

Community Fact Sheet

# Public intoxication decriminalised in Victoria



## **Aunty Tanya Day and the Day Family**

VALS acknowledges that the decriminalisation of public intoxication is thanks to the tireless and staunch advocacy of the Day Family after the passing of Aunty Tanya Day in 2017.

Aunty Tanya Day was a proud Yorta Yorta woman, a much-loved mother, grandmother and sister, and a respected member of the Aboriginal community in Victoria.

## **Acknowledgement of Traditional Owners**

VALS pays our deepest respect to traditional owners across Victoria, in particular to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

We pay our respects to all Aboriginal and Torres Strait Islander Elders who have maintained the struggle to achieve justice.

Across Australia, we live on unceded land. Sovereignty has never been ceded. It always was and always will be Aboriginal land.

## **Note on Language**

Throughout this document, we use the word 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people, communities and organisations. VALS acknowledges that there are many Aboriginal people in Victoria who have Torres Strait Islander heritage, and many Torres Strait Islander people who now call Victoria home.

## **Disclaimer**

This document contain advice that is general information only and does not constitute legal advice or services.

## **Artwork**

Artwork used in this document was made by Dixon Patten, a proud Gunnai, Yorta Yorta, Gunditjmara, Dhudhuroa man, for VALS.



# Public Intoxication

## Is it an offence to be intoxicated in public?

It is no longer a criminal offence in Victoria to be intoxicated (affected by alcohol) in public.

Police cannot arrest, detain or fine you for this offence. They still have powers to arrest and detain you for other public order offences (see further below). However, they do not have any new powers to arrest or detain people just because they are intoxicated in public.

In the past, being intoxicated in public was a criminal offence. If you were drunk in public, police could arrest and detain you, or issue you with a fine. VALS does not use the terms “drunk” and “drunks” as these terms reinforce racist stereotypes about Aboriginal and/or Torres Strait Islander People. We prefer to use public intoxication, which means that someone is affected by alcohol in public.

## Why is public intoxication being decriminalised?

Being affected by alcohol in public is a health issue which requires a health response. Treating public intoxication as a criminal issue means that people are not getting the support they need.

For decades, the offence of public intoxication has been applied in a discriminatory way to target and criminalise Aboriginal people.

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. Ms. Day was locked in the police cell for being intoxicated in a public place after falling asleep on a train.

Thanks to the advocacy of the Day family, the Government committed to decriminalise public intoxication and replace it with a health response in 2019. Three years later, the law is finally changing.

This reform is long overdue. Decriminalising public intoxication was first recommended by the [Royal Commission into Aboriginal Deaths in Custody](#) over thirty years ago.

# Health Services

## What health services are available?

If you are affected by alcohol in public, you may be able to access support through the following health services:

- Outreach workers can help you contact a friend or family member, organise transport to get home safely, or help you find another safe place to sober up.
- Sobering centres provide a safe place to sober up.
- On-demand places of safety are safe places where you can sober up under the supervision of outreach workers.
- Referrals and information: staff at sobering centres and outreach staff can provide you with information and referrals to other services.

These services are currently being set up in metro and regional Victoria. See the [website](#) of the Department of Health for more information.

If you are with someone who is unconscious or who needs emergency medical care, call an ambulance on triple 000.

## What can outreach workers do?

If you are affected by alcohol in public, an outreach worker can ask if you want help.

They can only support you if you agree. You do not have to agree to everything. For example, you may accept food and water, but not agree to any other support. You can change your mind at any time.

If you agree, outreach workers can:

- Ask you for information about yourself
- Check if you are ok and provide first aid
- Give you food and water
- Help you to contact a friend or relative
- Stay with you until you are picked up
- Organise transport for you to go home
- Help you to access a sobering centre or another place where you can safely sober up.

There are outreach workers in metro Melbourne and regional Victoria, including in Ballarat, Bendigo, East Gippsland, Geelong, Latrobe, Mildura, Swan Hill and Shepparton.

