Drugs and Crime Prevention Committee

Inquiry into Public Drunkenness

FINAL REPORT

Drugs and Crime Prevention Committee
Inquiry into Public Drunkenness June 2001 – **Final Report**

PARLIAMENT OF VICTORIA

DRUGS AND CRIME PREVENTION COMMITTEE

Inquiry into public drunkenness
FINAL REPORT

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Functions of the Drugs and Crime Prevention Committee

The Victorian Drugs and Crime Prevention Committee is constituted under the *Parliamentary Committees Act 1968*, as amended.

Parliamentary Committees Act 1968

Section 4 EF.

> *To inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with the illicit use of drugs (including the manufacture, supply or distribution of drugs for such use) or the level or causes of crime or violent behaviour, if the Committee is required or permitted so to do by or under this Act.*

Chairman's Foreword

When this Inquiry commenced 18 months ago, members of the Committee held definite views regarding the decriminalisation of public drunkenness. Some members strongly advocated decriminalisation as the only acceptable outcome. Others, including myself, were very much opposed to the idea of decriminalisation.

During the Inquiry, however, the Committee discovered that the issues related to public drunkenness are not straightforward, nor are they confined within an easily recognisable parameter, but are in fact extremely complex and extensive. Consequently, pre-existing opinions and perceptions were put aside.

At the conclusion of this exhaustive Inquiry I am therefore extremely pleased to have a Report with which all members of the Committee agree unanimously, and which presents recommendations formed to encompass the best interests of all facets of the community. It has taken a tremendous effort on behalf of the Committee to produce this comprehensive Report.

A major part of the Committee's research was to learn from the past mistakes and successes of all Australian jurisdictions, and throughout the course of this Inquiry the Committee has been extremely impressed with the commitment of many different communities throughout Victoria and other parts of Australia. A great number of individuals, voluntary and professional community organisations and government departments demonstrated extraordinary dedication to their respective communities. Such efforts have produced real results.

The Committee has used these examples as the basis of its recommendations.

In the course of this research the Committee became acutely aware that for decriminalisation to be effective, a number of essential processes would have to be adopted in order to prevent the same difficulties that have plagued other States. It must therefore be stressed that although the Committee has recommended that public drunkenness in Victoria be decriminalised, this should not take effect until all of the other essential processes are implemented.

For this reason the Committee's recommendations cannot be considered individually.

The Committee and I express our gratitude to all who have assisted us with this important Inquiry. In particular the Committee's own staff deserve special mention; Ms Sandy Cook for directing the research programme, Mr Pete Johnston for drafting this report and Ms Michele Heane for her administrative support.

I hope that all key and interested stakeholders closely consider the contents of this report, as we believe significant community benefit will flow from the implementation of the recommendations made.

Cameron Boardman MP
Chairman
June 2001

Executive Summary

Part A – Introduction

The Drugs and Crime Prevention Committee was given Terms of Reference to investigate the appropriateness of criminal laws against public drunkenness in Victoria and the adequacy of diversionary methods currently in place to deal with people arrested for public drunkenness.

The introductory chapters discuss the framework against which this Inquiry took place, the people and organisations consulted and the research process undertaken.

This Part also contextualises the problem of public drunkenness in Victoria. It is noted that alcohol is the most widely used and socially acceptable drug in Australia.

Part B – Law and Legal Issues

The chapters in this section discuss the laws, legal processes and procedures pertaining to public drunkenness in Victoria and the other States and Territories of Australia.

Chapter Four briefly examines the history of public drunkenness offences in Britain and Australia. It notes that at the beginning of the twentieth century public drunkenness offences comprised more than half of the charges being presented at Australian Magistrates' Courts, a situation that persisted until the middle of that century. The chapter concludes by discussing the move toward an alternative model of dealing with public drunkenness. These models, first introduced in Europe, perceive the issue of public drunkenness as a public health issue rather than a criminal justice problem.

Chapter Five examines the laws and procedures pertaining to public drunkenness across Australia.

It discusses the current situation in those States and Territories that have decriminalised public drunkenness offences (New South Wales, Western Australia, South Australia, Northern Territory and Australian Capital Territory), in addition to looking at the States in which being drunk in public remains an offence (Queensland and Tasmania).

Chapter Six looks at previous efforts to address the issue of public drunkenness in Victoria. In particular, it focuses on the work of the former Law Reform Commission of Victoria. The Commission's recommendations for the repeal of public drunkenness offences and its model draft legislation contained in two reports published in 1989 and 1990 respectively are discussed.

Chapter 7 examines the legal liability of police to those in their care when taken into custody for public drunkenness issues. The need for protocols to be established to

protect both the police and those who come into their custody is stressed. The related issue of the duty of care owed by licensees and servers of alcohol to their patrons is also discussed. The trend to hold licensees liable for any harm that befalls their intoxicated customers is noted.

Finally, this part concludes with a discussion of both case law and statutory provisions with regard to public drunkenness offences in Victoria.

Part C – Statistical Review of Public Drunkenness

Chapters 9 and 10 present an overview of public drunkenness in Victoria from a statistical perspective. The data, however, is limited and the collation methods of the criminal justice agencies responsible for the collection and dissemination of the information are less than adequate. Nonetheless, it can be stated that according to Victorian Department of Justice figures, offences of being drunk in a public place are the third most common charges being presented in Magistrates' Courts in Victoria.

Of particular concern is the fact that Indigenous Victorians are charged with public drunkenness offences at rates disproportionate to their population in Victoria. Chapter 10 analyses the limited data available on public drunkenness offences as it pertains to Victorian Aboriginals (Koories).

Part D – Health and Medical Issues

Part D contextualises the problem of public drunkenness and alcohol related harms by discussing the problems and risks (excessive) alcohol consumption presents to the community. After examining alcohol consumption patterns in Australia and Victoria, Chapter 11 briefly discusses the nexus between alcohol, violence and crime.

Chapter 12 discusses the problematic aspects of public drunkenness and alcohol related disorder from the perspective of people associated with it in the health and medical fields. The views of ambulance officers, medical and hospital staff, the police and custodial officers, and the State Coroner are ascertained in this regard. In addition, the training undertaken by police and other agencies with regard to intoxication and other drug related conditions, including poly-drug use, is briefly canvassed.

Part E – Policing Public Drunkenness in Victoria

Clearly, in any discussion of public drunkenness offences a discussion of the role and the opinions of Victoria Police is warranted. This Part discusses the current procedures the police use when charging a person with a public drunkenness offence and any alternatives to lodging intoxicated persons in police cells that Police may have. Chapter 14 examines the problems Victoria Police faces in policing the streets of Melbourne and regional Victoria, particularly in areas where there are high concentrations of alcohol related disorder and violence. In particular, it looks at violence in and around entertainment precincts and licensed venues. The chapter also discusses the difficulties in policing 'Big Events' such as major sports fixtures, street festivals and occasions such as New Year's Eve. Finally, this Part ascertains the views of

the Victoria Police themselves with regard to public drunkenness offences and their possible decriminalisation.

Part F – Other Models of Regulation

Part F discusses the ways in which public drunkenness and alcohol related disorder can be dealt with other than by processing through the criminal justice system.

Chapter 16 looks at the increasing use of municipal 'local laws' to prohibit and penalise the consumption of alcohol within local government boundaries. It poses the question as to whether the use of such by-laws can impose a de facto criminalisation on public drinking in those jurisdictions where public drunkenness offences have been decriminalised.

Chapter 17 examines a miscellany of issues associated with licensing issues and liquor licensing laws. It canvasses the views of both the Alcohol Industry and those who would seek greater regulation of the manufacture, consumption and distribution of alcohol. The chapter discusses the imposition of licensing restrictions in jurisdictions such as the Northern Territory and asks whether such forms of regulation are appropriate in the Victorian context.

Finally, the trend towards the use of Licensing Accords between police, local government and licensees is discussed in Chapter 18. It is noted that this increasingly popular form of 'self regulation' of the 'alcohol and licensing industry' is successful in curbing some of the excesses associated with public drunkenness and alcohol related disorder around licensed premises.

Part G –The Experience of Decriminalisation: Four Case Studies

The case studies are based predominantly on the Committee's visits to four jurisdictions in which public drunkenness offences have been decriminalised: the Northern Territory, New South Wales, Western Australia and South Australia. In each section there is a discussion of the alternative legal regime put in place to deal with intoxication in public. This is followed by an examination of the policy issues pertaining to decriminalisation of public drunkenness offences, including the problems and challenges associated with a shift to a non-criminal means of dealing with people intoxicated in public. The particular challenges posed for communities with relatively high concentrations of Indigenous people are noted. It is observed that a variety of approaches are used to curtail public drunkenness and provide alternative services to deal with the problem in other parts of the country. These range from the use of licensing restrictions in the Northern Territory to the declaration of dry areas in South Australia. Some of these methods seem successful while others are questionable. Each State and Territory, however, has established sobering-up centres as alternatives to holding intoxicated persons in police cells. On balance these diversionary systems have worked well.

The chapter concludes by discussing to what extent the systems in place in other States and Territories can be extrapolated to Victoria.

Part H – Law, Policy and Indigenous People

This Part recognises that the offence of public drunkenness and the problems associated with alcohol related disorder are by no means restricted to the Indigenous communities of Australia. Indeed, a person found drunk in a public place is far more likely to be from a non-Indigenous background. Nonetheless, for historic, cultural and instrumental reasons the impact of the criminalisation of public drunkenness has a disproportionate effect and impact upon Indigenous communities. This is a fact that was stressed by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The recommendations of the RCIADIC are discussed in the first two sections of this part.

Chapter 22 then examines the way in which public drunkenness impacts upon Victorian Aboriginals and their communities. Alternative methods of dealing with intoxicated persons from an Indigenous background are discussed. These include the use of sobering-up centres and Community Justice Panels. Finally, the views of Indigenous individuals and community organisations are ascertained in Chapter 23 – 'Decriminalisation of Public Drunkenness: Indigenous Voices Speak'.

Part I – The Differential Impact of Public Drunkenness

This Part discusses the way in which public drunkenness and the problematic consumption of alcohol may impact upon discrete groups in the community. It examines how policy interventions may need to be tailored differently for Victorians for whom the consumption of alcohol may pose diverse if equally serious problems and risks. The groups targeted are the homeless, young people, women and people with mental health problems.

Part J – Decriminalisation of Public Drunkenness: Canvassing the Options

After reviewing the material presented in earlier chapters, this Part discusses the complex arguments associated with both the decriminalisation of public drunkenness offences and the maintenance of the current system. The theoretical issues surrounding public drunkenness and its decriminalisation are canvassed. In addition, the opinions of those 'stakeholders' who have presented submissions to the Inquiry supporting either the status quo or a change to an alternative system are presented.

One of the major concerns of the Victoria Police is that if public drunkenness offences are decriminalised they will be left without an effective method of dealing with alcohol fuelled public disorder. In Chapter 26 the Report discusses whether a general alternative offence of dealing with public disorder is warranted. In doing so, it takes particular note of the way in which other jurisdictions have dealt with this matter.

Part K – Which Way Forward?

This Report recognises that the complex arguments both for and against the decriminalisation of public drunkenness, as discussed in the previous Part, are legitimate and sincerely held. On balance however, the final Part of the Report concludes that public drunkenness offences should be decriminalised. This recommendation, however, comes with a strong caveat. Decriminalisation should not

take effect until a raft of alternative measures, such as the establishment of sobering-up centres, are put in place.

Chapter 27 examines ways in which public drunkenness offences could be decriminalised without jeopardising either the safety of the intoxicated person or other members of the community. Detailed proposals for a Public Intoxication Act that allows for the civil apprehension and detention of intoxicated persons are canvassed. The cost implications of such a scheme are also discussed.

Finally, this Report concludes by reiterating that whilst public drunkenness is by no means a problem that only concerns Indigenous Australians, public drunkenness offences do have a disproportionate impact upon Indigenous people. The Drugs and Crime Prevention Committee hopes that this Report will result, in effect, in the recommendations of the Royal Commission into Aboriginal Deaths in Custody finally being realised.

Of similar importance is the hope that the recommendations of the Committee in this Report will result in equal benefit to *all* Victorians, from all backgrounds and all walks of life.

Recommendations

General Recommendations

1. Decriminalisation of public drunkenness offences shall take effect but not until the following requirements are met:
   - Legislation with regard to 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 with regard to the new legislation and any protocols and guidelines associated with it is undertaken.
2. Recommendations 79–84 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) should generally be implemented.

The Committee, however, makes more specific recommendations related to the subject of public drunkenness.

Specific Recommendations

Recommendations with regard to the Law

3. Section 13 of the *Summary Offences Act 1966* should be repealed.

4. Section 14 of the *Summary Offences Act 1966* should be repealed.

5. Section 16 of the *Summary Offences Act 1966* should be repealed.

6. Comprehensive new legislation dealing with public intoxication should be enacted.

7. A new public disorder offence must not be considered as a replacement for the repeal of public drunkenness offences.

Recommendations with regard to a new Public Intoxication Act

8. Comprehensive legislation dealing with the civil apprehension and detention of intoxicated persons and related matters should be enacted.

