



Royal Commission into Aboriginal Deaths in Custody Recommendation

79. Legislate to abolish the offence of public drunkenness

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) identified that many cases where Aboriginal people died in custody occurred after they had been arrested for being intoxicated in public. The Commission noted that arrests for public drunkenness were often used for social control rather than in response to criminal behaviour. The RCIADIC advocated for public drunkenness to be addressed outside of the criminal justice system and treated as a health and safety issue where intoxicated persons are returned home, hospitalised or safely escorted to a sobering up facility. At the time of the RCIADIC, several jurisdictions had abolished the offence but gave police powers of 'protective custody' which effectively permitted arrest for public drunkenness.
Intent	Decriminalise public drunkenness.
Responsibility	All state and territory governments.
Key contact	Department of Justice and Community Safety (DJCS).
Key action taken	
2005 Review³	<p>Recommendation 79 was assessed by the Department of Justice and Victoria Police as being partially implemented.</p> <p>Department of Justice</p> <p>Legal Policy advised that the offence of drunkenness had not been decriminalised. However, the offence of 'Habitual Drunk' (Section 15 <i>Summary Offences Act 1966</i>) was repealed in 1998. The Drugs and Crime Prevention Committee conducted an Inquiry into Public Drunkenness. The extensive report from this Inquiry was completed in June 2001 and included issues related to the RCIADIC. The Inquiry recommended that public drunkenness be decriminalised but not until adequate sobering up centres were established, legislation with regard to civil apprehension and detention enacted and comprehensive training provided for police officers and sobering-up centre staff. The report made further detailed recommendations in relation to public drunkenness and the <i>Summary Offences Act 1966</i> (Vic) ('Summary Offences Act') including that RCIADIC Recommendations 79-84 be generally implemented.</p>

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 3, 28 ('RCIADIC').

² Ibid vol 3, 13-14.

³ Aboriginal Justice Forum (Vic), Department of Justice (Vic), Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody (Review Report, October 2005) vol 1, 381-2 ('2005 Review').

79. Legislate to abolish the offence of public drunkenness

	<p>At the time of this review, recommendations from the Inquiry into Public Drunkenness were under consideration by the Government which had indicated it would consult with stakeholders and make an official response.</p> <p>In 2000, the Government commissioned the Scrutiny of Acts Regulations Committee (SARC) to review the Summary Offences Act and the <i>Vagrancy Act 1966</i> (Vic). Both Acts, in part, dealt with issues concerning behaviour in public spaces. The Government gave in principle support to recommendations to modernise provisions relating to obscene, indecent, threatening language and behaviour in public in their 2002 response to SARC's report on the Summary Offences Act.</p> <p>Victoria Police</p> <p>Victoria Police advised that there was one sobering-up centre in the Metropolitan region and five regionally. The Victoria Police Manual (VPM) stated that if Aboriginal people were arrested for being 'drunk' then the sobering-up centre must be notified. The Aboriginal Affairs Unit would supply contact details of all sobering-up centres to stations.</p> <p>Regionally, the Aboriginal Community Justice Panels (ACJP) played an important and effective role in assisting police with drunken clients. The Department of Justice were also seeking to establish/support regional night patrol services to assist in this matter.</p> <p>Victoria Police later advised that the issue of public drunkenness had been addressed by the Operations Department – Drugs and Crime Prevention Committee Inquiry into Public Drunkenness – Operations Response. The Review Team were provided with a copy of the issues paper and the briefing paper provided by Victoria Police.</p>
2018 Review⁴	<p>Deloitte assessed Recommendation 79 as being not implemented.</p> <p>At the time of this review, public drunkenness was still an offence punishable by a maximum sentence of one-month imprisonment. Drunk and disorderly offences still existed in Victorian legislation and could attract a penalty of imprisonment.</p>
Since then	<p>On 22 August 2019 the Victorian Government announced it would 'decriminalise public drunkenness and replace it with a health-based response, in order to provide vulnerable Victorians with appropriate help and support'.</p> <p>The Department of Justice and Community Safety (DJCS) and the Department of Health and Human Services (DHHS) supported an Expert Reference Group (ERG) to provide advice to government about development of a public health-based response. The ERG undertook broad consultation in late 2019 and early 2020 with a range of stakeholders which included Aboriginal organisations, first responders, health professionals as well as community and legal peak bodies. The ERG delivered its report, <i>Seeing the Clear Light of Day</i>, which included 86</p>

⁴ Deloitte Access Economics, Department of Prime Minister and Cabinet, Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody (Report, August 2018) 160 ('2018 Review').

