



Royal Commission into Aboriginal Deaths in Custody Recommendation

86. Monitor police responses to offensive language charges

That:

- a) The use of offensive language in circumstances of interventions initiated by police should not normally be occasion for arrest or charge; and
- b) Police Services should examine and monitor the use of offensive language charges.¹

Background²	Recommendation 86 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) follows discussion of the decriminalisation of public drunkenness, in which it notes that the practice of charging intoxicated persons with ‘public order’ offences such as offensive language, disorderly contact and others had the effect of ‘re-criminalising public drunkenness.’ The Commission noted the importance of police addressing this issue and establishing appropriate monitoring mechanisms to ensure that ‘persons who might otherwise have been apprehended for intoxication are not instead arrested and charged unnecessarily with other offences.’
Intent	Police officers should not use offensive language as a default excuse to arrest someone, especially where the interaction is initiated by police. Police Services should monitor the use of this charge.
Responsibility	The Commonwealth Government and all state and territory governments.
Key contacts	Victoria Police; Victorian Aboriginal Legal Service (VALS).
Key action taken	
2005 Review³	Victoria Police considered that no progress had been made against Recommendation 86 and advised that their responses to offensive language were generally governed by ‘accepted community standards’. Victoria Police used discretionary powers in relation to offensive language and matters generally involving drunkenness. Charges of offensive language were considered based on the circumstances of each incident under investigation and were generally restricted to offences where women or children were present. Police members were more tolerant in ‘modern times’ to offences of this nature.

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) vol 3, 29 ('RCIADIC').

² Ibid vol 3, 26 [21.1.74]-[21.1.75].

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 assessed Recommendation 86 as being partially implemented in Victoria with more work required to fully implement Part (a). Offensive language charges were monitored through broader crime statistics published online, 922 people were charged with the use of offensive language between April 2016 and March 2017. It was unclear whether Victoria Police monitored the use of these charges to ensure that they were not a response to circumstances initiated by police.</p>
<p>Since then</p>	<p>Victoria Police⁵</p> <p>In 2023, Victoria Police assessed Recommendation 86 as partially implemented noting: The use of the charge of offensive language is reported in crime statistics published by the Crime Statistics Agency (CSA). The Victorian Government notes that discretionary implementation exists and that the individual circumstances of the offence are taken into account, with most offences not escalating beyond initial intervention. Although data is available through the CSA, it is not monitored on an ongoing basis. Data indicates that offensive language in circumstances of interventions initiated by police does not normally lead to arrest or charges being laid.</p> <p>Work is ongoing to implement this recommendation in light of Yoorrook Justice Commission hearings. Victoria Police are exploring options to publish this data on a regular basis through the Victoria Police Aboriginal Portfolio Reference Group and Aboriginal Justice Forums.</p>
<p>Evidence of impact</p>	
<p>Authorising documents</p>	<p>Summary Offences Act 1966 (Vic)⁶</p> <p>Section 17 covers the use of obscene, indecent, threatening language and behaviour in public:</p> <p><i>(1) Any person who in or near a public place or within the view or hearing of any person being or passing therein or thereon—</i></p> <ul style="list-style-type: none"> <i>(a) sings an obscene song or ballad;</i> <i>(b) writes or draws exhibits or displays an indecent or obscene word figure or representation;</i> <i>(c) uses profane indecent or obscene language or threatening abusive or insulting words;</i> <i>(d) behaves in a riotous indecent offensive or insulting manner— shall be guilty of an offence.</i> <p><i>Penalty: 10 penalty units or imprisonment for two months;</i></p> <p><i>For a second offence—15 penalty units or imprisonment for three months;</i></p> <p><i>For a third or subsequent offence— 25 penalty units or imprisonment for six months.</i></p> <p>At the time of writing in July 2024 one penalty unit was \$197.59.</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) 171-2 ('2018 Review').

⁵ David Jones and Tyler McRae, 'Victoria Police Review of Recommendations from the Royal Commission into Aboriginal Deaths in Custody' (Tranche One).

⁶ *Summary Offences Act 1966 (Vic)* ('*Summary Offences Act*').