9. Such legislation should include but not be restricted to the following provisions:

   a) A police officer if he or she has reasonable grounds for believing that a person is intoxicated may apprehend and detain an intoxicated person found in a public place or trespassing on private property who is:

i) behaving in a disorderly manner;

ii) or behaving in a manner likely to cause injury to the intoxicated person or another person or damage to property; or

iii) apprehended or detained for the health, safety or welfare of the intoxicated person or any other person.

b) Police should be allowed to enter private property, without warrant, to apprehend an intoxicated person who is *trespassing* on that property.

c) Public Place is to be given the same meaning as that in section 3 of the *Summary Offences Act 1966*.

d) The definition of intoxication should be extended to include the words 'apparently intoxicated by alcohol or another drug or combination of drugs'.

e) The definition of drug should include 'a volatile substance capable of intoxicating a person'.

f) Police should still use their subjective judgement to decide whether a person is intoxicated. An objective test to determine intoxication should not be required.

g) Wherever possible an intoxicated person should be released into the care of a responsible person, able and willing to care for that person unless there are reasonable grounds to suspect the intoxicated person may inflict domestic or other violence upon another person.

h) An intoxicated person must be given a reasonable opportunity to contact a responsible person.

i) Responsible person means: A person capable of and willing to take care of an intoxicated person and includes:

i) a friend;

ii) a family member;

iii) or a representative or member of staff of an approved government or non-government organisation or facility, including sobering-up centres, detoxification centres, treatment services and or a facility generally providing alcohol or other drug rehabilitative services.

j) Community and Night Patrols should not have the power to forcibly apprehend intoxicated persons.

k) Only as a last resort should intoxicated persons be detained in police cells or police custody. This stipulation should be specifically mentioned in the relevant legislation and also in Police Operating Procedures.

l) Subject to the above recommendation, circumstances in which an intoxicated person detained by a police officer may be taken to and detained at a police station or in police custody are:

i) it is necessary to do so temporarily for the purpose of finding a responsible person willing to undertake the care of the intoxicated person; or,

ii) a responsible person cannot be found to take care of the intoxicated person or the intoxicated person is not willing to be released into the care of a responsible person and it is impracticable to take the intoxicated person home; or,

iii) the intoxicated person is behaving or is likely to behave violently so that a responsible person would not be capable of taking care of and controlling the intoxicated person; or,

iv) there are exceptional circumstances that justify the detention of the intoxicated person in police custody.

m) An intoxicated person who is detained in police custody under this section:

i) must, as far as is reasonably practicable, be kept separately from any person detained at that place in connection with the commission or alleged commission of an offence, and

ii) if the intoxicated person is apparently under the age of 18 years that person must, as far as is reasonably practicable, be kept separately from any person over that age detained at that place, and

iii) must not be detained in a cell at that place unless it is necessary to do so or unless it is impracticable to detain the person elsewhere at that place.

n) Sobering-up centre or approved facility staff should not be given powers to forcibly detain intoxicated persons.

o) A police officer may use reasonable force in apprehending, detaining and searching an intoxicated person.

p) A police officer who takes a person into detention may:

i) search or cause to be searched that person, and

ii) remove or cause to be removed from that person for safe keeping, until the person is released from custody, any property that is found on or about that person and any item on or about that person that is likely to cause harm to that person or any other person or that could be used by that person or any other person to cause harm to him/herself or another.

iii) A search under sub section (i) and (ii) must be performed by a person of the same sex as the apprehended person.

iv) All property taken from a person shall be recorded in a register kept for that purpose and shall be returned to that person on receipt of a signature or other mark made by that person in the register.

q) A police officer may seize from an apprehended person –

i) any intoxicant;

ii) any article (including any drug prescribed for the person) that could endanger the health or safety of the person or any other person.

r) Specific provisions must apply for the apprehension, detention and release of children who are intoxicated under any proposed legislation. The key consideration at all times must be that decisions are made with the interests and welfare of the child as paramount.

s) As soon as practicable after a child who is intoxicated is apprehended, a police officer must release the child who is intoxicated –

i) into the care of a person who is the child's parent or legal guardian;

ii) into the care of a person –

(***a***) whom the officer reasonably believes is a responsible person capable of taking care of the child, and

(***b***) who consents to taking charge of the child;

or

(***c***) if the officer is unable to comply with paragraph (***a***) or (***b***), into the care of the person in charge of an appropriate facility.

t) Any detention by a police officer of a child who is intoxicated must not be in a police station or lockup unless –

i) in the time needed to make other arrangements exceptional circumstances arise that justify detaining the child in a police station or lockup; or

ii) exceptional circumstances make it impracticable to comply with these provisions.

u) A person should only be detained until he or she ceases to be intoxicated.

v) Appropriate guidelines must be established that give police or sobering-up centre staff guidance as to how to properly use their discretion in these cases.

w) An intoxicated person should be able to apply to have his or her detention reviewed by a magistrate.

x) Under no circumstances should police be able to interview an intoxicated person being detained in police custody in connection with other suspected offences when that person has only been apprehended for being intoxicated.

y) Police, sobering-up centre and other relevant staff should be given indemnities against civil suit in respect of anything done or omitted to be done by that person in good faith in the execution of his or her duties under any proposed legislation.

z) Intoxicated persons should be able to apply to a magistrate for a certificate stating that she or he was not in fact intoxicated at the time of his or her apprehension and detention. The mere application for and granting of a certificate of exemption should not be taken of itself as signifying that the original apprehension and detention was unlawful.

Recommendations with regard to sobering-up centres

10. Substantial numbers of sobering-up centres must be established *before* decriminalisation takes effect.

11. Substantial numbers of sobering-up centres should be strategically established in Melbourne and regional Victoria, particularly in locations of high demand.

12. Where appropriate, sobering-up centres should be established specifically for Indigenous people.

13. Consideration should be given wherever possible to sobering-up centres established for Indigenous people forming part of a holistic 'treatment service' or 'healing centre'.

14. Where appropriate, Indigenous Community or Night-Patrols run in conjunction with sobering-up centres should be established.

15. A separate Indigenous patrol staffed by women and for women should be established.

16. Where appropriate, sobering-up centres should be established specifically for young people.

17. Where appropriate, sobering-up centres should be established specifically for women.

18. Where this is not possible, at least one female staff member should be in attendance at the sobering-up centre at all times.

19. Appropriate protocols need to be established between Victoria Police and the government departments or agencies responsible for funding and administering sobering-up centres.

20. Sobering-up centres must establish partnerships with appropriate rehabilitative, support and treatment services, including hospitals and community health centres, as part of a coordinated approach to drug and alcohol service delivery.

21. Sobering-up centres' services should be regularly reviewed and monitored to determine their effectiveness and adequacy.

22. Comprehensive guidelines should be published to assist staff in the running of sobering-up centres.

23. Funding for sobering-up centres should be coordinated by one central authority and allocated on a triennial basis.

24. Funding for Community or Night Patrols be allocated on a separate basis.

25. A thorough costing analysis be undertaken with regard to the establishment of sobering-up centres and associated services prior to decriminalisation.

Recommendations with regard to Police and Policing Issues

26. Pursuant to Recommendation 85 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC):

a) Police Services must 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.

Recommendations with regard to Training and Education

27. Police members should be given detailed and ongoing training and education with regard to any proposed legislation concerning public intoxication and the issues pertaining to public drunkenness.

28. Police training with regard to public drunkenness should be culturally specific to the interests of Indigenous people.

29. Wherever possible, training on Indigenous issues should be conducted by an Indigenous person.

30. Police training with regard to public drunkenness should take place prior to the legislation taking effect.

31. In particular, all levels of police should have comprehensive and ongoing training with regard to the medical and health risks associated with alcohol and other drug consumption or perceived consumption.

32. All police personnel must be alerted to the existence of and be familiar with the latest version of the Police Medical Checklist.

Recommendations with regard to Local Government

33. Consideration should be given to ensure that municipal by-laws concerning drinking in public places do not have the potential to 're-criminalise' public drunkenness and the potential to further disenfranchise Indigenous communities.

Recommendation with regard to expansion of Community Justice Panels

34. An Indigenous Community Justice Panel should be established in Melbourne.

Recommendations with regard to public major events

35. That consideration be given to the establishment of temporary sobering-up centres at every major public event taking place in the State. Such shelters could be staffed by St John's Ambulance, Salvation Army or similar agencies.

36. That public events and street festivals that serve alcohol be subject to safety and process audits and appraisals before, during and after the event.

Recommendations with regard to public education

37. Education programmes should be developed within schools and the general community to inform young people, parents and other adults of the risks associated with alcohol consumption.

38. Community education programmes should be established to inform the public about the proposed Public Intoxication Legislation.

Recommendations with regard to Licensees

39. Liquor Licensing Accords and Forums are to be encouraged and promoted in all local communities.

40. Liquor Licensing Accords and Forums should wherever possible have participation from all relevant community sectors.

41. Consideration should be given, where appropriate, for a representative from the Indigenous community to be on licensing committees or forums.

42. Licensees and hotel managers must ensure that all staff involved in the selling and service of liquor undertake Responsible Service of Alcohol training.

43. Licensees should be encouraged under Accord principles and arrangements to coordinate trading hours.

Recommendations with regard to the Taxi and Transport Industries

44. A review of the current provision of public and private transport services, including taxi services, be undertaken with the aim of ensuring that adequate provision is made so people, especially young people, can return to their homes directly after visiting licensed premises, particularly in high activity precincts.

45. Consideration should be given to the extension of public transport hours that service high activity precincts.

Recommendations with regard to monitoring

46. A monitoring body should be established to oversee the implementation of the Committee's recommendations.

47. Sobering-up centres' services should be regularly reviewed and monitored to determine their effectiveness and adequacy.

48. That police record the procedure and outcome and disposition, if appropriate, for every person apprehended under the new provisions and forward such data to the body established to monitor the new system.

49. That in particular, police who transport an intoxicated person to a sobering-up centre record such transfer in a register specifically established for the monitoring of the new system.

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PART A Introduction

1. Scope of Inquiry – History and background

Victoria is one of the few remaining States where public drunkenness has not been decriminalised. This Inquiry concerns the issue of whether the three drunkenness offences – drunk in a public place, drunk and disorderly and drunk and 'riotous'[1] – should be repealed.

The issue of public drunkenness is not inconsequential. It is the third most common charge heard in Victorian courts and at times has accounted for 40% of police cell occupation.[2] As the Committee said in the Discussion Paper published in October 2000:

> The question as to whether the State should criminalise and penalise being intoxicated in public places is one that is fraught with complexity and contradiction. The issue raises myriad questions that shall be addressed in this report. As with many areas of social and legal policy the issue of public drunkenness is one that affects a variety of 'players' in the system, all with different and, in some cases, competing interests and agendas. Police, welfare and health agencies, legal services, the churches, municipal and shire governments, small businesses and local residents will each have a unique perspective on how the State should deal with people found drunk in public places. Reconciling these diverse points of view is no easy task.

The task has not become any easier as the Committee has reached the end of its deliberations.

This Inquiry concerns the issue of public drunkenness. Public drunkenness, however, cannot be separated from the broader issues pertaining to alcohol consumption in Australian society. Alcohol plays a significant role in our life and culture.

> Australia's 'wet' drinking culture is often contrasted with the dry drinking cultures of Scandinavian countries. It implies that alcohol use is both socially integrated and a part of popular culture. For young people in particular,

1 Sections 13, 14,and 16 of the *Summary Offences Act 1966* (Vic).

2 For a statistical analysis with regard to public drunkenness offences, see Part C.

> alcohol is seen as being integral to their maturation and recreation (Lincoln & Homel 2001, p. 48).

Alcohol is without doubt the most widely used and socially acceptable drug in Australia.

The results of a recent survey by the Australian Institute of Health and Welfare (AIHW) are revealing. Three in five Australians aged 14 years or over (61%) believe that regular consumption of alcohol by adults is acceptable, nine in 10 Australians (89%) have tried alcohol and it was the preferred drug of choice for 51% of people (AIHW 1999a).

What is perhaps surprising is that:

> Less than one in seven Australians (14%) associate alcohol with a drug problem and the majority do not support raising the legal age for drinking, reducing the number of outlets or reducing trading hours. In contrast to its level of public acceptance, the burden of disease, injury and social disorder associated with alcohol consumption is considerable (Williams 2001, p. 114).

In 1997, in Australia there were 3,668 deaths that were attributed to alcohol (AIHW 1999b).[3] Furthermore 'while the link between alcohol consumption and social disorder is not fully understood, the overwhelming evidence is that there is an increased risk of being a victim or a perpetrator, or both, where alcohol is consumed or following alcohol consumption' (Williams 2001, p. 114).

The issue of public drunkenness has been an integral aspect of the deliberations of the *Final Report* and recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). Public Drunkenness as it pertains to the Aboriginal communities in Victoria was a key aspect of this reference. As such the Committee has canvassed widely the concerns of the Indigenous community in Victoria. The Committee hopes this is reflected throughout the Report.