79. Legislate to abolish the offence of public drunkenness

recommendations, to government in August 2020 (The ERG's report and the Victorian Government's response is available at www.justice.vic.gov.au/public-drunkenness).⁵

The Victorian government introduced the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 to Parliament on 8 December 2020. The legislation was passed on 19 February 2021 and repealed existing offences under the *Summary Offences Act 1966* (Vic) and made consequential amendments to the *Liquor Control Reform Act 1998* (Vic) and the *Bail Act 1977* (Vic) to remove references to public drunkenness offences. The Bill was to take effect in November 2022 to allow time to develop, trial and implement a public health response to support people who are intoxicated in public and protect community safety.

Consistent with the ERG's recommendation, the repeal was to come into effect after a 24-month implementation period, during which time the public health model could be trialled in key locations and then established across the state. Trial site locations were considered in line with ERG advice.

While the government acknowledged that these reforms were long overdue in Victoria, the implementation period was considered critical to creating a well-designed, collaborative and culturally safe system consistent with the ERG's vision. The Government provided \$16 million in the 2020-21 Budget to start work to implement these reforms.⁶

Victoria Police Response⁷

When asked about this recommendation in 2023, Victoria Police noted:

The *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic) repeals the public drunkenness offences in the *Summary Offences Act 1966*, together with associated arrest and infringement provisions. Public drunkenness will no longer be an offence from 7 November 2023.

The Department of Health's (DH) framework towards public intoxication reform was approved by Cabinet in December 2022. DH also developed a draft Public Intoxication Service Framework to support the tender process for outreach service providers. Four trial sites (City of Greater Dandenong, City of Yarra, City of Greater Shepparton and Shire of Mt Alexander) remain in operation to test the health-led response to public drunkenness. Victoria Police members in the trial sites are operating under a Chief Commissioner's Instruction that supports discretionary decision-making to divert people found to be drunk in public into the safe care of an appropriate person, or if appropriate, arrange transportation for that person to a place of safety.

Victoria Police is in the process of operationalising the policing response to these reforms. The response will include training for police, data gathering and accountability mechanisms. The response will also include processes for referral of persons drunk in public to outreach and

⁵ Expert Reference Group, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness* (Report, August 2020) ('Seeing the Clear Light of Day').

⁶ Department of Treasury and Finance (Vic), *Service Delivery 2023-24* (Report, 2023) 63, 71 ('Service Delivery 2023-24').

⁷ David Jones and Tyler McRae, 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Response to AJC Request (UNPUBLISHED), Tranche Two) 16.

79. Legislate to abolish the offence of public drunkenness

other services, and revised policies, including a Chief Commissioner's Instruction, to support police decision-making and accountability.

Evidence of impact

Authorising document **Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021 (Vic)**
This Act amended the *Summary Offences Act 1966* (Vic), the *Bail Act 1977* (Vic) and the *Liquor Control Reform Act 1998* (Vic) to decriminalise public intoxication.

Outputs **Victorian Government**

- Support for the Expert Reference Group (ERG) to provide advice to government about development of a public health-based response.
- Response to the ERG's report, 'Seeing the Clear Light of Day', which included 86 recommendations to government.
- Introduction of the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 to Parliament on 8 December 2020.
- \$16 million allocated in the 2020-21 State Budget to begin implementation of public intoxication reforms across four trial sites.

