



Royal Commission into Aboriginal Deaths in Custody Recommendation

81. Alternatives to detention for intoxicated persons

That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) identified cases where police did not consider all non-custodial options for the care of intoxicated persons and there were tragic consequences. The Commission recognised that whilst there were some barriers to the use of non-custodial resources, protective custody should be the last resort after the full range of available options have been considered. Additionally, the inappropriateness of the use of police cells for the care of intoxicated persons must be thoroughly understood, accepted and avoided in practice by police services.
Intent	Impose a statutory duty upon police to ensure alternatives to police custody are used in practice.
Responsibility	All state and territory governments.
Key contacts	Department of Justice and Community Safety; Victoria Police.

Key action taken

2005 Review³	<p>The Department of Justice assessed Recommendation 81 as partially implemented.</p> <p>Department of Justice</p> <p>The offence of drunkenness had not been decriminalised, but the offence of ‘Habitual Drunk’ (Section 15 of the <i>Summary Offences Act 1966</i>) had been repealed in 1998.</p> <p>The Drugs and Crime Prevention Committee carried out an Inquiry into Public Drunkenness. They recommended that public drunkenness be decriminalised once adequate sobering-up centres were established, legislation about civil apprehension and detention was enacted, and comprehensive training provided for police officers and sobering-up centre staff on the new legislation and any protocols and guidelines associated with it.</p> <p>The 2001 report made further detailed recommendations including that RCIADIC recommendations 79-84 be generally implemented. At the time, these recommendations were under consideration by the Victorian Government which had indicated it would consult stakeholders and make an official response.</p>
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¹ *Royal Commission into Aboriginal Deaths in Custody* (Final Report, 1991) vol 3, 28 ('RCIADIC').

² *Ibid* vol 3, 16.

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, 381-4 ('2005 Review').

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<p>2018 Review⁴</p>	<p>Deloitte found Recommendation 81 was partially implemented in Victoria through police policy, with no legislation mandating alternatives to detention for intoxicated individuals. Victoria Police could direct Aboriginal people to sobering-up centres, but this was not legislated. The Victoria Police Manual provided guidance on alternatives to lodging intoxicated persons in police cells, and where appropriate releasing them into the care of an Aboriginal Community Justice Panel.</p>
<p>Since then</p>	<p>Victorian Government</p> <p>The Victorian Government introduced the Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill to Parliament in December 2020. The legislation was passed in early 2021 to repeal existing offences under the <i>Summary Offences Act 1966</i> and make consequential amendments to the <i>Liquor Control Reform Act 1998</i> and the <i>Bail Act 1977</i> to remove references to public drunkenness⁵ offences. It came into effect in November 2023.</p> <p>Further work on guidelines for first responders and consideration of legislative powers for police in relation to these reforms was undertaken.</p> <p>The Victorian Government recognised that the requirements of a public health response would also strengthen Victoria’s response to RCIADIC Recommendation 81.</p> <p>Victoria Police⁶</p> <p>In their 2023 response, Victoria Police noted the Victorian Government had confirmed that police would not be provided with additional powers following the decriminalisation of public drunkenness. Victoria Police were operationalising the policing response to these reforms, including supporting the use of alternatives to police custody for intoxicated persons under a health-led approach.</p> <p>Department of Health⁷</p> <p>In a 2023 update the Department noted police would not be given any new powers in response to public intoxication. Instead, a health-based model would be adopted across metropolitan Melbourne, outer metropolitan areas, and regional locations. It included outreach teams and sobering-up services, with a particular emphasis on serving Aboriginal clients.</p>
<p>Evidence of impact</p>	
<p>Authorising documents</p>	<p><i>Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2020 (Vic) Chief Commissioner’s Instruction 09/23 – Persons drunk in public⁸</i></p> <p>This instruction contextualises public intoxication reforms noting that:</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) 163 ('2018 Review').

⁵ We recognise Aboriginal community concerns with the use of this terminology and its potential to reinforce harmful stereotypes, so have only used it where it reflects legislation, official documents or quotations. Wherever possible ‘public intoxication’ is used instead.

⁶ David Jones and Tyler McCrae, 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Response to AJC Request, Tranche Two) 81.

⁷ Department of Health (Vic), *Aboriginal Justice Forum 67* (13 October 2023) 22 ('Aboriginal Justice Forum 67').

⁸ Chief Commissioner of Victoria Police, 'Chief Commissioner's Instruction ' (2023) (09/23) *CCI 09/23 Persons drunk in public*.