The Committee acknowledges, though, that the problems associated with public drunkenness in Victoria are by no means restricted to Indigenous Victorian communities. It would seem that there is no one problem, issue, or community associated with intoxication in public. Rather, problematic public drinking takes on different forms and guises depending on the context in which it is placed. Whether this be the sporting venue, the licensed premise, or a busy city street, there is no one form of public drunkenness.

The Inquiry has received input and information from as many individuals, agencies and organisations with a stake or interest in this topic as possible. It would have been fanciful for the Committee to think that it could attempt to address all the issues associated with problem drinking and public drunkenness. However, the Committee has done its best to consult with and draw upon views from as many sources as possible. A number of these views are in opposition to each other. Nonetheless, the Committee believes that these views have been sincerely held.

3 For a discussion of alcohol consumption, morbidity and mortality see Part D.

2. Framework of Inquiry

On 14 March 2000, the Legislative Assembly of the Parliament of Victoria authorised the Terms of Reference for the current Inquiry as follows:

Received from the Governor in Council on 22 February 2000 and the Legislative Assembly on 14th March 2000

To the Drugs and Crime Prevention Committee – for inquiry, consideration and report by the first day of the Autumn 2001 Parliamentary sittings into the issue of public drunkenness. In particular, the Committee is to:

a) consider the appropriateness of the existing law in Victoria relating to public drunkenness;

b) identify any law reform the Committee considers necessary to deal with public drunkenness;

c) review the adequacy of existing strategies for dealing with persons arrested for public drunkenness, such as diversion of people from police custody into sobering-up centres.

In conducting the Inquiry the Committee is to have regard to:

a) approaches taken to this issue in other Australian jurisdictions;

b) the Final Report (published in 1991) of the Royal Commission into Aboriginal Deaths in Custody;

c) such other legislation, case law, reports and materials as are relevant to the Inquiry.

3. The Inquiry Process

The Committee has embarked upon an extensive research process in order to canvass the issues and receive input and information from as many individuals, agencies and organisations with a stake or interest in this topic as possible. In conducting the Inquiry the Committee has undertaken an extensive review of the literature on public drunkenness and alcohol related harm in Australia, called for and received submissions from the community, sought expert opinion, visited various organisations and facilities, prepared a Discussion paper, spoke to key stakeholders, held public hearings and travelled to regional Victoria, New South Wales, the Northern Territory, South Australia and Western Australia.

Discussion Paper

The Committee prepared a comprehensive and detailed Discussion Paper, which provided an overview of the current law and policies and programs in Victoria and other States and highlighted the scope and complexity of issues to be addressed. The Discussion Paper raised specific questions to be addressed and invited community response. The Discussion Paper was circulated widely. A copy was placed on the web.[4]

Occasional Paper

The Committee has published an Occasional Paper entitled *Trends in Negligence and Public Liability: The evolving liability of licensees and servers of alcohol to their patrons and third parties*. The Paper was circulated to all Members of Parliament and placed on the web. Members of Parliament forwarded this paper to their local police and licensed premises.

Written Submissions

Calls for written submissions were published on 3 April 2000 in the *Herald Sun, The Age* and on 1 April 2000 in the *Weekend Australian*. Further calls for submissions were published in the dailies and selected regional newspapers after the *Discussion Paper* was released in October 2000. Print media and radio interest also alerted the public to the Inquiry. Letters inviting submissions to the Inquiry were sent to key agencies in Victoria and interstate. In all, the Committee has received forty-three submissions.[5] These submissions came from a broad range of individuals and government and non-government organisations.

4 In all, 780 copies of the Discussion Paper have been distributed.

5 For a list of submissions received by the Committee see Appendix 1.

In addition to these submissions, the Committee has taken into account a number of reports, documents, correspondence and formal and informal discussions with a range of key stakeholders when reaching its conclusions.

Public Hearings

The Committee conducted Public Hearings on 8 and 13 November 2000 and heard evidence from sixteen witnesses. These hearings were held in Melbourne.[6]

Inter and Intrastate Visits

During the Inquiry the Committee travelled both interstate and intrastate to gain information. In order to investigate approaches taken to the decriminalisation of public drunkenness in other Australian jurisdictions, the Committee visited Sydney and Newcastle in New South Wales, Alice Springs, Tennant Creek and Darwin in the Northern Territory, Perth in Western Australia and Adelaide in South Australia. In each city and town the Committee held meetings with police, Indigenous groups, local government organisations, legal services and other key government and non-government agencies. The Committee also visited sobering-up centres, rehabilitation centres and joined staff on night patrols.[7]

To seek the views and concerns of rural communities in Victoria, the Committee travelled to Mildura, Swan Hill and Morwell and spoke with key stakeholders and community representatives. Members also visited Aboriginal sobering-up centres.

Local Visits and Inspections

The Committee made a number of site visits/inspections and held meetings with key organisations in and around Melbourne.[8] This enabled the Committee to conduct informal meetings with a range of individuals and representatives to gain their views on specific issues related to the Inquiry. These visits also gave the Committee the opportunity to experience, at first hand, the problems created by public drunkenness in an around nightclubs and hotels and at major events. It also provided valuable insights into the excellent work of various community and government organisations.

Additional Witnesses

In order to gain expert opinion and complement the information and testimony received from witnesses at the public hearings, visits to various facilities, information gained from submissions, the Committee periodically invited expert witnesses to address it regarding a range of pertinent matters and issues.[9]

The Committee is most appreciative of the time, effort and valuable contribution that all the individuals and organisations have made during the progress of this Inquiry. The submissions, visits and public hearings have provided valuable knowledge and insights into what has turned out to be an extremely complex issue.

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6 For a list of witnesses appearing at Public Hearings, see Appendix 2.

7 A list of site visits and informal meetings is provided in Appendix 3.

8 See Appendix 3.

9 For a list of witnesses invited to speak to the Committee see Appendix 3.

PART B:
Law and Legal Issues

4. A Brief History of Public Drunkenness and the Development of Decriminalisation Models

The regulation and control of the behaviour of intoxicated people through legal mechanisms is not a new phenomenon. Nor are the debates as to whether such a course is justified in circumstances where no other criminal behaviour is present. This chapter of the Report looks briefly at the development of public drunkenness laws and the initial movement for decriminalisation of these laws.

Public drunkenness was officially made a criminal offence in England in 1606. A Bill was passed into law in that year outlawing and 'oppressing the odious and loathsome sin of drunkenness'.[10] Public drunks could be fined five shillings or put in stocks for six hours. Sackville states:

> Historically, laws directed against public intoxication have been viewed as laws for the protection of moral and aesthetic values rather than for the protection of the public against any real danger (Sackville 1976, p. 12).

James (1992) takes this argument further:

> This theoretical position appeals to the sensitivities of the white middle class who foremost desire, a safe, clean environment shielded from unsightly reminders of the manifestations of poverty...The moral argument in favour of the imposition of a criminal sanction for this victimless offence on the ground of 'unseemliness' [can be criticised on Millesian grounds]...Public drunkenness is such an act that is of no risk to others, unless associated with overt violence. Criminalising the act

10 4 Jac. C.5, s.2 (1606).

> so as not to offend the moral virtue of the middle and upper class, is insufficient justification and somewhat hypocritical in light of the fact that their drunkenness is shielded by the private domain (James 1992, p. 13).

Sackville states, moreover, that the attitudes of the police with regard to penalising public drunkenness were always somewhat ambivalent. This is reflected in the evidence of a police magistrate appearing before the 1834 Select Committee appointed to enquire into '[t]he Extent, Causes and Consequences of the prevailing Vice of Intoxication among the Labouring Classes..':

> In describing the practice of the police in dealing with those found drunk in public places he stated that there was no interference with those who were with a friend or capable of going home. Only those who were 'incapable of taking care of themselves' (and thereby offending the public eye) were arrested (Sackville 1976, p. 12).

Most colonial and later State parliaments in Australia adopted some form of offence penalising people who displayed signs of drunkenness in public places. These laws enshrined in various Police Offences Acts were for the most part to remain unchanged until the late twentieth century.

Public drunkenness was clearly a concern to the authorities at the beginning of the twentieth century. In a recent study to mark the Centenary of Federation, Dr Adam Graycar, Director of the Australian Institute of Criminology, compared levels of violent crime at the ends of the nineteenth and twentieth century respectively. He reported that offences for public drunkenness:

> [c]omprised more than half of all offences brought before the Magistrates' courts in the early years of the twentieth century, and this persisted until the middle of the century...charges of drunkenness in 1900 were three times as high as charges of property crime and five times as high as charges of offences against the person...
>
> What mattered 100 years ago and what happens today are very different. One hundred years ago there was great concern about drunkenness, gambling and 'Chinese opium dens', whereas today concerns such as cyber crime, the international trafficking of drugs and their consequences in Australia, domestic burglary and (family) violence against women are prominent in crime discussions (Graycar 2001, pp. 1-2).

As early as 1908, however, there were concerns as to the efficacy of treating public drunkenness as a crime:

> Though the problem of the correct method of dealing with dipsomania is by no means an easy one, it seems fairly clear that the present plan of bringing offenders before magistrates, and subjecting them to the penalty of imprisonment or fine, has little deterrent effect, as the same offenders are constantly reappearing before the courts. Further, the casting of an inebriate into prison, and placing him in his weakened mental state in the company of professional malefactors, doubtless tends to swell the ranks of criminals and certainly tends to lower his self-respect, and examination of the prison records

> in New South Wales some years ago disclosed the fact that over 40% of the gaol population had commenced their criminal career with a charge of drunkenness…. With regard to drunkards, however, Captain Neitenstein, the Comptroller of Prisoners in New South Wales, advocates the entire abandonment of the system of repeated fine or imprisonment in favour of a course of hospital treatment (Commonwealth Year Book 1908, p. 762).

By the mid-twentieth century discontent with traditional criminal justice models of dealing with public drunkenness was becoming evident in many parts of the world. Sobering-up centres, as an alternative to criminal sanctions, for example, were established in Warsaw and Prague in the 1950s (Midford, Daly & Holmes 1994).

It is also clear that by the late 1960s, different models of 'decriminalisation' were being propounded. Giffen and Lambert state that:

> Decriminalisation is a concept encompassing a broad variety of options. The continuum ranges from the repeal of all statutes related to arrest, punishment, and the role of police in the matter of public inebriation (total decriminalisation) to keeping public inebriation as an offence but eliminating the punishment (minimum decriminalisation) (Giffen & Lambert 1978 cited in Daly & Maisey 1993, p. 1).

Since the early 1970s, alternative and diversionary programmes were established in some parts of the United States. These programmes drew from health or medical models of public drunkenness that interpret alcoholism, problem drinking and public drunkenness as symptomatic of a sickness rather than a wilful criminal act.[11] The Federal Government of the United States sought to move the response to public drunkenness into the health care system by providing financial incentives to states that decriminalised public drunkenness through the federal power to subsidise state health systems. Midford claims these attempts have not been wholly successful due to resistance from hospitals and health care providers to taking on these additional responsibilities (Midford 1995).

By the 1970s, police in Britain, Canada and other Western countries such as Sweden were granted powers to apprehend intoxicated persons and transport them to newly created detoxification and sobering-up centres. Some of these countries still gave police options to charge these persons later with a criminal offence. Midford notes that in the move to decriminalise public drunkenness, or at least deal with it in less punitive terms, two main models were apparent:

> The US approach followed the medical model and tied provision of co-ordinated health services to decriminalisation. Programs implemented in other Western countries owed more to the social welfare approach, but most aimed to also detoxify and rehabilitate chronic drinkers. In comparison, the Eastern European model made no provision for any form of rehabilitation, or even counselling. Its intention was to provide basic care for persons found drunk in

11 See for example, Nimmer (1971) and Finn (1985) for discussions of decriminalisation of public drunkenness in the United States of America and alternative diversionary programmes.

> public while they sobered up and to keep them out of the criminal justice system (Midford 1995, p. 3).

The social welfare model is generally seen as less restrictive than that of the medical models as established in the United States. This is particularly true of those states that coerced patients into detoxification or treatment as an 'alternative' to criminal penalties.[12] James points out that:

> [t]here are many flaws inherent in the 'sickness' perspective that substantially reduce its effectiveness…[whereas the social welfare] model is more concerned with the sobering up of the drunken person in a sobering-up centre, as opposed to any long term rehabilitative goals. Any subsequent treatment may be recommended on a strict voluntary basis. Coercive medical or other treatment is thought to be not only unethical, but likely to have little success in rehabilitation. Whilst the establishment of sobering-up centres is costly, they are much less so than detoxification centres (James 1992, p.14).

