



Royal Commission into Aboriginal Deaths in Custody Recommendation

85. Police Services monitor effects of decriminalisation

That:

- a) Police Services should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to alternative places of care;
- b) The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and
- c) The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.¹

Background²	The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) emphasised the importance of monitoring the effects of legislation that decriminalises public drunkenness to ensure it does not result in the discriminatory detention of Aboriginal people. At the time, government agencies and Aboriginal community organisations had given significant attention to the regulation of Aboriginal drinking. The Commission stressed that these forms of regulation needed to be carefully evaluated to prevent alternative charges from increasing custody rates and to ensure that people are not inappropriately detained in police cells instead of being taken to alternative care facilities. The results of such monitoring were to be made public to ensure transparency and accountability in implementing these policies.
Intent	Monitor the effects of decriminalising public drunkenness to prevent discriminatory detention and ensure appropriate care for individuals.
Responsibility	The Commonwealth Government and all state and territory governments.
Key contacts	Victoria Police; Crime Statistics Agency, Department of Justice and Community Safety (DJCS).
Key action taken	
2005 Review³	Victoria Police assessed Recommendation 85 as not implemented . Review Team The Review Team were concerned that public drunkenness had not yet been decriminalised in Victoria.

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 3, 26 ('RCIADIC').

² Ibid vol 3, 25-27 [21.1.77].

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, 380-4, 446 ('2005 Review').

85. Police Services monitor effects of decriminalisation

<p>2018 Review⁴</p>	<p>Deloitte concluded that Recommendation 85 was not implemented in Victoria as the offence of public drunkenness was retained.</p>
<p>Since then</p>	<p>Department of Health and Department of Justice and Community Safety⁵</p> <p>The Department of Health (DH) and Department of Justice and Community Safety (DJCS) provided an update to the Aboriginal Justice Forum on the development of the Monitoring and Evaluation Plan, which aims to ensure that monitoring and evaluation of the public intoxication reforms (PIR) is ‘consistent, coordinated, and complementary, and will deliver comprehensive analysis of the impact of the reforms.’ Aboriginal stakeholder engagement was an integral element in the establishment of this plan.</p> <p>Victoria Police and DJCS are to prepare quarterly monitoring reports, which include data on:</p> <ul style="list-style-type: none"> • number and type of Victoria Police PIR-related contacts by area • number and type of Victoria Police PIR-related contact outcomes • number and reason for arrests of intoxicated persons • adverse outcomes following PIR-related contact • emergency services call-out volumes, by event type • client volume, distribution, and demography. <p>DJCS selected Monash University to undertake the independent evaluation of the justice impacts of the public intoxication reform, particularly any use of alternate powers and offences by police members and impacts on Aboriginal communities who have been disproportionately affected by public intoxication laws. The evaluation involves a team of Aboriginal academics with extensive experience across Aboriginal policy and research, human rights, access to justice for marginalised groups, and law reform evaluation.</p> <p><u>Implementation Monitoring and Oversight Group⁶</u></p> <p>A key recommendation of the Expert Reference Group’s Seeing the Clear Light of Day report was for the establishment of an independent group to oversee public intoxication reform. The Implementation Monitoring and Oversight Group provides independent advice to the Minister for Mental Health, to be shared with the Attorney-General and Minister for Police:</p> <p style="text-align: center;"><i>The advice will primarily focus on reform progress and performance, cultural safety, and risks and issues regarding the decriminalisation of public drunkenness and the statewide health-based response.</i></p> <p>The Implementation Monitoring and Oversight Group includes Aboriginal representatives and experts in health and justice.</p> <p>Victoria Police⁷</p> <p>Victoria Police require members to record data on their interactions with people who are intoxicated in public, using the Public Drunkenness Reform Application (PDR App). This</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) 170 ('2018 Review').

⁵ Department of Health & Department of Justice and Community Safety, *Aboriginal Justice Forum; Public Intoxication Reforms Update* (14 & 15 March, 2024) 215-216 ('Aboriginal Justice Forum; Public Intoxication Reforms Update').

⁶ Ibid 217.

⁷ Victoria Police, 'Aboriginal Justice Forum 68 - Public Drunkenness Data ' (Papers Pack) 265.

85. Police Services monitor effects of decriminalisation

information is monitored as part of Victoria Police' efforts to track implementation and impacts of the reform.

Victoria Police committed to transforming its systems and processes in line with the former Chief Commissioner's promise and apology to the Aboriginal community before the Yoorrook Justice Commission. One of the 79 actions outlined in that Statement of Commitment was to:

Monitor the operationalisation of the decriminalisation of public drunkenness to ensure there is no up charging or unequal use of discretion.⁸

Evidence of impact

Authorising documents

Chief Commissioner's Instruction – Persons drunk in public

Outlines the information police must record in relation to each type of interaction (placing a person in the care of family or friends, referring to or requesting the assistance of a local outreach or sobering service, leaving in situ, transporting to a place of safety) with a person who is drunk in public which includes:

- all decisions, reasons for decisions and actions in relation to their obligations under Victoria Police Manual operational duties and responsibilities, and
- details of their interaction with the person in the PDR App.

Outputs

Department of Health and Department of Justice and Community Safety

- Monitoring and Evaluation Plan – a framework for monitoring and evaluation projects conducted following the decriminalisation of public drunkenness.
- Implementation Monitoring and Oversight Group – provides independent advice to the Minister for Mental Health, who then shares the advice with the Attorney-General and the Minister for Police. The advice primarily focuses on reform progress and performance, cultural safety, and risks and issues regarding the decriminalisation of public drunkenness and the statewide health-based response.