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- Arrest powers are no longer available to be used to manage or transport a person who is drunk in public.
- No new powers or additional duties (including no additional duties of care specific to persons drunk in public) were provided to police as part of this reform.
- Victoria transitioned to a new health-based model for responding to public drunkenness that prioritises the use of non-criminal justice response options such as local health-based, outreach and alternative support services and seeks to reduce unnecessary contact with the criminal justice system, by minimising the role of Victoria Police in responding to public drunkenness incidents. The successful operation of the health-based model requires police members to exercise discretion in determining whether to take enforcement action against persons who are drunk in public. It is important that members note that it is not the intent of decriminalisation for members to rely on alternative low-level offences as a substitute for the repealed public drunkenness offences.
- The decriminalisation of public drunkenness does not alter members' existing duties or functions. Members must act in accordance with legislation and Victoria Police policy in the performance of their duties and functions, and the exercise of their powers. This includes acting in compliance with existing obligations under the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) and the *Occupational Health and Safety Act 2004*.

A range of response and referral options are to be considered when a person is found intoxicated in public. A flow-chart (below) highlights things for police to consider when pursuing these options.

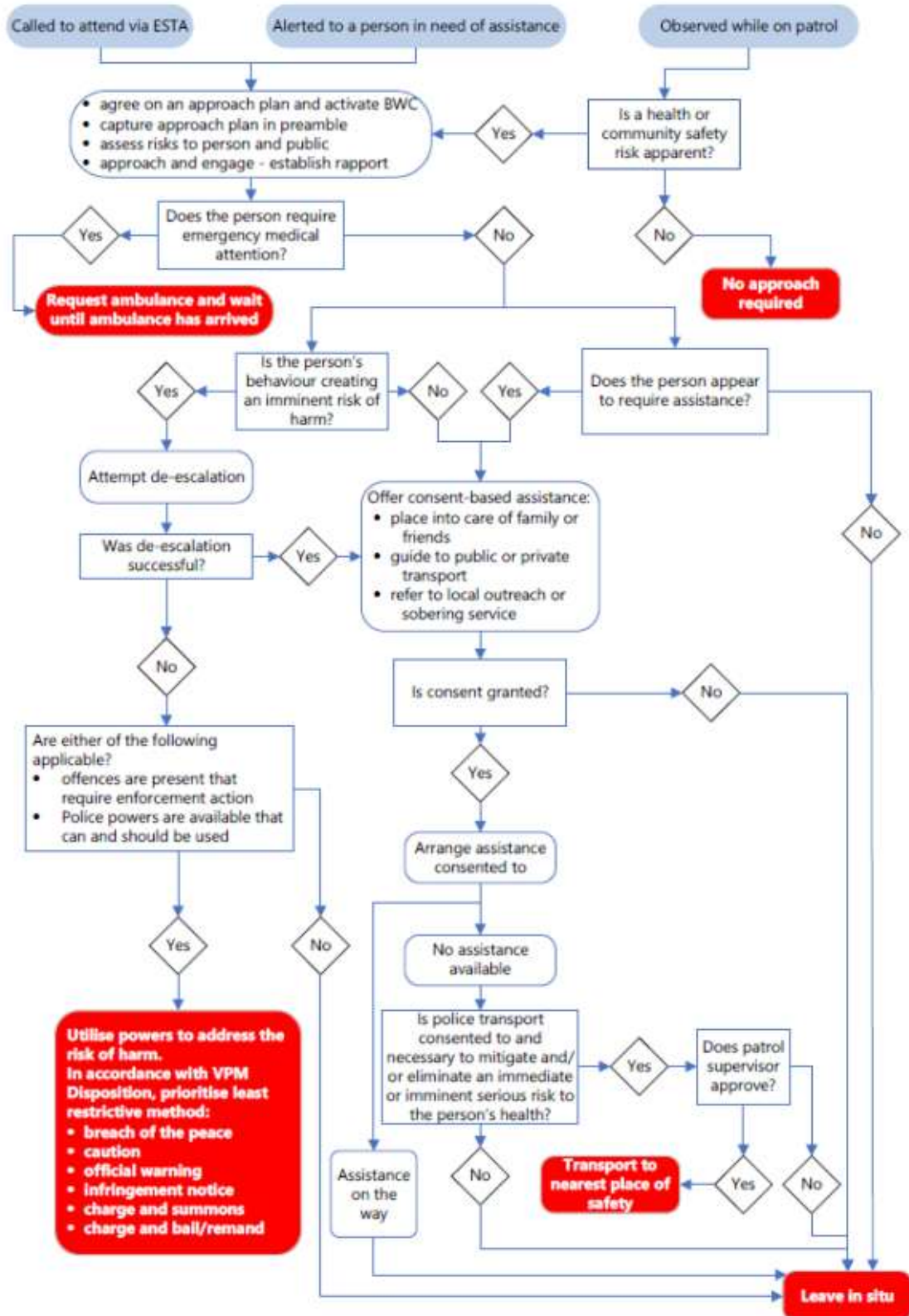
Response and referral options

Where a person does not require emergency medical attention, members may consider providing them with support and assistance in a community policing capacity.

Police can consider placing the person into the care of family or friends, referring the person to a local outreach or sobering-up service, leaving the person in-situ or transporting the person to the nearest place of safety.

Assistance a person may require from police members will vary, based on their individual circumstances, preferences (including cultural preferences) and ability and willingness to provide informed consent. When identifying what form(s) of assistance may be suitable to offer, members are to have regard to 'whether the person self-identifies as being Aboriginal and/or Torres Strait Islander' as well as their cultural and linguistic needs and preferences, gender, additional support or mobility needs and their current means and ability to safely and independently reach a place of safety or access safe transport options.

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Outputs

Chief Commissioner's Instruction 09/23 – Persons drunk in public was issued pursuant to the powers of the Chief Commissioner of Police under Section 60, *Victoria Police Act 2013*. Originally published on the Victoria Police intranet in October 2023, this instruction was to expire 18 months from publication unless reissued.