Outreach services for Aboriginal people are provided by Aboriginal organisations, including:

- [Ngwala Willumbong Aboriginal Corporation](#) (Melbourne Metro, Wyndham, Frankston, East Gippsland, Mildura, Latrobe and Swan Hill)
- [Rumbalara Aboriginal Cooperative](#) (Shepparton)
- [Bendigo & District Aboriginal Cooperative](#) (BDAC) (Bendigo)
- [Wathaurong Aboriginal Cooperative](#) (Geelong)
- [Ballarat and District Aboriginal Cooperative](#) (BADAC) (Ballarat).

There are also non-Aboriginal outreach services in metro Melbourne provided by [CoHealth](#).

See the [website](#) of the Department of Health for more information.

## What if I am under 18 years old?

If you are younger than 18, you can be supported by an outreach worker if one is available. The outreach worker can help you to get home, or to the home of a responsible adult that you know (including a friend or relative).

If you are in out of home care, an outreach worker can help you to contact your carer (including if you live in residential care), or the Department of Families, Fairness and Housing (DFFH), or an Aboriginal Community Controlled Organisation (ACCO) responsible for your care and wellbeing.

If you are not able to go home or to the home of a responsible adult, the outreach worker may help you to go to a sobering centre or on-demand place of safety if certain conditions are met. As a last resort, the outreach worker may take you to an emergency department at a hospital and stay with you until you have sobered up.

Outreach workers must comply with any mandatory reporting requirements if they have concerns about your wellbeing.



## What are sobering centres?

If you are affected by alcohol in public in metro Melbourne, you can go to a sobering centre. You can go to the centre yourself or an outreach worker can help you get there.

It is your choice to go to a sobering centre. You cannot be forced to go there. If you change your mind, you can leave.

There are two sobering centres in Melbourne: one in St Kilda (run by [Ngwala Willumbong Aboriginal Corporation](#)) and one in Collingwood (run by [CoHealth](#)). See the [website](#) of the Department of Health for more information.

There are no sobering centres in regional Victoria. If you are affected by alcohol in public in regional Victoria, you may be able to access support from an outreach worker (see above).

## What will happen at a sobering centre?

Staff will ask you questions about yourself, including if you agree to support.

If you have any alcohol, weapons or illegal drugs, you will need to hand these in to be allowed into the centre.

You will be able to sleep, shower, have a snack and do laundry.

Staff will monitor you while you are there. They may do basic first aid. They may talk to you about follow up services, such as alcohol and other drug services.

Workers may call an ambulance if they think you need medical support. If a worker is concerned that you are a risk to others, they may also call police.





## Do I have to accept help from an outreach worker?

If you are unconscious or there is a serious risk to your health, an outreach worker can call an ambulance even if you do not agree. If you do not need emergency medical care, outreach workers can only support you if you agree. You do not have to accept help from an outreach worker and you can change your mind at any time. You should tell the outreach worker if you do not want to accept their help.

## The role of police in the health response

### When can police get involved?

Police may respond to someone who is intoxicated in public if someone calls 000, or if police are on patrol and encounter someone who is affected by alcohol in public.

According to Victoria Police guidelines (Chief Commissioner's Instruction 09/23), if someone calls 000 about a person who is intoxicated in public, the police should only attend if there is a "risk to community safety." In assessing risk, the guidelines indicates that police should consider whether there is a foreseeable risk to the person, the health or safety of another person, community safety or property.

If police are on patrol, they may also offer to support you in a community policing capacity based on their role of "[helping those in need of assistance](#)."

Police also have other powers to question, arrest and detain people in certain circumstances. For example, they can arrest you if they have a [reasonable suspicion that you are committing a certain type of offence](#), or they can issue a [move on order](#) in certain circumstances. It is also still a criminal offence to behave in a [disorderly manner in a public place](#).

However, police guidelines (CCI 09/23) indicate 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." Police officers "should prioritise de-escalation strategies to engage the drunk person, avoiding the need for enforcement action where possible."