Victoria Police

- Public Drunkenness Reform Application – used to record data on police interactions with people who are intoxicated in public.
- Chief Commissioner's Instruction – Persons Drunk in Public

Outcomes

- Aboriginal leadership and membership of the Implementation Monitoring and Oversight Group
- Aboriginal Justice Caucus involvement in the independent evaluation being conducted by Monash University researchers. The evaluation will examine the extent to which up charging may be occurring (in line with part b) of this recommendation) along with other potential justice impacts.

⁸ Shane Patton, Victoria Police, *Chief Commissioner's Statement of Commitment* (Statement, 11 March 2024) ('Chief Commissioner's Statement of Commitment').

85. Police Services monitor effects of decriminalisation

	<ul style="list-style-type: none"> Victoria Police began providing data to the Aboriginal Justice Forum collected via the Public Drunkenness Reform Application
<p>Community views</p>	<p>Victorian Aboriginal Legal Service</p> <p><i>Victoria Police must not use alternative powers to undermine the reforms. It is critical that the Victorian Government monitors implementation of the reforms through public and transparent reporting on alternative police powers, including move on powers.</i>⁹ (Nerita Waight, CEO)</p> <p>VALS advocated for greater alignment between the Chief Commissioner’s instructions to police members on information to be recorded in the PDR App and the Monitoring and Evaluation Plan, so that members are directed to record:</p> <ul style="list-style-type: none"> use of move on powers in relation to someone who is intoxicated in public use of breach of the peace powers in relation to someone who is intoxicated in public use of alternative arrest powers in relation to someone who is intoxicated in public any investigations and or charges that follow an incident where police have contact with someone who is intoxicated in public escalation and/or use of alternative arrest powers when police are providing transport to a safe place.¹⁰
<p>Related recommendations</p>	
<p>Yoorrook for Justice Report into Victoria’s Child Protection and Criminal Justice Systems¹¹</p>	<p>Recommendation 30</p> <p>In relation to the decriminalisation of public intoxication:</p> <p>(a) the Chief Commissioner of Police must ensure that Victoria Police conduct is closely monitored to ensure police members do not use existing powers to unnecessarily take intoxicated people into custody, for example by ‘up-charging’, and</p> <p>(b) the Victorian Government’s planned independent evaluation of the monitoring of police conduct must:</p> <ol style="list-style-type: none"> be Aboriginal led, with appropriate governance by them cover at least the first 12 months and then three years of implementation, and have results that are made public.
<p>2005 Review¹²</p>	<p>No recommendation could be made about monitoring the effects of decriminalisation as such legislative change had not been made at that time.</p>

⁹ 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/>>.

¹⁰ Unpublished correspondence between VALS and Victoria Police, sent to Alison Creighton, Executive Director, Capability Department on 27 July 2023.

¹¹ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria’s Child Protection and Criminal Justice Systems* (Report, August 2023) 35 ('Yoorrook for Justice').

¹² 2005 Review, vol 1, 447.

85. Police Services monitor effects of decriminalisation

Assessment summary¹³

The intent of Recommendation 85 was to monitor the effects of decriminalising public drunkenness to prevent discriminatory detention of Aboriginal people and ensure appropriate care for individuals.

A Monitoring and Evaluation Plan has been developed to guide monitoring and evaluation following public intoxication reforms. Aboriginal stakeholder engagement was integral to the establishment of this plan.

The Implementation Monitoring and Oversight Group comprises several Aboriginal representatives and provides independent advice to the Minister for Mental Health on reform progress and performance, cultural safety, risks and issues. This advice is shared with the Attorney-General and Minister for Police.

Monash University are independently evaluating the impacts of the reforms, particularly the use of alternative powers and offences by police members, as well as impacts on Aboriginal communities. We are involved in the independent evaluation which is looking at the extent to which up charging may be occurring along with a range of other potential justice impacts.

Victoria Police use the Public Drunkenness Reform Application to record information from their interactions with people who are intoxicated in public. This information is monitored as part of Victoria Police' internal evaluation of the implementation and impacts of the reform. We acknowledge that Victoria Police began providing data collected via this app to the Aboriginal Justice Forum, but this has not continued.

Overall, these actions partially align with the intent of the recommendation, but do not completely address parts b) and c), which require differences in police practices between urban and regional areas to be assessed and monitoring data to be made publicly available.

Victoria Police must not use alternative powers to undermine the reforms. It is critical that the Victorian Government monitors implementation of the reforms through public and transparent reporting on alternative police powers, including move on powers. (Nerita Waight, CEO, VALS)

We are concerned about the quality and timeliness of data provided in response to our (Aboriginal Justice Caucus) requests, and dependency on external bodies for progress updates on reforms.

Recommendation 85 remains highly relevant. Further work to monitor implementation of public intoxication reforms through public and transparent reporting, including on use of alternative police powers and charges, would increase transparency and police accountability and could contribute to reducing incarceration.

¹³ 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)').

Assessment of Recommendation 85

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

1.5

(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

2

(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

2

(Score out of 3)

Potential actions for further work

Monitor implementation of public intoxication reforms through public and transparent reporting

Monitor implementation of public intoxication reforms through public and transparent reporting, including on use of alternative police powers and charges.

Implement the relevant Yoorrook recommendation (Yoorrook for Justice, Recommendation 30)

In relation to the decriminalisation of public intoxication:

- (a) the Chief Commissioner of Police must ensure that Victoria Police conduct is closely monitored to ensure police members do not use existing powers to unnecessarily take intoxicated people into custody, for example by ‘up-charging’, and
- (b) the Victorian Government’s planned independent evaluation of the monitoring of police conduct must:
 - i. be Aboriginal led, with appropriate governance by them
 - ii. cover at least the first 12 months and then three years of implementation, and
 - iii. have results that are made public.

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 85
	Low (0-2)			

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