Outcomes

Victoria is the only jurisdiction where public drunkenness has been decriminalised without additional powers being conferred on police. While a statutory duty for police to consider and utilise alternatives to the detention of intoxicated persons in police cells was not introduced at the time public drunkenness offences were repealed, the Chief Commissioner of Police issued instructions outlining response and referral options that police should consider when dealing with a person who is intoxicated in public.

ABC News – Police union criticises 'sit back' approach⁹

The ABC reported that the Police Association of Victoria union supported the decriminalisation of public drunkenness but insisted on replacement powers for police. The union secretary Wayne Gatt said:

What police will have to do, in cases where no offence has been committed, will be to sit back, watch and wait for an offence to be committed... We think that's going to put the community at significant risk.

Mr. Gatt confirmed that in other states and territories where the law had been reformed, police were given a range of powers to transport, detain, and relocate individuals who were unwilling to engage with health services.

Victorian Ambulance Union secretary Danny Hill reiterated his concerns 'about the state's ability to install enough health services to respond to public drunkenness' and that 'if police could not interfere and health outreach services were busy; the workload would fall on ambulances.'

Victoria Legal Aid¹⁰

To assist members of the public to understand the reforms, Victoria Legal Aid (VLA) published information about police powers and the rights of individuals. VLA confirmed that the police cannot arrest or fine you for being intoxicated and that a health-based model is now in place. However, police can still approach you if you are affected by alcohol in public and they assess that you require support. If the police believe you require medical assistance, they can call an ambulance. If they do not think you need medical attention, they might speak with you and offer support.

VLA confirmed that if you agree, police officers can:

- Place you in the care of family, a carer or a friend. This may include getting a family member or friend to come to get you. Police may ask a friend or family member to organise

⁹ Ashleigh Barraclough, 'Decision Not to Give Victoria Police New Powers When Public Drunkenness is Decriminalised Draws Union Criticism', *ABC News* (online, 17 January 2023) <<https://www.abc.net.au/news/2023-01-17/public-drunkenness-decriminalisation-victoria-police-powers/101861744>>.

¹⁰ 'Public Intoxication', *Victoria Legal Aid* (Web Page, 10 July 2024) <<https://www.legalaid.vic.gov.au/public-intoxication>> ('Public Intoxication').

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a taxi or rideshare. Police will check to see if it is safe for you to go home. If you do not feel safe at home, you can tell the police.

