



Community Factsheet

decriminalising public intoxication

In December 2017, much-loved mother, grandmother, sister and proud Yorta Yorta woman, Aunty Tanya Day, passed away after falling and hitting her head in a police cell in Castlemaine, Victoria. Aunty Tanya Day was locked in the police cell for being drunk in a public place after falling asleep on a train.

After almost two years of courageous advocacy by Aunty Tanya Day's family, and over 28 years since the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), the Government finally committed to decriminalise public drunkenness and to replace it with a public health response in August 2019.

What did the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) say about the criminal offence of public drunkenness?

Between 1987 and 1991, the RCIADIC investigated the deaths of 99 Aboriginal and Torres Strait Islander People across Australia - including three in Victoria - and systemic problems that had contributed to their deaths.

Of the 99 deaths in custody that were investigated by the Commission, 35% involved individuals who were detained by police in relation to public intoxication. In 27 cases, Aboriginal people were detained for the criminal offence of public intoxication. This included the three Victorian cases investigated by the Commission, including Aunty Tanya Day's uncle,



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Harrison Day. A further eight cases involved Aboriginal people in NSW, SA and NT who were detained in relation to public intoxication, under protective custody laws rather than criminal laws.

The RCIADIC made 339 recommendations to end Aboriginal deaths in custody, including that the criminal offence of public drunkenness be abolished and that Governments establish non-custodial facilities for the care and treatment of intoxicated persons, such as sobering up centres. The Commission also recommended that police be required by law to consider and use alternatives to detaining intoxicated people in police cells.

How does the criminal offence of public intoxication affect Aboriginal people?

Criminal charges of public intoxication are disproportionately used by police against Aboriginal people. Whilst Aboriginal people make up 0.8% of the Victorian population, 6.5% of all public intoxication offences between 2014 and 2019 were recorded against Aboriginal people. The arrest and detention of Aunty Tanya Day demonstrates how Aboriginal people are brought to police stations when they pose no danger to anyone and is a clear example of how systemic racism affects Aboriginal people.



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What is protective custody and how does it affect Aboriginal people?

In all States and Territories, aside from Victoria and Queensland, public intoxication is not a criminal offence. However, Aboriginal people continue to be locked up in police cells when they are intoxicated in public. This is because police have the power to detain an intoxicated individual for “their own protection” or the “protection of others”. This is called “protective custody” and Aboriginal people continue to be detained under these laws at disproportionate rates to the detriment of their safety and often their lives.

In South Australia, 41% of people who are detained for public intoxication under protective custody laws are Aboriginal. In the Northern Territory, almost everyone who is detained for public intoxication (92%) is Aboriginal.

VALS strongly opposes protective custody laws.

What has happened in Victoria since the RCIADIC?

Since 1991, there have been several inquiries in Victoria that have reaffirmed the need to decriminalise public intoxication, including a Parliamentary Inquiry into Public Drunkenness in 2001 and a 2005 Review of the Government’s progress in implementing the RCIADIC recommendations.

Finally, in 2019, on the eve of the Coronial Inquest into the death of Auntie Tanya Day, the Government announced that it would decriminalise public intoxication and replace it with a public health response. The Government



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established an Expert Reference Group (**ERG**), to provide advice on what needed to be done to implement this reform. The ERG included two Aboriginal experts – Nerita Waight, CEO of VALS; and Helen Kennedy, then Chief Operation Officer at VACCHO – and two non-Aboriginal experts, including a former Assistant Commissioner of Police.

What did the Coronial Inquest recommend?

In 2020, the Coronial Inquest into the death of Aunty Tanya Day found that:

- Police should have taken Aunty Tanya to hospital or sought urgent medical attention, instead of arresting and detaining her.
- Aunty Tanya's death was clearly preventable had she not been taken into police custody.
- The checks the police officers conducted on Aunty Tanya whilst she was in the police cell were inadequate, and that the police officers failed to take proper care for Aunty Tanya's safety, security, health and welfare.
- Had the checks been conducted by the police in accordance with the relevant requirements, Aunty Tanya's deterioration may well have been identified and treated appropriately earlier.

The Coroner found that the totality of the evidence supported a belief that an indictable offence may have been committed, and referred two police officers for criminal investigation. The Director of Public Prosecutions did not, however, prosecute.



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The Coroner also recommended that the offence of public intoxication be decriminalised, which the Victorian Government committed to do in August 2019.

What did the Expert Reference Group recommend?

Over 12 months, the ERG carried out extensive research and consultation with key stakeholders, including Aboriginal organisations, Victoria Police, Ambulance Victoria, and other health authorities.