By the mid-1970s, State and Territory governments in Australia were considering the decriminalisation of public drunkenness in line with these international trends and the publication of domestic reports that were critical of the continued penalising of public drunkenness.[13] One of the most stringent of these critics was Professor Ronald Sackville. In a report on Homeless People and the Law, commissioned for the Henderson Inquiry into Poverty in Australia, he wrote:

> It is possible to attack the continued operation of laws of public drunkenness and vagrancy on the general philosophical ground that the function of the criminal law ought not to be the punishment of activities which cause no harm to persons other than the actor. Neither the vagrant nor the drunk causes harm to the person or property of other members of the community, assuming of course the absence of specific acts of misconduct for which the offender is liable to be punished on the usual principles of criminal law. Even if it were sought to justify punishment of vagrants and drunks as preventive measures designed to penalise those with a propensity for serious crime, the evidence does not support the conclusion that vagrants and drunks are sufficiently prone to other criminal activity to warrant the drastic step of preventive punishment (Sackville 1976, p. 37).

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12 One of the key aspects of the Sackville Report into Homelessness and the Law was its discussion of whether admission to intake and/or detoxification centres should be voluntary or compulsory. The report concluded that with some exceptions pertaining to emergency treatment and care such admissions should be voluntary only (Sackville 1976, p. 81).

13 See for example, the Working Party on Homeless Men and Women, Report to the Minister for Social Security, Canberra, June 1973; Criminal Law and Penal Methods Reform Committee of South Australia, *First Report*; *Sentencing and Corrections*, July 1973; Office of the Minister for the Northern Territory, *Report of the Board of Inquiry into the Liquor Laws of the Northern Territory*, 1973; New South Wales Bureau of Crime Statistics and Research, *City Drunks – A Possible New Direction* (Statistical Report 7), 1973; *Report on the Vagrancy (Insufficient Means) Bill 1974*, Victorian Statute Law Reform Committee 1974, cited in Sackville 1976; *A Report into Homeless People and the Law*, Research Report for the Australian Commission of Inquiry into Poverty prepared by Ronald Sackville, 1976.

At the same time there was increasing concern raised with regard to the effect of alcohol consumption on Indigenous Australians and the incarceration of intoxicated Indigenous persons in police lockups and prisons. A comprehensive discussion of public drunkenness and Indigenous Australians is given in Part H of this Report.[14]

By 1990, all States and Territories except Queensland, Victoria and Tasmania had decriminalised public drunkenness offences. Midford (1995) claims that the decriminalisation model adopted in all Australian jurisdictions is most similar to the Eastern European 'minimalist' approach. A brief account of the history of these developments is given under each State or Territory's individual case study in Chapter 5 of this Report.

14 Ironically, some commentators have argued it was the repeal of legislation prohibiting Aboriginals from consuming alcoholic beverages and the granting of full citizenship rights in 1967 that arguably, at least in part, contributed to the problems associated with public drunkenness and Indigenous Australians. See for example, Alexander (1990) and James (1992).

5. An Overview of Public Drunkenness Laws in Australian States and Territories

Each Australian State and Territory deals with public drunkenness in different ways but they share many common features pertaining to a civil model of detention.

Following and extending the analysis of Commissioner Johnston in the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody (1991a), it is possible to classify the legislative provisions with regard to public drunkenness in the Australian States and Territories according to the level of intervention by the State.

1. Jurisdictions which still maintain public drunkenness or a variant thereof as a criminal offence:
   - Victoria
   - Tasmania
   - Queensland (partial offence, see discussion later in this chapter).
2. Jurisdictions where apprehension and detention is justified on grounds of public drunkenness alone:
   - Western Australia
   - Northern Territory.
3. Jurisdictions where the apprehension and detention of intoxicated persons is only justified in more qualified circumstances:
   - South Australia
   - New South Wales
   - Australian Capital Territory.

Western Australia

The Law

Public Drunkenness was decriminalised in Western Australia in December 1989 by the *Acts Amendment* (*Detention of Public Drunkenness*) *Act 1989*. This amending Act introduced changes into the *Police Act 1892* (WA) allowing the civil detention of persons found intoxicated in public places. This legislative change was predominantly a response to the 1988 *Interim Report* of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). Some heated debate ensued as to whether the legislation

should be proclaimed prior to the establishment of alternative sobering-up centres. Given the relatively high numbers of Aboriginal deaths in custody in Western Australia, it was eventually decided that the decriminalisation legislation should take effect even if there were no centres yet available to receive intoxicated persons (Midford 1993). The legislation was proclaimed in April 1990.

In late 2000, Part 5A of the Police Act dealing with the apprehension of intoxicated offenders was repealed by section 30 of the *Protective Custody Act* 2000. This Act is discussed in detail in this chapter. Given, however, that the following discussion of public drunkenness covers the period since decriminalisation first took effect, in conjunction with the very recent proclamation of the new legislation, the Committee believes it necessary to discuss both legislative regimes.

Police Act 1892 – December 1989 until December 2000

In many respects the Western Australian legislation resembles the major features of the Northern Territory legislation.[15] Some of the key features of the Western Australian legislation are as follows.

Apprehension (Section 53A)

A police officer may apprehend and detain a person if he or she has reasonable grounds for believing that person is intoxicated:

- the person is in a public place;
- the person is trespassing on private property.

Search and Use of Force (Sections 53B)

Similar to most other jurisdictions, a police officer may use reasonable force in apprehending and detaining an intoxicated person. He or she may also search that person and remove any item likely to cause harm to that person whilst detained.

Period of Detention (Section 53D)

In the Western Australian legislation no time limits as such apply for detaining a person. However, if a police officer still believes a person to be intoxicated eight hours after apprehension he or she must apply to a justice as soon as practicable for an extension of detention. Otherwise, a person shall be detained by a police officer as long as it reasonably appears to that officer that the person remains intoxicated.

Release of Person into care of a third party (Section 53G)

Provided that the consent of the intoxicated person is given, a police officer may release that person into the care of a person he or she believes is capable of taking adequate care of the intoxicated person. This provision allows for the police officer to release the intoxicated person into the charge of a sobering-up centre.

15 From a practical point of view, this could be thought desirable. In the north and north-west border regions between the Northern Territory and Western Australia, many services, particularly those serving Aboriginal communities, have a cross-border jurisdiction. For consistency and uniformity in the application of the laws and practice it is seen as beneficial to have as many of the provisions as similar as possible (Members of the Northern Australian Aboriginal Legal Service in conversation with the Committee, 3 August 2000).

Reviews (Section 53I)

Similar to the Northern Territory legislation, but unlike most other jurisdictions that have decriminalised public drunkenness, the Western Australian legislation provides for a review mechanism for the detention of an intoxicated person. A person may request a police officer to have their detention reviewed by a justice at any time. As stated above, a police officer must seek a review of the detention if the intoxicated person has been detained more than eight hours after apprehension. On review, a justice has the power to release the person unequivocally, release him or her into the care of a third person or extend the period of detention with or without specific directions.

A person being detained under these provisions cannot be investigated, fingerprinted, questioned or photographed in connection with suspected other offences.

As with most Australian legislation of this type, police officers or other persons responsible for detained persons shall not be civilly liable for any acts or omissions performed in good faith whilst exercising any power under these laws.

The Western Australian legislation also contains a unique provision relating to escape from detention. In short, a person who absconds whilst in detention under this law shall not be considered as having escaped from legal custody (section 53M). In other words, the normal consequences of the criminal law with regard to escaped prisoners (severe sanctions in their own right) shall not be applicable.

Protective Custody Act 2000[16]

This Act has repealed the features of the Police Act pertaining to the apprehension and detention of intoxicated adults. It substitutes a new regime for the apprehension and detention of intoxicated offenders. However, many features of this new legislation are the same as those found in the previous legislation. Its most important and original features are provisions that permit the police to detain juveniles intoxicated by alcohol or any other intoxicating substances. Although juveniles could be detained previously by police under child welfare legislation if it was thought they were at risk, the new legislation is much more specifically tailored to providing care for those juveniles found intoxicated by alcohol or other drugs. Its main features are as follows.

Apprehension

- The Act enables *authorised officers* who may be police officers or *community officers* appointed under the Act to apprehend intoxicated persons (adults or children under 18 years of age) and place them in protective custody in *approved facilities* (Our emphasis).
- *Authorised officers* must not detain or keep detained an apprehended person who is not or is no longer intoxicated. Nonetheless, special duty of care and release procedures apply in the case of juveniles. A child who is no longer intoxicated may still be detained by an *approved place* until arrangements for the child's welfare have been put in place. The key purpose of detaining an intoxicated person is to:

16 This Act was proclaimed and commenced on 1 January 2001.

- Protect the health and safety of the person or any other person; and
- Prevent the person causing serious damage to property (Our emphasis).

Intoxication

- The new act defines intoxicants as being alcohol, a drug, a volatile or other substance capable of intoxicating a person.
- Police have been given powers to seize such intoxicants. This could include such otherwise legal substances as petrol, glue or paint.

Placement and Release

Children

- The Act requires an authorised officer to release the child to:
  - the care of a parent or legal guardian; or
  - the care of a person the authorised person believes is a responsible person capable of taking care of the child and consents to so doing; or
  - if neither of these options is possible the authorised person must place the person into the care of an approved facility.
- The paramount consideration with regard to the apprehension, placement and release of children is the *safety and welfare of the child*: 'This is generally recognised as giving first priority to parents and legal guardians'.[17]
- In cases where it is not practicable to release a child into the care of parents, a responsible person or a placement facility, the child may be retained in a police station or lockup in *exceptional circumstances only*.

Adults

- Authorised officers may release an intoxicated person to another person who applies for the adult's release if:
  - the intoxicated person does not object to being released into the care of the applicant; and
  - the authorised officer reasonably believes the applicant is capable of taking care of the adult; and
  - if an authorised officer decides not to place a person into the care of an applicant that decision may be reviewed on application to a justice of the peace.
- Authorised officers may also release adults to an approved facility.
- If none of the above options are available or practicable the adult may be retained in police stations or lockups in exceptional circumstances.

17 Protective Custody Act 2000; *Protocols for Participating Agencies* (p. 2), Western Australia Drug Abuse Strategy Office, Perth, 2001.

Approved Facilities[18]

Approved facilities under the Act include the sobering-up centres already established in Western Australia and any subsequent centres, including juvenile centres, so approved. Whilst persons admitted to an approved facility cannot be kept there against their will, facility staff are advised to arrange for police to attend the facility should a person become violent subsequent to admission. Agency staff are also instructed to seek medical attention in cases where an intoxicated person's condition deteriorates subsequent to admission.

Where a child is admitted to an approved facility, the authorised officer must keep the relevant agency and the child aware of steps taken to release the child to parents or a responsible person. Children admitted to an approved facility must be kept separate from adults and be continuously supervised by agency staff. Prior to discharge from the approved facility, the agency must ensure that a child is released to an appropriate person as stipulated in the Act. An approved facility will manage the release of the child even after the period of the child's intoxication. If the child leaves an approved facility prior to an approved discharge, the agency will immediately advise the appropriate authorised officer to secure further placement in the interests of that child's health and safety.

Miscellaneous

The new legislation has similar provisions to the old with regard to search and seizure, the use of force, judicial review, escape of an apprehended person and protection for authorised officers from personal liability.

The development of approved facilities will be subject to local protocols between Western Australia Police, Health and Welfare Departments, the Western Australia Drug Strategy Office, and potential agencies. Local protocols will identify:

- Key agencies;
- Agency Roles;
- Hierarchy of options for placing children and adults based on the resources available in each community; and
- Review processes for each region.[19]

18 As of the time of writing, no approved facilities for juveniles had been gazetted under the Western Australian Act.

19 Protective Custody Act 2000; *Protocols for Participating Agencies*, Western Australia Drug Abuse Strategy Office, Perth, 2001 p. 4.

Northern Territory

The Law – Summary Offences Act 1996[20] *and Police Administration Act 1996*

The Northern Territory decriminalised the offence of being intoxicated in public in 1974 and was the first Australian jurisdiction to do so.

In the first years of decriminalisation in the Territory there were no sobering-up centres or equivalent facilities to which intoxicated persons could be transported. Therefore the level of people detained in police cells and the attendant problems associated with this (including Aboriginal deaths in custody) remained high.[21] The establishment of sobering-up centres in the early 1980s has resulted in a decrease in the number of Aboriginals detained in police cells for public drunkenness.

Laws and regulations against public drinking in the Territory fall into two main types. The first group deals with the drinking of alcoholic beverages within a specified distance of licensed premises, whether the person is intoxicated or not. The relevant law for this purpose is to be found in Part 6A of the *Summary Offences Act 1996* (as amended *1999*).

Public Drinking Prohibitions – Summary Offences Act

To a certain degree these provisions mirror the municipal laws administered by some local councils in Victoria. The crucial difference in the Territory's case is that the police are responsible for overseeing these laws rather than it being done by a municipal or by-laws officer. These laws are *not* concerned with public drunkenness per se.[22] Nonetheless, these laws are inextricably linked with the administration of the public drunkenness detention provisions and indeed, in the minds of some Territorians, are often thought to be part and parcel of the same law. They therefore warrant some brief scrutiny.