## What can police do?

Police may offer you support if you are intoxicated in public. You do not have to accept their help. You can change your mind at any time. You should tell the police if you do not want to accept their help.

However, if police decide you need emergency medical care, police may call an ambulance. They may do this even if you do not agree to it.

If you do not need emergency medical care, but you would like some help, police can call an outreach worker or a sobering centre.

If you do not need emergency medical care and there are no health services, police can:

- Ask you for information about yourself
- Check if you are ok
- Help you to contact a friend or relative
- Stay with you until you are picked up
- Organise transport for you to go home
- Help you to access a sobering centre or find another place where you can safely sober up.

If you feel threatened or hassled by police, you can ask them to leave you alone.

## Can police provide transport?

In limited circumstances, police may offer to transport you to your home, the home of a friend or family member, or another safe place to sober up.

According to police guidelines (CCI 09/23), police can only provide transport if:

- You agree to the transport; and
- An outreach worker or sobering centre is not available to come within a reasonable time; and
- Transport will mitigate an immediate and imminent risk to your health; and
- A patrol supervisor has given approval; and



- You do not have a serious medical issue.

If you do have a serious medical issue and/or require emergency medical care, police should call an ambulance.

If you agree to police transport, and then change your mind during the journey, police should stop and let you out of the vehicle as soon as it is practicable and safe to do so, unless they have another reason for continuing to detain you.

## Can police arrest me if I am affected by alcohol in public?

Police cannot fine, arrest or detain you just for being affected by alcohol in public.

Police still have other powers to arrest and fine people, and issue move on directions, for certain public order offences. However, police guidelines (CCI 09/23) indicate 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."

If you are fined, arrested or issued with a summons or notice to appear, you should speak to a lawyer. Mob can call VALS on **1800 064 865** or **03 9418 5999** to speak to a lawyer for free.

If you are Aboriginal and are in custody, you can get help through VALS' [Custody Notification Service](#).

## What can police do if I am under 18 years old?

If you are under 18 years of age, police have the same role and powers for public intoxication as they do for adults (see above).

If you are in out of home care, police can help you to contact your carer (including if you live in residential care), the DFFH or an ACCO responsible for your care and wellbeing.

If you have suffered or are likely to suffer significant harm and your parents either cannot be found or are not protecting you from that harm, police and child protection workers can also place you in emergency care (a secure welfare placement).

## Are police being given any new powers?

Police do not have any new protective custody powers for people who are affected by alcohol in public.

## What if I was fined or charged for public intoxication before 7 November 2023?

If you were fined or charged for being affected by alcohol in public before 7 November 2023, you may have to pay the fine or go to court. Mob can call VALS on **1800 064 865** or **03 9418 5999** to speak to a lawyer for free.

You can ask about:

- if you have to pay the fine
- if you have to go to court
- if a conviction for public intoxication will stay on your criminal record.

## Local Laws

### Is it still an offence to drink in public?

Although it is no longer an offence to be intoxicated in public, Local Council laws on drinking in public have not changed.

Local drinking laws are different in each Local Council area across Victoria. Generally, it is prohibited to drink alcohol in public in certain areas and at certain times.

If you break one of these Local Council Laws, you may be given a fine. Mob can call VALS on **1800 064 865** or **03 9418 5999** to speak to a lawyer for free.

For more information, contact your Local Council. [VicCouncils](#) have the contact details of all local councils in Victoria.

## How can I make a complaint?

If you are unhappy about the way you were treated by an outreach worker, staff at a sobering centre, or a paramedic, you can make a complaint.

If you would like to make a complaint about police, you should talk to a lawyer. Mob can call VALS on **1800 064 865** to speak to a lawyer for free.

## Where can I get more information?

The Department of Health's [public intoxication reform](#) webpage has more information.





**Victorian Aboriginal  
Legal Service**

If you need advice  
on your rights, **call**  
**VALS** *toll free* on  
**1800 064 865**  
or **03 9418 5999**