Outcomes **Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness⁸**

The Seeing the Clear Light of Day Report demonstrated that Aboriginal people were significantly overrepresented amongst those charged with breaching public drunkenness laws. The report stated that 'whilst they make up 0.8 percent of the Victorian population, overall 6.5 percent of all public drunkenness offences were recorded against Aboriginal and/or Torres Strait Islander people'. In addition, it was noted that the Victorian Government's decision to abolish the offence of public drunkenness was made on the evening before the coronial inquest into the death of Tanya Day. Tanya Day was removed by police from a train and taken into custody for being intoxicated in public. She sustained a serious head injury after falling in a police cell and died 17 days later, on 22 December 2017.

Victorian Government

The Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 was passed on 19 February 2021 and repealed existing offences under the *Summary Offences Act 1966* (Vic) and made consequential amendments to the *Liquor Control Reform Act 1998* (Vic) and the *Bail Act 1977* (Vic) to remove references to public drunkenness offences. In June 2022, legislation was introduced to enable formal deferral of the decriminalisation of public drunkenness to November 2023.⁹

Victorian Aboriginal Legal Service¹⁰

⁸ *Seeing the Clear Light of Day*, 19-25.

⁹ Crimes Legislation Amendment Bill 2022 (Vic) ('Crimes Legislation Amendment Bill').

¹⁰ Victorian Aboriginal Legal Service, 'Public Intoxication to Finally Be Decriminalised' (Media Release 3 November 2023) <<https://www.vals.org.au/public-intoxication-to-finally-be-decriminalised/>>.

79. Legislate to abolish the offence of public drunkenness

	<p>The Victorian Aboriginal Legal Service (VALS) published a statement on the decriminalisation on public intoxication implemented on 7 November 2023. VALS highlighted that it was an ‘historic and long overdue reform’ and that Victoria was ‘finally treating it as the public health issue, as it has always been.’</p>
Community views	<p>The family of Aunty Tanya Day (2023)</p> <p><i>Our mother would still be here today if the Government repealed the laws criminalising public drunkenness as first recommended over 30 years ago in the Royal Commission into Aboriginal Deaths in Custody. We are glad the government is finally listening and is implementing these changes.</i>¹¹</p> <p>Associate Professor Crystal McKinnon, Steering Committee member at the Dhadjowa Foundation</p> <p><i>Public drunkenness laws have contributed to far too many deaths in custody. These changes have been worked towards and fought for by the Aboriginal community over decades and are well overdue.</i>¹²</p>
Related recommendations	
Inquest into the passing of TD (2020)¹³	<p>Recommendation 1 – Decriminalise Public Drunkenness</p> <p>I recommend that the offence of public drunkenness be decriminalised, and that section 13 of the <i>Summary Offences Act 1966</i> (Vic) be repealed.</p>
2005 Review¹⁴	<p>Recommendation 54</p> <p>That the Victorian Government:</p> <ul style="list-style-type: none"> a) proceed, as a matter of urgency, to abolish the offence of public drunkenness; b) establish appropriately resourced Aboriginal run Sobering-Up Centres, which operate twenty-four hours, seven days a week; and <p>That the Victorian Government implement and monitor Recommendations 79 and 80 through any monitoring process established as a consequence of this Review.</p>
Drugs and Crime Prevention Committee Inquiry into Public	<p>Recommendation 1</p> <p>Decriminalisation of public drunkenness offences shall take effect but not until the following requirements are met:</p> <ul style="list-style-type: none"> • Legislation with regard to civil apprehension and detention of intoxicated persons is enacted • Adequate numbers of sobering-up centres and associated services are established

¹¹ Human Rights Law Centre, 'Public Intoxication to Finally Be Decriminalised' (Media Release 3 November 2023) <<https://www.hrlc.org.au/news/2023/11/3/public-intoxication-decriminalised>>.

¹² Ibid.

¹³ Coroner Caitlin English, Inquest into the Death of Tanya Louise Day (Findings COR 2017 6424, 9 April 2020) ('Inquest into the Death of Tanya Louise Day').