- Contact workers about referring you to a sobering centre or on-demand place of safety. If you are in metropolitan Melbourne and cannot go to a friend, family member or carer's place, you can be referred to a sobering centre. Aboriginal-led organisations also have on-demand places of safety in some regional areas.
- Transport you to a place of safety in very limited circumstances. Police must get your agreement and make it clear you are not under arrest. If you change your mind, police need to let you out as soon as they safely can.
- Police officers can also leave you where you are. They may do this if you do not want help or if transport is on its way. Police should clearly tell you if they are doing this.
- Under the health-based model, you do not have to agree to police help. If you do agree to help, you can change your mind at any time.¹¹

Community views

Day Family Statement – Human Rights Law Centre

*We welcome the Andrews government's decision to hear our family's concerns and not to add or replace already excessive police powers and laws. This is the first time across the nation that a jurisdiction has made a commitment to true decriminalisation.*¹²

Nerita Waight, CEO, Victorian Aboriginal Legal Service

*The Victorian Government's decision to ensure police will not have new powers to respond to public intoxication is the right decision and a testament to the tireless advocacy of the Day Family since the passing of Aunty Tanya Day over 5 years ago... This is an important decision that will have a huge positive impact for overpoliced Aboriginal communities as well as other vulnerable communities across Victoria.*¹³

Aboriginal Justice Caucus, Aboriginal Justice Forum 68

*The AJC remain concerned that Aboriginal Community members are being charged with alternative offences after being approached by a police officer when intoxicated. Anecdotal evidence suggests that this is the case, however data is difficult to obtain. We know that due to ongoing and historical racism and bias, tensions are often high in interactions between police and Community. Alcohol can serve to amplify any agitation.*¹⁴

¹¹ Ibid.

¹² Human Rights Law Centre, 'No further police powers once public drunkenness is decriminalised: Day family statement' (online 17 JANUARY 2023) <[¹³ Ibid.](https://www.hrlc.org.au/news/2023/1/16/day-family-statement#:~:text=In%20response%2C%20the%20Day%20family%20said%3A&text=No%20person%20should%20ever%20be,in%20a%20public%20health%20response.>></p></div><div data-bbox=)

¹⁴ Aboriginal Justice Caucus, 'Aboriginal Justice Caucus Report to Aboriginal Justice Forum 68' (Agenda Paper) 148.

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Related recommendations

2005 Review

Recommendation 55

That Victoria Police consider and utilise alternatives to custody as matter of statutory responsibility when dealing with intoxicated people in police cells.

That the Victorian Government continue to implement and monitor Recommendation 81 through any monitoring process established as a consequence of this Review.

Drugs and Crime Prevention Committee Inquiry into Public Drunkenness¹⁵

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 regarding the new legislation and any protocols and guidelines associated with it is undertaken.

Recommendation 2

Recommendations 79–84 of the RCIADIC should generally be implemented.

Assessment summary¹⁶

The intent of Recommendation 81 is to impose a statutory duty upon police to ensure alternatives to police custody are used in practice. When public drunkenness was decriminalised in Victoria, police were not provided with additional powers:

*We welcome the Andrews government's decision to hear our family's concerns and not to add or replace already excessive police powers and laws. This is the first time across the nation that a jurisdiction has made a commitment to true decriminalisation.*¹⁷ (Day family)

There is no statutory requirement for police to consider or use alternatives to detaining intoxicated persons in police cells. While the Chief Commissioner of Police issued instructions outlining response and referral options for police when dealing with publicly intoxicated individuals, there is limited evidence that these options are being applied consistently.

It becomes difficult for us as a Caucus to monitor or evaluate some of these sorts of things, particularly with Victoria Police. We might get a sense of whether the professional development or training that takes place reflects these sorts of directives, but not how it's reported on. We need to keep an eye on it; make sure we're asking the right questions and getting the information we need. (Lawrence Moser, Chairperson, Eastern Metropolitan RAJAC).

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

¹⁶ 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)*').

¹⁷ {Human Rights Law Centre, #648}

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Additional monitoring and data are required to assess whether police are consistently using the available alternatives when dealing with publicly intoxicated individuals. This is particularly important given the uneven availability of outreach, health, and other support services across the state, and the absence of sobering-up services in some areas.

Introduction of a statutory duty mandating that police consider and use alternatives, could further reduce incarceration and increase safety in custody.

Assessment of Recommendation 81

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

(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

1.75

(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

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

3

(Score out of 3)

Potential actions for further work

Introduce a statutory duty so police must consider and use alternatives to custody for intoxicated persons.

Update Victoria Police Manual and other guidance to reflect this statutory duty.

High 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)			
	Moderate (3-4)			Rec 81
	Low (0-2)			

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