The basic position can be paraphrased as follows. A person who either:

- *drinks* liquor within two kilometres of premises licensed for the sale of liquor; or
- has on their person *opened* or *unopened* containers of alcoholic beverage with the intention of consuming same within that same specified distance is guilty of an offence (section 45D).

Police Powers with respect to public drinking (Section 45H)

A police officer may issue a prescribed notice to a person suspected of committing an offence against section 45D, describing the circumstances which led the police officer to believe an offence had been committed.

Whether or not such a notice is issued, a police officer has the power to seize an *open* or *unopened* container of alcohol if he or she believes it to be a source of liquor from which a person has drunk, or may drink in the future, in contravention of section 45D.

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20 As reprinted at June 1999.

21 See Royal Commission into Aboriginal Deaths in Custody 1988, *Interim Report;* and Royal Commission into Aboriginal Deaths in Custody 1991a, *Final Report*, vol. 3.

22 NAALS stated that some groups argue that the two-kilometre law is simply criminalisation by another name. Northern Australian Aboriginal Legal Service (NAALS) in conversation with the Committee, 3 August 2000.

Such a provision relies to a large extent on the police officer's subjective and individual judgement in the circumstances. The liquor may also be seized from third parties in the vicinity of the suspected offender if the police officer is of the belief that the liquor container has been drunk from or may be drunk from in the future by the suspected offender. There are provisions giving people the right of appeal against their liquor being confiscated (section 45HA).

Apprehension for Public Intoxication – Police Administration Act 1996

As in some other jurisdictions, such as New South Wales, the Northern Territory legislation applies to people who are thought to be intoxicated by alcohol or *any other drug*. The level of intoxication required is that of being 'seriously affected'. Little other guidance is given as to what this means. To a large extent it is up to the subjective judgement of the individual police officer.

A police officer may take a person into custody, *without arresting* that person, in circumstances where the police officer believes on reasonable grounds that the person is intoxicated in a public place or intoxicated whilst trespassing on private property (section 128).

In order to fulfil his or her duties under this provision the officer may:

- without warrant enter upon private property;
- search the suspected offender;
- remove any property of the suspected offender into safekeeping until such time as she or he is released from custody.

Period of Apprehension and Custody (Section 129)

The rule of thumb is that the apprehended person shall be kept in custody only for such period as the police officer considers the person to be in a state of intoxication. When the officer believes the offender to be no longer intoxicated, he or she shall be released from custody without entering into any bail arrangements. A person who is in custody after midnight may be kept in custody until 7.30 a.m. of that day, notwithstanding that the person is no longer intoxicated.

At any time a police officer may also release the offender into the care of a person whom the officer believes is capable of taking care of the offender, unless the offender objects to being released into the care of such person. Such a person may include a representative from one of the Territory's sobering-up centres. But the sobering-up centre has no legal power to detain or restrain the person once in their custody.

Legal Consequences of Detention

The Act quite specifically states that a person detained without power of arrest under these provisions cannot be:

- charged with an offence;
- questioned with regard to any suspected offence;
- photographed; or
- fingerprinted.

For such procedures to take place, the person must be arrested, detained and charged according to the ordinary due process of criminal law.

A person detained under section 128 has the right at any time after apprehension to request a review of his or her detention by a justice. It could be argued that at least with regard to Aboriginal detainees, such a right of review is somewhat illusory.

Lawyers from the Northern Australian Aboriginal Legal Service (NAALS) claim that 68 per cent of the Territory's Aboriginal population do not speak English and very few indeed would read English:

> There is a wide variety of Aboriginal languages and the interpreter service… cannot be accessed by individuals; it can only be accessed by departments. Our clients do not know it even exists. If you happen to be a non-English speaking Aborigine in custody, firstly you would not have access to the Police Administration Act; secondly, you could not understand it even if you could read it; and thirdly, you could not adequately communicate your difficulties to a justice[23].

South Australia

The Law – Public Intoxication Act 1984

Public drunkenness was decriminalised in South Australia in 1984. Under section 7 of the Public Intoxication Act, however, a police officer or an authorised officer may apprehend and detain a person[24] under the influence of a drug or alcohol and who by reason of that fact is *unable to take proper care of himself or herself*.

Thus in South Australia the power to apprehend someone for being drunk in public is somewhat qualified.

Under section 4 of the Act, the term drug is defined as 'any substance declared to be a drug for the purposes of the Act'. In the second reading speech of the Public Intoxication Bill (April 1984), the then Minister of Health explained the rationale for such a wide and open-ended definition:

> Clause 5(1)(b) enables the Governor to declare any substance to be a drug for the purposes of the Act. This means that volatile solvents (glue, petrol) could be declared at a later date if appropriate so that police would have the power to apprehend glue sniffers, and take them home or to treatment. The police have felt powerless to act in such situations, although they often encounter the problem.[25]

If a police officer makes a decision that a person does need to be apprehended for their own wellbeing, as soon as reasonably practicable the officer takes that person to either:

- the person's place of residence (if any);
- to a police station; or
- to a sobering-up centre.[26]

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23 Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee, 3 August 2000.

24 Under section 6 of the Act 'person' includes children.

25 South Australia, Legislative Council 1984, *Debates,* 11 April, p. 3464, per Hon. J.R Cornwall (Minister of Health).

26 Public Intoxication Act 1984 (SA), section 7(3).

This Act, unlike legislation from other jurisdictions, does not privilege one form of disposition over another. However, before the expiration of ten hours the officer in charge of the police station must either:

- discharge the person if in the opinion of the officer the person has sufficiently recovered from the effects of the drug or alcohol as to be able to take care of himself or herself; or
- transfer that person to a sobering-up centre.[27]

A person taken to a sobering-up centre may be detained by the person in charge of the centre. This power exceeds those given to comparable persons in other jurisdictions.[28] For example, in most jurisdictions once a person is transferred to a sobering-up centre or equivalent, the person in charge does not have the power to detain the intoxicated person against his or her will. At most, the person in charge or other staff member can resort to calling the police after the intoxicated person has 'bolted'.

A person must be discharged from a sobering-up centre, where in the opinion of the person in charge he or she has recovered sufficiently so as to be able to take care of himself or herself or before the expiration of 18 hours from the time of apprehension.[29]

The Act applies equally to adults and children. If, however, a child is apprehended and detained, the parent or guardian of the child (if any) must be notified as soon as practicable after the commencement of the detention.[30] As far as possible, children in detention must be kept from coming into contact with adults detained under the Act.[31]

Children and adults alike are given rights under the Act to communicate with a solicitor, friend or relative. Solicitors may request that the detained person be released into the custody of the solicitor or a friend or relative capable of caring properly for the detained person. The officer in charge of the police station may accede to this question at his or her discretion if satisfied that the solicitor, friend or relative is in fact capable of caring properly for the intoxicated person.[32]

A person may, before the expiration of thirty days from the date of his or her discharge from a police station or from a sobering-up centre, apply to a court of summary jurisdiction, constituted of a special magistrate, for a declaration that at the time of the person's detention he or she was not under the influence of a drug or alcohol.[33] As indicated in earlier debates on the legislation, this may be necessary in cases where the person was suffering from a condition where the symptoms mimic intoxication and there could be civil or criminal repercussions if a person was wrongly found to be drunk or otherwise intoxicated.

27 Ibid, s. 7(4).
28 See Table 1 this chapter.
29 Public Intoxication Act 1984 (SA), section 7(5).
30 Ibid, s. 7(7).
31 Ibid, s. 7(10).
32 Ibid, s. 7(9).
33 Ibid, s. 8.

Police officers may use reasonable force in apprehending an intoxicated person and may search that person for the purpose of removing objects that may constitute a danger to that person while in an intoxicated state.[34]

A criticism made in the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody (1991a) was that whilst the basic structure of the Act was sound, for many years South Australia had virtually no sobering-up centres and therefore most detentions under the Act were in police cells.[35] This criticism is by no means restricted to South Australia. Indeed, it seems to be commonplace that outside the capital cities and larger provincial towns, sobering-up facilities are sadly inadequate. The result of this metropolitan 'bias' is that people apprehended under public drunkenness legislation in remote and rural Australia are more likely to be detained in police custody.[36]

New South Wales

The Law – New South Wales (Intoxicated Persons Act 2000)[37]

The above Act has consolidated and amended provisions of the original decriminalisation legislation for New South Wales, the *Intoxicated Persons Act 1979*. The new Act was assented to in June 2000 and commenced by proclamation on 16 March 2001.

The 1979 laws can be summarised as follows:

- Government and non-government facilities could be gazetted as *proclaimed places* to which persons found intoxicated in a public place could be taken by police officers or authorised persons (including people engaged in the conduct of care facilities if so designated under the Act).
- People in charge or control of such proclaimed places were authorised to detain the intoxicated person at that place.
- Police officers or authorised persons were authorised to take an intoxicated person to another proclaimed place or as a last resort to a police station, if there was inadequate accommodation in the first proclaimed place, the person was violent, it was impractical to take the person home or it was thought generally to be in the best interests of the person for him or her to be removed from the first proclaimed place.

Major changes as a result of the amending legislation

The amendments to the original Act reflect a change in emphasis, whereby primacy is given to placing the intoxicated person in the hands of the *responsible person*; making provisions for the health and welfare of the intoxicated person whilst in custody; and generally simplifying some of the definitional sections of the Act.

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34 Ibid, s. 7(2).

35 Royal Commission into Deaths in Custody 1991a, *Final Report*, vol. 3, p. 11.

36 The fewer sobering-up centres there are in any given jurisdiction, the higher the likelihood that the intoxicated person will be held in a police cell.

37 For a more detailed discussion of the law as it pertains to public drunkenness in New South Wales, see the Position Paper produced by the Drugs and Crime Prevention Committee, unpublished.

Moreover, a person found intoxicated in a public place will *only* be able to be detained by a police officer. Such officer will be *required* to release the person into the care of a responsible person, such as a friend or family member or the staff of a facility for the care of intoxicated persons. Only if such a course is impracticable will the person be able to be detained in a police station or juvenile detention centre.

Staff of government or non-government care facilities will no longer have the power to detain intoxicated persons. They will only be able to receive such persons into their custody when such persons are released into their care by a police officer.

Another important change is that by the definition of *intoxicated person* the Act makes it quite clear that intoxication includes drugs other than alcohol or a combination of alcohol and another drug or drugs. In effect this means that the provisions of transport and detention may be used with regard to a person appearing to be under the influence of cannabis or other illicit drugs. The definition under the 1979 Act was restricted to alcoholic liquor.

Detention and Transport (section 5)

Section 5 of the 2000 Act allows a police officer to detain a person who *appears* to be *seriously* affected by alcohol or another drug or combination of both in a public place, if he or she believes that person:

- is behaving in a disorderly manner;
- is likely to cause injury to self or another;
- is likely to cause property damage; or
- is in need of physical protection because of intoxication.

Thus prima facie it would seem that the legislation delimits the circumstances in which a drunken person can even be taken into custody without arrest.

The crucial change to section 5 is that after a police officer has formed the opinion that the person fits into one of the above categories, he or she in the first instance must attempt to:

- take the intoxicated person and release him or her into the care of a responsible person willing to immediately undertake the care of the intoxicated person.

As in the Northern Territory, a responsible person does *not* have the power to detain an intoxicated person delivered into their care against the intoxicated person's will.

Police Stations as Places of Detention

The only circumstances in which this can be done is if:

- it is for the temporary purpose of locating a responsible person or facility willing to receive the intoxicated person;
- a responsible person cannot be found or is not willing to receive the intoxicated person into their custody;
- it is impracticable to take the intoxicated person home; or
- due to the violence or threatened violence of the intoxicated person a responsible person would not be capable of taking the person into their care and control.

Duty of Care

The new Act builds in a protocol with regard to intoxicated persons taken into the custody of the police station due to their intoxication. Some features include:

- The intoxicated person must be given a reasonable opportunity to contact a responsible person.
- As far as reasonably practicable the intoxicated person must be kept separately from a person detained at the police station in connection with the commission or suspected commission of an offence.
- An intoxicated person apparently under the age of 18 must as far as reasonably practicable be kept separately from an adult.
- The intoxicated person must be furnished with food, drink and bedding appropriate in the circumstances. (The use of the qualifier 'appropriate' would, one assumes, provide for the situation where it would be dangerous to give the person food due to their intoxicated state, for example the possibility of choking on their vomit.)

There are also fairly circumscribed powers of restraint and search as are reasonable in the circumstances to protect the intoxicated person and or others from injury and protect property from damage (see sections 5 and 6).

Section 8 of the Act gives a police officer an indemnity with respect to any act done or omitted to be done by that officer in the reasonable execution of his or her duties under this Act.

It is unclear from a prima facie reading of the Act as to what procedures are to be followed in circumstances where the intoxicated person leaves the care or custody of the responsible person prior to having 'sobered up'. In cases where the responsible person is a staff member of a sobering-up facility, they might, as in the Northern Territory, either contact the police or simply let the matter rest.