¹⁴ 2005 Review.

79. Legislate to abolish the offence of public drunkenness

Drunkenness (2001)¹⁵

- Comprehensive training for police officers and sobering-up centre staff with regard to the new legislation and any protocols and guidelines associated with it is undertaken.

Recommendation 2

Recommendations 79–84 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) should generally be implemented.

Recommendations 3-5

Sections 13, 14 and 16 of the *Summary Offences Act 1966* should be repealed.

Recommendation 6

Comprehensive new legislation dealing with public intoxication should be enacted.

Recommendation 7

A new public disorder offence must not be considered as a replacement for the repeal of public drunkenness offences.

Record of Investigation into Death of KD (1991)¹⁶

Recommendation 1 – Case study for decriminalisation of public drunkenness

There has been a great deal of discussion within the community about issues relating to alcohol use and abuse including underage drinking and the possible decriminalisation of public drunkenness. I intend to submit my Findings in this inquest to the Attorney-General for his attention with the recommendation that it be referred to the Law Reform Commission for consideration as a case study in what can go wrong in the existing legislative framework.

Assessment summary

The intent of Recommendation 79 was to remove ‘public drunkenness’ offences from legislation.

In 2019, on the eve of the inquest into the death of Yorta Yorta woman Tanya Day, the Victorian Government announced that it would decriminalise public drunkenness and replace it with a health-based response. This announcement followed tireless advocacy by Tanya Day’s family for this recommendation to be implemented:

*Our mother would still be here today if the Government repealed the laws criminalising public drunkenness as first recommended over 30 years ago in the Royal Commission into Aboriginal Deaths in Custody.*¹⁷

The Summary Offences Amendment Bill 2020 (Decriminalisation of Public Drunkenness) was passed by the Victorian Parliament in February 2021. This Bill repealed existing offences under the *Summary Offences Act 1966* (Vic) and made amendments to the *Liquor Control Reform Act 1998* (Vic) and the *Bail Act 1977* (Vic) to remove references to public drunkenness offences. Originally, the legislative changes were to take effect in November 2022 after a 24-month implementation period, during which time the public health model could be trialled in key locations and then established across the state. Ultimately, a twelve-month extension was required with public drunkenness decriminalised from 7 November 2023.

¹⁵ Drugs and Crime Prevention Committee, Parliament of Victoria, Inquiry into Public Drunkenness (Final Report No 86 Session 2000-2001, June 2001) xi.

¹⁶ Coroner Jonathan Klestadt, State Coroner, Record of Investigation into Death of Kenneth Robert Duggan (Findings Case No. 4676/89, 15 April 1991) ('Record of Investigation into Death of Kenneth Robert Duggan').

¹⁷ Human Rights Law Centre, 'Public Intoxication to Finally Be Decriminalised'.

79. Legislate to abolish the offence of public drunkenness

The Aboriginal Justice Caucus (AJC) determined that the actions taken closely aligned with the intent of the recommendation and were directly linked to the removal of the relevant offences from legislation. As one of a chorus of Aboriginal voices, the AJC lamented three-decades of inaction between when this recommendation was made and when public drunkenness offences were abolished in Victoria, noting that several people had died in custody as a result.

*The foresight of Aboriginal people 30 odd years ago when these initial recommendations were put in place needs to be acknowledged. They should have been listened to and lives would have been saved.*¹⁸ (Marion Hansen)

*Public drunkenness laws have contributed to far too many deaths in custody. These changes have been worked towards and fought for by the Aboriginal community over decades and are well overdue.*¹⁹ (Crystal McKinnon)

Provided these legislative changes remain in place in Victoria, the AJC considered Recommendation 79 to be no longer relevant. However, if the legislation were to be repealed or other similar offences created this recommendation would become 'absolutely relevant' once more.