The ERG reported back to the Government in August 2020 yet the Victorian Government still has not yet responded in detail to the ERG recommendations. **Their lack of response will invariably cause difficulties as the sector grapples with forming an appropriate health response without understanding the Victorian Government's position and expectations.**

The ERG made 86 recommendations on decriminalising public intoxication and establishing a public health response. VALS supports some, but not all of these recommendations.

Key ERG recommendations supported by VALS include:

- The criminal offence of public intoxication should be decriminalised.
- No one should be detained in a police cell solely for being intoxicated in public (this means that Victoria should not give police protective custody powers).



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- Individuals who are intoxicated in public and are transported to a safe place to sober up, should, in general, be transported to their home or another private residence. If this is not an option, they could also be transported to a health or sobering service, an emergency centre or a rural trauma and urgent care centre.

What is VALS' position on decriminalising public intoxication?

VALS' position on decriminalising public intoxication differs to some of the ERG recommendations. In particular, we support the [position of the Day family](#) that **police should not be involved in a public health response to public intoxication.**

Transitioning from a criminal justice to a health response requires cultural, institutional and system reform. It requires significant investment in health-based services, including outreach services, sobering centres and adequate transport capacity. Inadequate funding of the health response must not be used as an excuse to justify involvement of police and/or more extensive police powers.

Aboriginal self-determination must be at the forefront of the new health response, and must be central during the reform process. Aboriginal and/or Torres Strait Islander communities must be empowered to develop and implement Aboriginal-led responses that are culturally safe and tailored to the needs of local communities.



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What is VALS' position on any new powers for First Responders?

If Victoria Police are involved in the public health response, they should only be involved as a **last resort and their role should be strictly limited:**

- The threshold for police involvement (including a referral to police), must be high, where there is a “serious and imminent risk of significant harm to the intoxicated individual or other individuals.”
- They should not have the power to detain someone in a public place whilst they identify a safe place where the person can sober-up.
- They should only be able to provide transport to an intoxicated individual in strictly limited circumstances. If police provide transport, they must be required to notify the VALS Custody Notification Service.

The ERG also recommended that as a last resort, there may be instances where health personnel (not including staff at Sobering Services) will need to detain an individual who is intoxicated in public.

VALS strongly opposes detention of intoxicated individuals by health personnel.



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What is VALS' position on safeguards and accountability for First Responders?

If Victoria Police are given new powers to respond to public intoxication, there must be robust safeguards and accountability mechanisms, to ensure that this power is not abused:

- If police are given a power to detain individuals while they identify a safe place for the person to sober up, it should only be exercised if there is “a serious and imminent risk of significant harm to the intoxicated individual or other individuals.” Any new detention powers must be limited to a maximum duration of 60 minutes.
- Police must be bound by comprehensive legislation, regulations, guidelines, policies and procedures, to ensure that police discretion is applied appropriately and reasonably to all members of the community.
- Police must be provided with training (including ongoing refresher training) on: cultural awareness; systemic racism; unconscious bias; culturally appropriate service delivery; mental health and disability; de-escalation and conflict resolution.
- Any charges that arise from a public intoxication incident, including any charges relating to assault police, must be authorised by an Inspector.
- Police must be required to keep detailed and publicly available disaggregated data on:
 - All public intoxication incidents involving police.
 - Any enquiries made by police to locate a safe place for the intoxicated person.



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- Use of “move on” powers to direct an intoxicated person to leave a public place.
- Any arrest that is made in relation to a person who is intoxicated in public, including for assault police or other minor offences.

In addition, VALS supports the ERG recommendation that the Victorian Government should empower an oversight body to adjudicate complaints and conduct investigations in relation to the implementation of the public intoxication reforms.

Where is the reform up to now?

In February 2021, the Government passed a law to decriminalise public intoxication. The law was due to come into effect in November 2022; however, the Government wants to delay decriminalisation until November 2023 so that there is more time to establish the health response.

In December 2021, the Government announced that it will trial the new public health response in Shepparton, Dandenong, Castlemaine and the City of Yarra (Melbourne). The trials are currently being established and will include an Aboriginal-led response in each of the trial sites. The trials are expected to inform the state-wide roll out of the health response and any future legislation.

VALS is disappointed that the decriminalisation of public intoxication will not occur as planned in November 2022, as every extra day it takes to implement this reform is another day that Aboriginal people are being



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targeted and locked up under the existing laws. The Government must use this extension to ensure that the health response is culturally safe and that Aboriginal voices are central to the design of the model.

Where can I learn more about the process to decriminalise public intoxication and replace it with a public health response?

- Expert Reference Group on Decriminalising Public Drunkenness, [Seeing the Clear Light of Day: Report to the Victorian Attorney-General](#)
- [VALS Submission to the Parliamentary Inquiry on Victoria's Criminal Justice System](#)
- [Statement from the Day Family](#) (December 2021)