Australian Capital Territory

The Law – Intoxicated Persons (Care and Protection) Act 1994

In the Australian Capital Territory the powers of detention and apprehension are qualified in similar ways to legislation in New South Wales and South Australia. A police officer may apprehend and detain a person whom he or she believes on reasonable grounds is intoxicated and because of that intoxication is:

- behaving in a disorderly manner;
- behaving in a manner likely to cause injury to himself, herself or another person, or damage to any property; or
- is incapable of protecting himself or herself from physical harm.

A person so detained must be released when he or she ceases to be intoxicated or at the expiration of the period of eight hours after detention, whichever is earlier.

Police officers may release intoxicated persons into the care of a manager of a licensed place (equivalent of a sobering-up centre).

The Australian Capital Territory provisions do not allow a person employed by a licensed place (a 'carer') to detain a person released into his or her custody against their will. In fact, the carer must inform the detained person that he or she may leave the premises at any time. The detained person must also be informed that they may contact a responsible person at any time (section 7).

Such carers are indemnified against civil suit for any act done or omitted to be done in good faith in the exercise of their duties (section 13).

To cover all Australian States, a brief discussion follows of those jurisdictions, other than Victoria, which have not decriminalised.

Tasmania

The Law – Police Offences Act 1935

It is important to note that being drunk in a public place is not of itself a criminal offence in Tasmania. Drunken conduct will only be subject to criminal sanctions if the person is drunk and in addition:

- incapable of taking care of himself or herself;
- disorderly; or
- drunk while in charge of any vehicle or animal or in possession of a dangerous weapon (section 4).

Penalties range from a one to six-month maximum prison sentence or the imposition of penalty units.

Police may also seize the alcoholic liquor of any offender against these provisions.

Queensland

The Law – Liquor Act 1992 (as amended)

The Queensland provisions could be viewed as a hybrid model that combine criminal sanctions with the type of municipal public drinking infringements found pursuant to local government acts and regulations.

Section 164 deals with people who are publicly *drunk* and is included in the section entitled 'Conduct causing public nuisance'. It is an offence for a person to be:

- drunk in a public place (1 penalty unit); or
- drunk *or* disorderly *or* creating a disturbance in licensed premises (25 penalty units).
- A police officer may arrest a person contravening these subsections if the police officer believes on reasonable grounds that, because of the consumption of liquor, the person is, or is likely to be, a danger to:
  - himself or herself; or
  - others.

Subsection (4) does not limit the circumstances in which a person may be arrested for a contravention of subsection (1) or (2).

However, the recently proclaimed *Police Powers and Responsibilities Act 2000* (Qld) permit a police officer to take a person arrested for public drunkenness to a 'place of safety' in order to receive treatment or care necessary to recover from the effects of being drunk.[38] Examples of places of safety include hospitals, sobering-up centres, the person's home or that of a friend or family member. An important and unique feature of the new provisions is that a person's home or that of a friend or family member may only be considered and used as a place of safety if:

> [t]here is no likelihood of domestic violence or associated domestic violence happening at the place because of the person's condition or the person is not subject to a domestic violence order preventing the person from entering or remaining at the place.[39]

A person taken to a place of safety cannot be compelled to remain there.[40]

It is also prohibited to *consume* alcoholic liquor in a public place that is:

- a road; or
- land owned or the under the control of a local government (section 173B).

A person will not be guilty of an offence under this section if the consumption of liquor is authorised under a licence or permit or the public area has been designated as a public place where liquor may be consumed (sections 173B, 173C).

These provisions relate to the *consumption* of liquor only. They are not concerned with drunkenness per se.

Section 174 authorises a person called the 'investigator' to exercise the powers conferred by the Act. An investigator is defined under section 4 as including a police officer.[41]

Despite public drunkenness still being a crime in Queensland, the government has sought to promote a more integrated approach to the care and treatment of people arrested for public drunkenness. The Queensland Government's *Management of Public Drunkenness Policy and Protocol* seeks to address:

- the marketing and serving practices which increase the likelihood of public drunkenness (Prevention);
- the empowering of police to arrest or divert persons drunk in a public place (Public amenity);
- the immediate care of the drunken person (Duty of Care); and
- the provision of negotiated assessment and referral services, if appropriate, to the drunken person with regard to treatment and ongoing support (Social integration). (Queensland Department of Family and Community Services 1995).

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38 See *Police Powers and Responsibilities Act 2000* (Qld), section 210. This Act was given Royal Assent on 23 June 2000.

39 Ibid, s. 210(1)(b).

40 Ibid, s. 210(5).

41 For a critical discussion of the Queensland provisions, see S. Sheppard, 'Public Drunkenness in Queensland: Decriminalisation vs Diversion', *Aboriginal Law Bulletin*, vol. 3, no. 68, 1984, pp 16-17.

Table 1: Public drunkenness: Comparison of provisions in Australian jurisdictions

	South Australia	New South Wales
Relevant legislation	*Public Intoxication Act 1984*	*Intoxicated Persons Acts 1979 and 2000*[42]
Who may apprehend	Police Officer/Authorised Officer	Police
Who may detain	Police/Person in charge of a sobering-up centre	Police; Detention (Correctional and Juvenile Correctional) Officers. Civilians (sobering-up centre staff) no longer have power of civilian detention
Type of Drug/Level of Intoxication	Under the influence of a drug or alcohol	Person appears to be seriously affected by alcohol or another drug or combination of drugs
Criteria for Apprehension	Public Place Unable to take care of self	Public Place Disorderly; or Likely to cause injury to self, another person or property; In need of physical protection because the person is intoxicated
Power to search	Yes. Also power to remove objects constituting a danger	Police may search detained person and take possession of objects
Use of force or restraint	Reasonable force may be used to apprehend	Reasonable restraint may be used to protect the intoxicated person or others from injury and property from danger
Disposition options	Person's place of residence; Sobering-up centre; Police cells	Responsible Person (includes sobering-up centres) Home Police Cells
Length of detention permitted	Before expiration of 10 hours person must be discharged if thought sufficiently recovered; or Transferred to a sobering-up centre	Must be released as soon as the person ceases to be an intoxicated person
Review mechanisms and safeguards	Right of communication with friend or solicitor Special safeguards for children/juveniles Person may apply to court for a declaration he or she was not intoxicated at the time of detention	Variety of safeguards with regard to medical care, contacting responsible person and general duty of care issues. Juveniles to be kept separately Drunken detainees to be separated from other prisoners Records to be kept
Indemnities	No civil liability attached to any person acting in good faith in the exercise of their duties	Police and detention officers not liable for acts or omissions done in good faith

42 As explained in the text, the Intoxicated Persons Act 2000 was proclaimed on the 16 March 2001. The table, however, represents the law as applicable to the new legislation with comments applicable to the 1979 legislation as appropriate.

Northern Territory	Western Australia	Australian Capital Territory
Police Administration Act 1996	*Protective Custody Act 2000*	*Intoxicated Persons (Care and Protection) Act 1994*
Police	Police/Authorised Officer/Community Officer	Police
Sobering-up centre personnel and other persons into the custody of whom the police release the intoxicated person do not have a power of forcible detention.	Police/Authorised Officers Approved facilities (sobering-up centres) cannot detain against person's will.	Licensed carers (usually personnel of sobering-up centres) do not have power to detain against person's will. They must inform detained person of this fact
Person appears to be seriously affected by alcohol or another drug	Affected apparently by alcohol, a drug or volatile substance	Alcohol, another drug or a combination of drugs
Public Place or trespassing on private property	Public Place or trespassing on private property To protect health, safety of the intoxicated person or another person or serious damage to property	Public Place Disorderly; or Likely to cause injury to self, another person or property; or Incapable of protecting self from physical harm
Yes. Police may remove money, valuables or dangerous objects. A woman must be searched by a female officer	Yes. Police may remove money, valuables or dangerous objects. A woman must be searched by a female officer	Yes. Police officer may search a person taken into custody and take possession of any articles found in his or her possession. A carer may search a person at a licensed place with consent
Reasonable force may be used for apprehension	Reasonable force may be used for apprehension	Act is silent as to amount of force that can be used in apprehending person
May release into the care of a person believed to be capable of caring for intoxicated person. Includes sobering-up centres Police cells	Police may release into the care of a capable third party This includes approved facility staff. Special provisions for children.	Police may release intoxicated person into the care of a 'licensed place' (equivalent of sobering-up centre) Police Cells
Can be kept for long as it reasonably appears person is intoxicated But after six hours of custody must be brought before a justice for an order justifying continuing detention	Can be kept for long as it reasonably appears person is intoxicated After eight hours an officer must bring before a justice as soon as practicable to extend period of detention	Must be released as soon as ceases to be intoxicated or at the expiry of eight hours, whichever is earlier
Person shall not be questioned or charged with an offence whilst in custody under these provisions Person may request to be taken before a justice for release from custody	Person shall not be questioned or charged with an offence whilst in custody under these provisions Person may request to be taken before a justice for release from custody Person who escapes from civil detention will not be considered an 'escapee'	Person must be informed can contact a responsible person at any time
Act silent as to indemnities with regard to these specific detentions.	Police indemnified against civil liability for acts or omissions done in good faith	Police indemnified against civil liability for acts or omissions done in good faith Carers, Licensees and Managers also protected

6. Background to the Current Law regarding Public Drunkenness in Victoria

The history of public drunkenness laws has already been discussed in Chapter 4. It was noted that the origins of the laws on public drunkenness can be traced back to the days of James 1 and the English parliament of 1606. A Bill was passed into law in that year outlawing and 'oppressing the odious and loathsome sin of drunkenness'.

Most colonial and later State parliaments adopted some form of penalising people who displayed signs of drunkenness in public places. The modern statement of the law in Victoria is, as stated, to be found in the *Summary Offences Act 1966* (Vic) which was assented to on 17 May 1966 and came into operation on 21 December 1966. This Act consolidated the law found in various Police Offences Acts up to that time.

With the exception of some minor and insignificant changes, the public drunkenness offences have remained unchanged in form from the time they were introduced in 1966. The major change to the law has occurred, with the repeal of section 15 of the Act in 1998 (Habitual Drunkenness) which will be discussed below.

The Law Reform Commission of Victoria – Reports into Public Drunkenness 1989 and 1990

In 1989 the former Law Reform Commission of Victoria (hereinafter called the Commission) was asked to produce a report on public drunkenness in Victoria and the operation of the Summary Offences Act, pursuant to the publication of the *Interim Report* of the Muirhead Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (December 1988).

The Commission conducted a lengthy period of consultations, discussions and visits with a diverse range of individuals and organisations. These included Victoria Police, welfare and health agencies, Indigenous organisations and government departments. The final report of the Commission, mirroring the findings of the *Interim Report* and subsequently published *Final Report* of the RCIADIC, unanimously recommended the decriminalisation of public drunkenness crimes and the repeal of the relevant sections of the Summary Offences Act.

It is salient to note that the Commission found:

> No support for continued reliance on the criminal law as a means of dealing with the problem of public drunkenness. *Everyone* agreed that public

> drunkenness should be decriminalised (Our emphasis) (Law Reform Commission of Victoria 1989, p. 9).[43]

It should be noted, however, that whilst the above statement may or may not reflect the position as it was in 1989, it is by no means universally true in 2000. To date this Committee has listened to opinions that support or oppose decriminalisation in almost equal measure.

Moreover, the Commission decided that decriminalisation should not be replaced by giving police powers of detention or custody short of arrest, as is the case in some other jurisdictions. The Commission recommended that any new custodial powers given to police should be strictly limited. The power should only apply to cases in which the person is reasonably believed to be at significant risk of being unable to take care of himself or herself, or is behaving in a manner likely to cause injury to self or others, or may cause damage to property. In particular, the Commission exhorted that:

> The power to apprehend, remove and detain is not appropriate where the person's behaviour is simply, annoying or unsightly ('disorderly') (Law Reform Commission of Victoria, p. 9).

The Commission released two reports in 1989 and 1990: *Public Drunkenness*, Report no. 25 and *Public Drunkenness*, Supplementary Report no. 32**.** The 1989 Report proposed and annexed legislation entitled 'Draft Bill for a Public Intoxication Act 1989'. To a large degree this formed the basis of the Public Drunkenness (Decriminalisation) Bill 1990. Appendices of the Supplementary Report included guidelines for Victoria Police in relation to the exercise of their powers under the proposed legislation. In addition, this Report set out guidelines to follow for personnel employed in sobering-up centres in the event of decriminalisation.

The major features of the proposed legislation included:

- Repeal of sections 13, 14, 15 and 16(a) of the Summary Offences Act 1966.[44]
- The right of police officers or 'authorised persons'[45] to apprehend and detain a person intoxicated by alcohol or *another drug* in circumstances only where:
  - The person is at significant risk because he or she is unable to take proper care of himself or herself; or
  - The person is behaving in a manner that is likely to cause injury to others or damage to property (Our emphasis).