It will be absolutely relevant if the government change their mind at the drop of a hat and stop funding the public intoxication reform projects that have been put in place. (Marion Hansen, Chairperson, AJC)

As the Victorian legislation was changed as intended Recommendation 79 was considered fully implemented. In terms of the potential benefits of further implementation, the AJC emphasised the need for further work to implement RCIADIC recommendations related to the public health response rather than this one.

Assessment of Recommendation 79

Is the intent of the recommendation accurately described?

Yes ☒ No ☐

Does the action taken align with the intent of the recommendation?

0 – No action taken

1 – Action taken is of little relevance to the intent of the recommendation

2 – Action taken partially aligns with the intent of the recommendation

3 – Action taken fully aligns with the intent of the recommendation

2-3

(Score out of 3)

Is there evidence of the desired impact or outcome/s?

0 – No evidence

1 – Evidence of output rather than outcome

2 – Some evidence action contributed to outcome/s

3 – Clear link between action and impact or outcome/s

3

(Score out of 3)

¹⁸ Marion Hansen (Co-chairperson, Aboriginal Justice Caucus) Meeting with Aboriginal Justice Caucus Working Group (Aboriginal Justice Caucus Project Team, Online) ('Working Group Meeting (10 October 2024)').

¹⁹ Human Rights Law Centre, 'Public Intoxication to Finally Be Decriminalised'.

How relevant is the recommendation in the current context?

- 0 – No relevance – refers to practices, agencies or laws that no longer exist
1 – Low – some relevance, but most aspects of the recommendation no longer apply
2 – Moderate – remains relevant, but some aspects of recommendation no longer apply
3 – High – entirely relevant to current context

0/3

(Score out of 3)

Does full implementation have the potential to reduce incarceration, increase safety in custody and/or progress Aboriginal self-determination?

- 0 – No potential to improve Aboriginal justice outcomes
1 – Low – potential to improve Aboriginal justice outcomes, but none of the three identified
2 – Moderate – potential to progress one or two of the outcomes identified
3 – High – potential to reduce incarceration AND increase safety in custody AND self-determination

0-1

(Score out of 3)

Potential actions for further work

Aboriginal access to the public health response

In the wake of the decriminalisation of public drunkenness, ensure that Aboriginal people across Victoria have access to the alternative health-based responses, particularly those delivered by ACCOs.

Low priority for further work

Relevance and potential impact

		Low (0-2)	Moderate (3-4)	High (5-6)
Extent of action taken and evidence of outcomes	High (5-6)	Rec 79		
	Moderate (3-4)			
	Low (0-2)			

Bibliography

- Aboriginal Justice Forum (Vic), Department of Justice (Vic), *Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody* (Review Report, October 2005)
- Coroner Caitlin English, *Inquest into the Death of Tanya Louise Day* (Findings COR 2017 6424, 9 April 2020)
- Coroner Jonathan Klestadt, State Coroner, *Record of Investigation into Death of Kenneth Robert Duggan* (Findings Case No. 4676/89, 15 April 1991)
- Crimes Legislation Amendment Bill 2022 (Vic)
- Deloitte Access Economics, Department of Prime Minister and Cabinet, *Review of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Report, August 2018)
- Department of Treasury and Finance (Vic), *Service Delivery 2023-24* (Report, 2023)
- Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Public Drunkenness* (Final Report No 86 Session 2000-2001, June 2001)
- Expert Reference Group, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness* (Report, August 2020)
- meeting of Group, Aboriginal Justice Caucus Working (Aboriginal Justice Caucus Project Group, Aboriginal Justice Caucus Working, Online)

Human Rights Law Centre, 'Public Intoxication to Finally Be Decriminalised' (Media Release, 3 November 2023) <<https://www.hrlc.org.au/news/2023/11/3/public-intoxication-decriminalised>>

Jones, David and Tyler McRae, Victoria Police 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Response to AJC Request (UNPUBLISHED) Tranche Two, 2023)

Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991)

Victorian Aboriginal Legal Service, 'Public Intoxication to Finally Be Decriminalised' (Media Release, 3 November 2023) <<https://www.vals.org.au/public-intoxication-to-finally-be-decriminalised/>>