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Outputs

Crime Statistics Agency

Offensive Language offences, June 2016 – June 2025⁷

This table shows the number of offensive language offences allegedly committed by people in Victoria.

Offence Subgroup	Offence Code	Offence Description	Year ending June										
			2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	
D24 Offensive language	549NY	ABUSE ROAD SAFETY CAMERA OPERATOR	2	3	2	2		3	3	28	12	23	
	599AK	USE ABUSIVE WORDS IN PUBLIC PLACE	62	71	65	48	42	45	39	26	23	28	
	599AL	USE INSULTING WORDS IN PUBLIC PLACE	81	92	71	55	43	43	46	31	16	38	
	599AM	USE OBSCENE LANGUAGE IN PUBLIC PLACE	135	134	110	84	78	82	36	57	45	37	
	599BW	PUBLIC VEHICLE-ABUSE/INSULT PASSENGER										1	
	599FL	USE PROFANE LANGUAGE IN PUBLIC PLACE	6	5	6	6	9	3	4	1	3	6	
	599FQ	USE INDECENT LANGUAGE ON RAIL PREMISES	3										
	599FV	USE OFFENSIVE LANGUAGE IN A ROAD VEHICLE	1										
	599FW	USE OFFENSIVE LANGUAGE ON RAIL PREMISES	6										
	599G	USE INDECENT LANGUAGE PUBLIC PLACE	232	167	169	156	133	103	72	68	43	60	
	599GN	USE INDECENT LANGUAGE OR ABUSIVE WORDS	468	448	481	416	285	307	218	171	154	131	
	599IG	USE OFFENSIVE LANGUAGE IN A TRAIN	4	4	8	6	1	1	1	2	2	3	
	599IH	USE OFFENSIVE LANGUAGE ON RAILWAY PREM	15	31	19	19	6	4	4	8	10	6	
	599IK	USE INDECENT LANGUAGE IN A TRAIN		4	6			2	3			3	
	599IL	USE INDECENT LANGUAGE ON RAILWAY PREM	17	12	10	11	7	2	2	4	2	5	
	599IM	USE OBSCENE LANGUAGE IN A TRAIN					1					1	
	599IN	USE OBSCENE LANGUAGE ON RAILWAY PREM	2			1	1	1		2			
	599KX	USE INDECENT LANGUAGE IN A BUS				2	3			2	2		
	844NR	USE OFFENSIVE LANGUAGE IN A TRAM			2	1							
	844NS	USE THREATENING LANGUAGE IN A TRAM				1	2		1				
844NT	USE INDECENT LANGUAGE IN A TRAM			1	2		1						

Alleged offender incidents by Aboriginal status, June 2016 – June 2025⁸

The table below shows the number of offensive language offences allegedly committed by Aboriginal people.

Offence Division	Offence Subdivision	Offence Group	Year ending June										
			2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	
D Public order and security offences	D20 Disorderly and offensi..	D24 Offensive lang..	48	38	54	41	30	34	18	24	27	12	
	Total		48	38	54	41	30	34	18	24	27	12	

Outcomes

Victoria Police

There has been ‘a massive decrease’ in the use of offensive language charges over time (from 1,034 offences in 2015-16 to 342 in 2024-25), however Aboriginal people remain over-represented, accounting for 3.5 percent of those charged in the 2024-25 period.

Victorian Aboriginal Legal Service

The Project Team sought the views of lawyers at VALS on this recommendation. They were not aware of many instances where charges of offensive language were used to initiate police action against their clients.

Community views

Victorian Aboriginal Legal Service⁹

Racism is particularly prevalent in Victoria Police, manifesting in denial of Aboriginality, over-policing of Aboriginal Communities, over-representation of Aboriginal people in

⁷ Crime Statistics Agency, 'Recorded Offences', *Crime Statistics Agency*, September 2025) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/recorded-offences-2>> ('Recorded Offences').

⁸ Crime Statistics Agency, 'Alleged offender incidents by Aboriginal and Torres Strait Islander status', *Crime Statistics Agency*, September 2025) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-aboriginal-crime-data/alleged-offender-incidents-by-aboriginal-and-torres>> ('Alleged offender incidents by Aboriginal and Torres Strait Islander status').

