



Royal Commission into Aboriginal Deaths in Custody Recommendation

79. Legislate to abolish the offence of public drunkenness¹

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.²

Background³	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. It 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	Abolish the offence of public drunkenness.
Responsibility	All state and territory governments.
Key contact	Department of Justice and Community Safety (DJCS).
Key action taken	
2005 Review⁴	<p>The Department of Justice and Victoria Police assessed Recommendation 79 as 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) was repealed in 1998.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. Their extensive 2001 report addressed issues raised by the RCIADIC and recommended decriminalising public drunkenness only after appropriate sobering-up centres were in place, supporting legislation on civil apprehension and detention was enacted, and comprehensive training was provided for police 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)</p>

¹ We recognise Aboriginal community concerns with the use of this terminology and its potential to reinforce harmful stereotypes, so have only included it where it reflects the language included in legislation or quotations. Wherever possible we use 'public intoxication' instead.

² *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 3, 28 ('RCIADIC').

³ *Ibid* vol 3, 13-14.

⁴ 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').

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(‘Summary Offences Act’) including that RCIADIC Recommendations 79-84 be generally implemented.

At the time of the 2005 Review, recommendations from the Inquiry into Public Drunkenness were under consideration by the Victorian Government which had indicated it would consult with stakeholders before making an official response.

In 2000, the Government commissioned the Scrutiny of Acts and Regulations Committee (SARC) to review the Summary Offences Act and the *Vagrancy Act 1966* (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.

Victoria Police

Victoria Police advised that there was one sobering-up centre in the metropolitan region and five regionally. The Victoria Police Manual stated that if Aboriginal people were arrested for being ‘drunk’ then the sobering-up centre must be notified. The Aboriginal Affairs Unit supplied contact details of sobering-up centres to stations.

Regionally, the Aboriginal Community Justice Panels played an important and effective role in assisting police with intoxicated clients. The Department of Justice were seeking to establish and/or support regional community night patrol services to also assist people intoxicated in public.

2018 Review⁵

Deloitte concluded that Recommendation 79 was **not implemented** in Victoria as public drunkenness was still an offence punishable by imprisonment.

Since then

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’.

The Department of Justice and Community Safety and the Department of Health and Human Services 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 and community and legal peak bodies. The ERG delivered its report, *Seeing the Clear Light of Day*, which included 86 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).⁶

The Victorian Government introduced the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill to Parliament on 8 December 2020. The legislation was passed on 19 February 2021, repealing existing offences under the Summary Offences Act and making

⁵ 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').

⁶ 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').

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consequential amendments to the *Liquor Control Reform Act 1998* (Vic) and the *Bail Act 1977* (Vic) to remove references to public drunkenness offences. The Act 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 period to allow the public health model to 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.⁷

Victoria Police Response⁸

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

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

The Department of Health's (DH) framework for 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) remained in operation in 2023 to test the health-led response to public intoxication. In those sites, Victoria Police members operated under a Chief Commissioner's Instruction that supported discretionary decision-making to divert people found to be drunk in public into the safe care of an appropriate person or arrange transportation for that person to a place of safety.

Victoria Police were operationalising the policing response to these reforms that included training for police, data gathering and accountability mechanisms. It was to also include processes for referring people to outreach and 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 drunkenness.

⁷ Department of Treasury and Finance (Vic), *Service Delivery 2023-24* (Report, 2023) 63, 71 ('Service Delivery 2023-24').

⁸ David Jones and Tyler McRae, 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Response to AJC Request, Tranche Two) 16.

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<p>Outputs</p>	<p>Victorian Government</p> <ul style="list-style-type: none"> • 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’ and its 86 recommendations to government. • Introduction of the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 to Parliament. • \$16 million from the 2020-21 State Budget to begin implementation of public intoxication reforms across four trial sites.
<p>Outcomes</p>	<p>Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness⁹</p> <p>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.</p> <p>Victorian Government</p> <p>The Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020 was passed on 19 February 2021, repealing existing offences under the <i>Summary Offences Act 1966</i> (Vic) and making consequential amendments to the <i>Liquor Control Reform Act 1998</i> (Vic) and the <i>Bail Act 1977</i> (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 2023.¹⁰</p> <p>Victorian Aboriginal Legal Service¹¹</p> <p>The Victorian Aboriginal Legal Service (VALS) published a statement on the decriminalisation of 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 a public health issue, as it has always been.’</p>
<p>Community views</p>	<p>The family of 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</i></p>

⁹ *Seeing the Clear Light of Day*, 19-25.

¹⁰ Crimes Legislation Amendment Bill 2022 (Vic) ('Crimes Legislation Amendment Bill').

¹¹ 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/>>.

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*into Aboriginal Deaths in Custody. We are glad the government is finally listening and is implementing these changes.*¹²

Associate Professor Crystal McKinnon, Steering Committee member at the Dhadjowa Foundation

*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.*¹³

Related recommendations

Inquest into the passing of TD (2020)¹⁴

Recommendation 1 – Decriminalise Public Drunkenness

I recommend that the offence of public drunkenness be decriminalised, and that section 13 of the *Summary Offences Act 1966* (Vic) be repealed.

2005 Review¹⁵

Recommendation 54

That the Victorian Government:

- a) proceed, as a matter of urgency, to abolish the offence of public drunkenness, and
- b) establish appropriately resourced Aboriginal run Sobering-Up Centres, which operate twenty-four hours, seven days a week.

That the Victorian Government implement and monitor recommendations 79 and 80 through any monitoring process established as a consequence of this Review.

Drugs and Crime Prevention Committee Inquiry into Public Drunkenness (2001)¹⁶

Recommendation 1

Decriminalisation of public drunkenness offences shall take effect but not until the following requirements are met:

- legislation regarding civil apprehension and detention of intoxicated persons is enacted
- adequate numbers of sobering-up centres and associated services are established
- 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 should generally be implemented.

Recommendations 3-5

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

¹² 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>>.

¹³ Ibid.

¹⁴ 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').

¹⁵ 2005 Review.

¹⁶ Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Public Drunkenness* (Final Report No 86 Session 2000-2001, June 2001) xi.

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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)¹⁷

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 summary¹⁸

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 Aunty 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 Aunty 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.¹⁹

The *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act* was passed by the Victorian Parliament in February 2021. This Act 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.

Actions taken align 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 Aboriginal Justice Caucus (AJC) lament three decades of inaction between when this recommendation was made and when public drunkenness offences were abolished in Victoria, noting that several people 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. (Marion Hansen, Co-chairperson, AJC)

¹⁷ 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').

¹⁸ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 10 October 2024) ('Working Group Meeting (10 October 2024)'); Meeting with Aboriginal Justice Caucus (Project Team, In Person, 11 December 2024) ('AJC Meeting (11 December 2024)').

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

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Provided these legislative changes remain in place in Victoria, Recommendation 79 is 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, Co-chairperson, AJC)

As the Victorian legislation was changed as intended, the implementation of Recommendation 79 is complete, but there is still the need to do further work to implement RCIADIC recommendations related to the public health response to public intoxication, like support Aboriginal organisations' outreach and sobering-up services.

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

2.5

(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)

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

(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

0.5

(Score out of 3)

Potential actions for further work

Aboriginal access to health-based responses

Ensure that Aboriginal people across Victoria have access to health-based responses implemented under the public intoxication reforms, particularly those delivered by ACCOs.

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)			

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