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43 S. James, We don't have the Aboriginal problem: Local responses to public drunkenness, MA thesis, Department of Criminology, University of Melbourne, 1992. According to James, most government and community agencies consulted by the LRCV supported the draft Bill. Such organisations included Health Department Victoria, Victoria Police, Office of Corrections, Drug and Alcohol agencies, religious and welfare institutions, legal and law reform bodies. The original stance of these organisations as established in consultations was then later verified by telephone (p. 17). The key groups that were insufficiently consulted, according to James, were local councils. This lack of consultation and the consequent lack of support in local government for decriminalisation were crucial in defeating the Bill in the Upper House (p. 18).

44 For a discussion of these sections, see Chapter 8 of this Report.

45 Authorised person as defined by section 3 means a person appointed by the Minister pursuant to section 14 of the proposed Act.

- Responsibilities of the police officer or authorised person once the intoxicated person is apprehended. These include:
  - Power to release the person after removal from the public place;
  - Power to take the intoxicated person to his or her home;
  - Power to release the person into the custody of another person able and willing to take responsibility for the intoxicated person;
  - Power to take the person to a sobering-up centre or similar organisation; and
  - Power to take the intoxicated person to a police station or lockup.

  Wherever practicable police or authorised officers were recommended to use the first listed powers in preference to those enumerated later. In particular, detention in police cells was envisaged as a practice of last resort. The proposed Act also stipulated a time limit, by which an intoxicated person could not be detained more than eight hours from the time he or she had been originally apprehended.

- The Bill imposed a duty of care on police officers and those in charge of sobering-up centres to provide medical attention for those intoxicated persons who appeared to be in need of it. Intoxicated persons in detention were also to have the right to make a telephone call and be visited by a person of his or her choice.
- Police officers were to have reasonable powers to search the intoxicated person and take (temporary) possession of any belongings of the intoxicated person. They were also to be given power to use reasonable force in restraining an intoxicated person.
- Police officers, authorised persons and persons in charge of a sobering-up centre were to be immune from civil liability for any action in relation to the proposed Act done in good faith.
- The Act was to have applied to anyone irrespective of age. If the apprehended person was, or appeared to be, under 17 years of age, the person in charge of any sobering-up centre to which that apprehended juvenile was taken had a duty of care to ensure as far as practicable that the juvenile person was kept from coming into contact with any adult person detained under the Act.

The Bill was introduced into the Legislative Assembly of Victoria in November 1990. In May 1991 it was defeated by the Legislative Council.[46]

To date, the only change to the law with regard to public drunkenness has been the repeal of section 15 of the Act in 1998. Section 15 dealt with the situation of repeated or habitual drunkenness and read as follows:

46 James in her analysis of why the Bill failed posits the following as plausible reasons:

> [The] overwhelming lack of support or indecision for the Bill can be attributed to a number of factors. The following were revealed: poor consultation between state and local government levels; a corresponding lack of council debate regarding the Bill; and further, a perceived conflict between public drunkenness decriminalisation and the continuing existence of the public drinking local laws (James 1992, p. 37).

> Any person having been thrice convicted of drunkenness within the preceding twelve months who is again convicted of drunkenness shall be liable to imprisonment for twelve months.

In February 1998, the then Victorian Attorney-General, Mrs Wade, introduced a number of miscellaneous amendments to the Summary Offences Act 1966. Of particular note was the motion to repeal section 15. This was in part a response to the recommendations in the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody. Mrs Wade stated on this occasion:

> The repeal of habitual drunkenness enables the problem of chronic drunkenness to be addressed by health and social support mechanisms rather than by the criminal justice system. The repeal acknowledges that it is inappropriate that a person could be sent to gaol for up to a year for having been drunk on four occasions. The offence of public drunkenness remains: it is only the penalty for habitual drunkenness which is repealed.[47]

There have been no further changes to the law in Victoria concerning public drunkenness.

47 Mrs J. Wade (Attorney General) Summary Offences (Amendment) Bill Second Reading, Victoria, Legislative Assembly, 26 February 1998, Debates, p. 354.

7. Public Liability Issues

There is concern among the Victoria Police organisation and individual police officers in its employ that if the offence of public drunkenness is decriminalised the boundaries of police liability with regard to duty of care issues will become blurred. This concern has been expressed both officially and unofficially. In some other jurisdictions duty of care protocols have been built into legislation, requiring certain procedures be followed with regard to the health and wellbeing of intoxicated persons being held in police cells or being transported to sobering-up centres.[48] Chapter 5 of this Report has discussed the current protocols and police guidelines regarding people placed in police custody for public drunkenness. Specific operating procedures also apply to juveniles and Aboriginal and Torres Strait Islanders.[49] There are also strict protocols applicable for medical care, particularly with regard to people suspected of drug misuse.[50]

Most States and Territories also have provisions written into their apprehension legislation that indemnify police and other authorised officers from liability with regard to civil detentions made in good faith of people found intoxicated or presumed to be intoxicated in public places. To a certain extent such legislative provisions act as safeguards in cases where police no longer act pursuant to their powers of criminal law arrest. However, there are issues of liability that go beyond the narrow issues of whether a person has been wrongfully detained under public intoxication legislation. Therefore duty of care issues are a legitimate area of concern if public drunkenness offences become decriminalised.

Issues of legal liability that are of peripheral relevance to the Inquiry into Public Drunkenness are of three basic types:

1. Duty of Care of Police to persons under their care or in their custody;

2. Duty of Care of sobering-up centres and similar agencies to those in their care; and

3. Duty of Care of servers of alcohol and licensed establishments to their patrons and third parties.

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48 See Chapter 5 of this Report.

49 Police must automatically notify the Victoria Aboriginal Legal Service when a person who identifies as being of Aboriginal or Torres Strait Islander descent comes into their custody. An Aboriginal Community Justice Panel should also be contacted if possible. In the specific case of an offence of public drunkenness, an Aboriginal person should be released into the custody of a representative of an [Aboriginal] Sobering-Up Centre, wherever possible. See Victoria Police, *Manual*: *Operating Procedures*, 2000, Chapter 12, section 12.5. For operating procedures with regard to juveniles, see Chapter 7, section 7.5.3.

50 See Victoria Police, *Manual: Operating Procedures*, Chapter 1, section 1.3.6 'Impaired Conscious State', and Chapter 10, 'Prisoners'. For further discussion of these provisions, see Part D of this Report.

This latter category can be further divided into liability for loss suffered, or damage incurred, both within the establishment and in the outside environs of the licensed premises.

General Statement of the Law

In general terms the elements of the tort of negligence are made out if the plaintiff can prove:

- the defendant owed him or her a duty to take reasonable care;
- the defendant breached that duty by failing to take reasonable care;
- the defendant's breach of duty caused the injury or damage suffered by the plaintiff; and
- the injury or damage suffered was not too remote a consequence of the breach of duty.

Police Liability

Clearly a concern of Victoria Police, and indeed other agencies that come into contact with intoxicated persons, is the issue of their legal liability towards general members of the community and specifically intoxicated persons. Victoria Police has expressed major concerns about its legal liability if members have to deal with intoxicated persons without an unambiguous legislative mandate: '[p]olice must therefore have legislative protection for the decisions they make in good faith and according to accepted procedures'.[51]

Duty of Care issues are certainly foremost in the minds of front-line police in exercising their discretion with regard to public drunkenness:

> We have a power of discretion. In terms of our shifting duty of care, we've got to be comfortable that this person is going to be cared for, and we can't shift that onus or responsibility. So we just can't prop someone out in the paddock and just leave them. But if we are comfortable that they are put in proper care, I think that we are utilising our discretion not to charge or actually prosecute that person.[52]

The transport of people who are drunk to sobering-up centres is seen as a significant issue, not only in terms of resources but also with regard to the question of legal liability should decriminalisation become a reality:

> [t]here have to be appropriate accessible alternatives that are there 24 hours a day – transport is a major problem to us, in terms of the legal issues, once we take custody of somebody then when can we pass our duty of care to somebody else and where it stops and starts. And what happens if the divvy van turns over while the person is in the back? You know, we've got this person in custody, do we have the lawful right to put them in there, or do we just sit

51 Victoria Police, Submission to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, November 2000.

52 Acting Chief Inspector Steven James and other officers, Victoria Police, in conversation with the Committee, 7 July 2000.

> and wait for a taxi to turn up to take them off. So there are many functional issues that have to be dealt with.[53]

The following discussion of the legal liability of the police to people in their care is based on the leading case in Western common law jurisprudence in this area.

Kirkham v Chief Constable of the Greater Manchester Police[54]

In this case Mr Kirkham was an alcoholic man who had been suffering chronic depression. On the night of his death by suicide the police had arrested him for suspected domestic violence against his wife. Mr Kirkham was charged with criminal damage and remanded into prison custody.

The person in question had a history of depression. This fact was known to the police. The police were also aware that he had made several suicide attempts. The police did not inform the prison authorities of the prisoner's suicidal tendencies when he was transferred to the custody of the prison. This was despite the fact that there was a standard form that the police were required to fill out and hand over at the moment of transfer, alerting the prison to this fact. Mr Kirkham was treated as a 'normal' prisoner and placed in a cell alone. He subsequently committed suicide by hanging himself in his cell.

The deceased's wife sued the Manchester Police in negligence. The basis of the plaintiff's case was that the Police were negligent in not communicating their knowledge of the deceased's suicidal tendencies to the remand prison authorities.

The police argued in defence that:

- They did not owe the deceased a duty of care as they were 'mere bystanders'.
- The plaintiff's cause of action was in any case barred on the grounds of public policy as the claim arose out of an act of suicide.

Both the judge at first instance and the Court of Appeal rejected these arguments. The Court of Appeal also rejected a new third argument raised by the defendant, that of *volenti non fit injuria* – voluntary assumption of risk.

Their reasoning was as follows:

1. Duty of Care

By taking a person into police custody and detaining him or her, the police assume a duty to take reasonable care of the person's safety.[55] That duty did not end when the deceased was transferred to prison. In taking the deceased into custody, the police had the responsibility to pass on to the prison authorities any information essential to the

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53 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

54 [1990] 3 All ER 246

55 This was not a particularly novel finding. Earlier cases in both Australia and the United Kingdom had found police liable for the death or injury of those in their custody. For example, in the Australian case of *Howard v Jarvis* (1958) 98 CLR 177, the police were held liable for the death of a prisoner who was burnt to death in a country lockup and had been negligently left in possession of cigarettes and matches unsupervised. In England, police were found liable for prematurely and negligently releasing a man arrested for public drunkenness with the result that he was killed in a traffic accident whilst still partly intoxicated – *Bryson v Northumbria Police Authority* (1977) CLY 2042. Nonetheless, *Kirkham* is the most thorough and far-reaching analysis of police liability in negligence in recent times.

prisoner's wellbeing. By failing to complete the form for exceptional risk prisoners and thereby not passing on information concerning the prisoner's suicidal tendencies, the police were in breach of their duty of care. Lord Justice Lloyd characterised the general duty as follows:

> The common law does not impose liability for pure omissions...But there is an important qualification. The common law frequently imposes liability for a pure omission where the defendant is under a duty to act...The question depends in each case on whether, having regard to the particular relationship between the parties, the defendant has assumed a responsibility towards the plaintiff, and whether the plaintiff has relied on that assumption of responsibility (at p. 250).

Lord Justice Farquharson added:

> The position (of whether one owes a duty of care with regard to omissions) [is] different when one person is in the lawful custody of another, whether that be voluntarily, as is usually the case in a hospital, or involuntarily, as when a person is detained by the police or by prison authorities. In such circumstances, there is a duty on the person having custody of another to take all reasonable steps to avoid acts or omissions which he could reasonably foresee would be likely to harm the person for whom he is responsible (at p. 253).

2. Public Policy (ex turpi causa non oritur actio)

All members of the court rejected this argument on the basis that suicide was no longer a criminal offence and that the public attitude toward suicide and people who attempted it had greatly changed. It could no longer be said that the plaintiff's claim 'was an affront to the public conscience nor would it shock the ordinary citizen'.

3. Voluntary Assumption of Risk

All members of the court rejected this argument. Since the deceased had been suffering clinical depression and his judgement was impaired at the time of his suicide, his act was not truly voluntary and therefore he could not be said to have abandoned any claim arising from his suicide. Lord Justice Farquharson stated:

> The defence of *volenti non fit injuria* is inappropriate where the act of the deceased relied on to support the defence is the very act which the duty cast on the defendant required him to prevent (at p. 247).

Kirkham is a significant case in the context of the current Inquiry. If public drunkenness offences are decriminalised and a 'civil' apprehension/detention model is developed similar to New South Wales, duty of care issues do take on an added importance. Where, for example, does the duty of care of police to those apprehended begin and end? On the basis of *Kirkham* one could extrapolate that police would still be responsible for any intoxicated person taken into custody up and until any point where they formally relinquish that custody to another.[56] This might include a relative,

56 They may still possibly be liable in circumstances where the transfer could be viewed as inappropriate. For example, by releasing the intoxicated person into the care of another intoxicated person or a person ill-equipped to take responsibility for the welfare of the detainee.