⁹ Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems, *Yoorrook Justice Commission* (Report, August 2023) 253 ('*Yoorrook for Justice*').

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police custody, arresting Aboriginal children and young people rather than issuing a summons, use of force and explicit racial abuse against Aboriginal people.

Related recommendations

Yoorrook for Justice¹⁰

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.

ALRC Pathways to Justice¹¹

Recommendation 12-4

State and territory governments should review the effect on Aboriginal and Torres Strait Islander peoples of statutory provisions that criminalise offensive language with a view to repealing the provisions; or narrowing the application of those provisions to language that is abusive or threatening.

2005 Review¹²

Recommendation 58

That Victoria Police:

- a) provide quantitative evidence on how offensive language is dealt with in relation to charges laid
- b) detail the numbers of Aboriginal people that are charged with offensive language as a result of being detained for public drunkenness, and
- c) provide a report to the Aboriginal Justice Forum on (a)-(b).

That the Victorian Government continue to implement and monitor Recommendation 86 through any process established as a consequence of this Review.

¹⁰ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023) 35 ('Yoorrook for Justice').

¹¹ Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) Recommendations p 17 ('Pathways to Justice').

¹² 2005 Review, 50.

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Assessment summary¹³

Recommendation 86 intended that police officers should not use offensive language as a default excuse to arrest someone, especially where the interaction is initiated by police. Police Services should also monitor the use of these charges.

Actions taken partially align with the intent of this recommendation. Use of the charge of offensive language is reported in statistics published by the Crime Statistics Agency (CSA). Although data is available through the CSA, it is not monitored on an ongoing basis. The data indicates that offensive language in circumstances of interventions initiated by police does not normally lead to arrest or charges being laid. Victoria Police are exploring options to publish this data on a regular basis through the Victoria Police Aboriginal Portfolio Reference Group and Aboriginal Justice Forums.

There was evidence that actions taken had contributed to ‘a massive decrease’ in the use of offensive language charges over time (from 1,034 offences in 2015-16 to 342 in 2024-25), however Aboriginal people remain over-represented among those charged, accounting for 3.5 percent of the cohort in the 2024-25 period.

Recommendation 86 remains relevant. We remain concerned about discretionary use of these charges in relation to public intoxication and/or other situations where it may be used as the basis for ‘up-charging’:

People might be a bit boisterous in a venue and come to the attention of police, and then all of a sudden, because the person's intoxicated then the language comes out, and then it escalates from whether it was abusive language into something else. (Bobby Nicholls, Chairperson, Hume RAJAC)

When a young person is picked up one of the so-called charges could be offensive language, but police may lump other things on top of that. Then when they get to the courts, there are negotiations and offensive language might be struck out but they're gonna go on with the more serious charge. (Bobby Nicholls, Chairperson, Hume RAJAC)

I would say it is a concern, because of that hamburger with the lot approach. It's a charge that can be easily used and lumped in with everything else. (John Gorton, Chairperson, Grampians RAJAC)

Further efforts to implement Recommendation 86 in terms of closer monitoring, could potentially improve Aboriginal justice outcomes and shed light on the situations in which people are charged for offensive language.

Are these charges straight up where police walk up and say you know you're swearing in a public place, and then it escalates and you get charged? Or have they been looked at to see if they're part of a police discussion with a person about something else? (Merle Miller, VAEAI)

¹³ Meeting with Aboriginal Justice Caucus Working Group (Project Team, Online, 15 May 2024) ('Working Group Meeting (15 May 2024)'); Meeting with Aboriginal Justice Caucus (Vic) (Project Team, In person, 17 July 2024) ('AJC Meeting (17 July 2024)').

Assessment of Recommendation 86

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

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

2

(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

1

(Score out of 3)

Potential actions for further work

Enhanced monitoring of offensive language charges

Examine data on the use of offensive language charges to understand whether they are typically single charges or combined with others.

Moderate 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 86	
	Low (0-2)			

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