'responsible person' or sobering-up centre. On the basis of the case law one would suggest that given this scenario, at the very least, police should:

- effect transfer through formal and documented processes;
- warn any receiving person or agency, such as sobering-up centres, of significant factors that are known to the police concerning the person in their custody; and
- arrange medical attention for the person in custody in circumstances where there is the slightest suspicion that the person may be in ill health.

To a certain extent this is reflected in the training given to Victorian police officers in the area of civil litigation and duty of care. For example, the Custody Welfare Training Package highlights *Kirkham* as adding a further dimension to the civil duty:

> This is the duty to pass on information that may affect the well-being of the prisoner (or the well-being of others, e.g., prisoners or custodians) to those who may have subsequent custodial responsibility, namely:
>
> 1. Officer to Officer
> 2. Officer to Watch-house
> 3. Watch-house to Watch-house
> 4. Watch-house to other agency (e.g. Human services or Corrections).[57]

Category Four, it is submitted, would clearly cover transfers to sobering-up centres.

Other British Cases

The general principles with regard to duty of care and negligence pertaining to police and other custodial officers to those in their custody that were expounded in *Kirkham* have been followed in numerous cases since 1990. An important case that was also decided in 1990 is *Knight and ors v Home Office* [1990] 3 All ER 237. Obiter Dicta[58] in this case suggest that the standard of care expected of custodial officers in situations where special care is required but is not readily provided may not be as high as the standard of care expected of people in charge of, or working in, facilities where such specialist care *is* provided. In this case the deceased prisoner was also known to have suicidal tendencies. He was placed in a remand prison cell pending transfer to a psychiatric hospital. The deceased killed himself in the interval between regular 15-minute inspections. The court held that the standard of care provided for a mentally ill prisoner was not required to be as high as the standard of care provided in a psychiatric hospital outside prison. This was because psychiatric hospitals serve different functions than prisons and prison hospitals and the duty of care in respect of each type of institution had to be tailored to the act and function performed. This decision has implications for police custodians. It should be added, however, that the fact the prison officers *did* perform inspections at 15-minute intervals in part absolved them from liability. It is suggested that if police officers in an analogous situation made similar inspections, they would also have met the standard of care expected of them. There are echoes of the *Knigh*t dicta finding favour in one of the leading Australian cases – *Ceikan v Haines*

57 *Custody Welfare Training Program* , Victoria Police, Training Development Division 2000, p. 10.

58 Non-binding or non-authoritative judicial statements.

Australian Cases

Ceikan v Haines[59], is an authority of the NSW Court of Appeal. Its fact scenario is germane to the subject of our Inquiry.

In this case the appellant was seriously injured whilst in custody in a cell at Sydney Central Police Station in 1978. The appellant was found intoxicated in a public place, charged with drunkenness and placed in police cells. The appellant sustained his injuries by jumping from a partition between the cell toilets and hitting his head on the concrete floor, resulting in paraplegia. The design of the cells, dating back to the nineteenth century, did not allow for the police officer on the duty desk to see into the cell. These cells were put aside exclusively for intoxicated people to 'dry out'.

The appellant brought his action in negligence. He argued that given the knowledge available in July 1978, those responsible for the care and custody of intoxicated persons, such as police officers, were negligent to put the appellant in a cell to 'dry out' when he could not be kept under continuous surveillance.

The appellant argued that the standard of care for the handling of intoxicated persons according to the state of knowledge that existed in 1978 was stringent. As such:

> …persons found seriously intoxicated in a public place were members of a well identified and highly vulnerable group. They were prone to severe depression, the risk of self injury, injury to others and even suicide (at p. 298).

It was therefore argued that had proper systems been put in place and proper surveillance maintained the appellant would probably have been seen before he injured himself.

The trial judge rejected these arguments. He conceded that as the appellant was in the custody of the police, they were responsible for his safety (ie. they had a duty of care to him). Nonetheless, the second limb of the liability requirements in negligence had not been made out.

The test to be applied was whether the police 'had observed the precautions which a reasonable and prudent man will follow'. Those precautions required reference to 'the usual practice in like circumstances' (at p. 298).

The appeal court for the most part accepted the reasoning of the trial judge and dismissed the appeal. Some important conclusions follow from *Ceikan*:

- The court supported and reiterated the premise that the government (and through it, agencies such as the Police) owed a duty of reasonable care to people in its custody.[60]
- The liability of the custodian will often depend on the knowledge they have of the person's condition:

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59 (1990) 21 NSWLR 296.

60 This point was later discussed in the case of *Quayle v State of NSW* (1995). Australian Torts Reports 81-367. This case concerned the suicide of an Aboriginal man who was thrown into a police lockup after being refused admission into the local hospital because he was (mistakenly) believed to be drunk. The court found that the police had a duty of care to the person in their custody and had breached it by not conducting regular checks on the person or seeking medical attention for someone who was clearly not well.

> [t]his was not a case like *Kirkham* where the police were well aware, from prior contact, of the prisoner's mental condition. It was not suggested here that the appellant was a 'public drunk' in the sense of being a person repeatedly found intoxicated in a public place and known as such to the authorities. There is no evidence that the appellant had ever previously been taken to the Central police cells (at p. 300).

- The standard of care expected once a duty of care is established will vary depending on the level of knowledge existing at the time. If *Ceikan* was decided today it may well be that the outcome would be different given the more sophisticated knowledge available with regard to intoxication and its effects. Mahoney J put it well:

> It is necessary to recognise that, in some areas of government activity, the standard of care is not fixed but evolving. I mean by this that, though the legal formula (the reasonable man's response) may remain the same, the actual precautions which that response requires a defendant government to take change: ...as time goes on that response will require government to take further or more stringent precautions (at p. 313).

- Importantly, the court, and particularly Justice Kirby, recognised that the economic costs to the State of providing reasonable care must be taken into account in determining whether State authorities have fulfilled their duty:

> There is no simple formula for the economics of providing reasonable care. Courts take economic costs into account in determining what natural justice requires of public authorities. Similarly, they must consider the costs of modifications said to have been necessary to attain to standards of reasonable care to avoid liability in negligence.[61]

- There is obiter by Mahoney J to the effect that a distinction may be drawn between services which a State *must* provide because of its obligations at law (such as prisons or police stations), and those which it chooses to provide voluntarily. Mahoney J suggested that it may only be with regard to the latter that a continuing obligation to keep abreast of evolving standards be demanded:

> If a government chooses to provide a voluntary service...it must take all such precautions against the risks of injury which the provision of those services will create. And in particular, it is prima facie not open to it to plead lack of resources if it does not do so. A plaintiff may say that if it has not the resources to make such provision against risk, it should not offer to provide the services (p. 314).

Given these developments in common law negligence it is highly understandable that Victoria Police should want their responsibilities delineated and clarified should public drunkenness offences be decriminalised.

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61 For an interesting discussion of balancing the economic cost to public authorities against their liabilities in negligence, see John G. Fleming, 'The Economic Factor in Negligence', in *Law Quarterly Review*, vol. 108, January, 1992, p. 9.

Victoria Police is further concerned that non-police service providers may also find themselves potentially vulnerable to lawsuits should they take a greater role with regard to intoxicated persons if Victoria was to decriminalise public drunkenness.[62] These views are echoed by those working in the drug and alcohol field.

Such agencies generally support the decriminalisation of public drunkenness, yet are most concerned that they are properly funded to 'do the job properly' and therefore don't have to 'cut corners'. For example, the Indigenous sobering-up centre run by Ngwala Willumbong in Northcote has the following reservations.

- Currently the sobering-up centre collects intoxicated clients from police custody when asked to do so by Victoria Police. This results in the sobering-up centre itself being seriously understaffed and creates risks for those in the care of the centre, particularly if they are women.
- The above position is exacerbated by inadequate bail procedures at the Melbourne Custody Centre. Often workers can be waiting up to two hours until the paperwork is completed allowing the client's release into the custody of the sobering-up centre.
- Police can release clients into the care of the sobering-up centre without giving consideration to whether this is appropriate in the circumstances. This is particularly true of clients with 'hard' drug problems or mental health conditions. Glenn Howard, the Director of Ngwala Willumbong, explains the dilemma in the following terms.

> One of the big difficulties we've got at the moment is that the police contact us about a person, we go in there, we don't know what they've been on, if they're out of it then we've got really no means of determining what they've been using. We take them back to the sobering-up centre, the person starts withdrawing. We're not licensed to set up as a withdrawal centre. I mean those have to be hospital based facilities and because of the delay in getting people into de-tox which can be up to a couple of weeks, we end up stuck with that person. We can't throw them back on the street and yet we're running all sorts of incredible risks by having that person there... Police also have quite an unrealistic expectation of what we can do. We're funded to provide an alternative to incarceration…yet we've been called in by police to deal with domestic violence in situations where there are alcohol and drugs, missing persons, dead bodies. They call us because we're the only Aboriginal show in town after 5.00 p.m. at night.[63]

Therefore the following suggestion of Victoria Police definitely merits consideration:

> Victoria Police therefore advocates that the roles, responsibilities and limits for all agencies that are mandated a role in responding to public drunkenness be specified in legislation. For non government agencies, it may also be necessary to specify the required standards, training and facilities, and to

62 Victoria Police, Submission to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness.

63 Glenn Howard, Director, Ngwala Willumbong, in conversation with the Committee, 9 October 2000.

> establish Memoranda of Understanding with Victoria Police to define the respective roles.[64]

Such an understanding could even take the form of a protocol between police, State health and welfare departments and the community sector, similar to that in New South Wales.[65]

Liability of Licensees and Providers of Alcohol to Patrons and Third Parties

Chapter 17 of this Report discusses the functions, role and responsibilities of licensees and the alcohol industry in the context of public drunkenness and alcohol related harm. One aspect of the responsibilities of licensees that is most suitably discussed in this part, however, is their liability at law to their patrons and third parties.[66]

The apportionment of alcohol providers' liability in negligence is one of the most important developments in tort law in recent years. The experience of the Canadian courts and case law is a possible guide to the evolution of this liability in Australia.[67]

The literature suggests that in both Canada and Australia licensed premises contribute disproportionately to alcohol related problems.[68] Solomon and Payne argue that even within the general category of pubs, clubs and hotels, certain practices are associated with greater problems:

> Premises that cater to young males, have no or poor entertainment, do not encourage the consumption of food, do not offer low strength and non alcoholic beverages, and are over crowded, uncomfortable and understaffed are associated with greater problems. Happy hours, free drinks, extra strong drinks, double rounds, price discounts, irresponsible advertising and promotions, and drinking contests...all have a similar impact on these risks. Untrained staff, aggressive bouncers, and house policies that permit continued sales to visibly intoxicated patrons have also been found to increase the likelihood of problem (Solomon & Payne 1996, p. 193).

It is a combination of the factors enumerated above, alongside the empirical evidence of alcohol related deaths, morbidity, crime and other harms, that have led to the Canadian courts widening the boundaries of tort liability to hotel licensees and other alcohol providers. Such liability has been extended to injuries and loss sustained both on and *off* the licensed premises. Whether Australian courts will follow suit to the

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64 Victoria Police, Submission to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, p. 14.

65 For a discussion of which, see Chapter 19.

66 Some of the discussion following in this part is based on an Occasional Paper produced by the Drugs and Crime Prevention Committee entitled Trends in Negligence and Public Liability: The evolving liability of licensees and servers of alcohol to their patrons and third parties, March 2001.

67 For an excellent comparative discussion of the legal, social and empirical aspects of alcohol providers' liability in Canada and Australia, see R Solomon and J Payne, 'Alcohol liability in Canada and Australia: Sell, serve and be sued, *Tort Law Review,* vol. 4, 1996, pp.188-241.

68 See for example, the research of Stockwell et al. which suggests that although licensed premises in Australia sell approximately one-third of alcohol consumed, they are associated with about two-thirds of alcohol problems, including alcohol related deaths (Stockwell, Lang & Rydon 1993; Stockwell 1994). See also Lang and Rumbold 1997.

same degree remains to be seen. Early indications and some recent cases suggest, however, that at least in part, Australian courts are prepared to take a tougher line.

The Evolution of the Law

Licensed establishments and servers of alcohol have a Duty of Care to their patrons and third parties. This can be divided into two categories: liability for loss suffered, or for damage incurred, both within the establishment and in the outside environs of the licensed premises.

In general terms the elements of the tort of negligence are made out if the plaintiff can prove:

- the defendant owed him or her a duty to take reasonable care;
- the defendant breached that duty by failing to take reasonable care;
- the defendant's breach of duty caused the injury or damage suffered by the plaintiff; and
- the injury or damage suffered was not too remote a consequence of the breach of duty.

Traditionally the law of tort has not imposed a duty of care on one person to control or oversee the conduct of another unless a special relationship existed between them.

What counted for a special relationship has until relatively recently been narrowly defined:

> Since providers of alcohol and hosts of alcohol related events were not seen as being in a special relationship with their patrons, and guests, they owed them no duty of care. Consequently, they could not be held liable for the injuries that their intoxicated patrons or guests caused or suffered. However, in the last 30 years the duty to control has expanded dramatically in Canada and to a lesser extent, Australia (Solomon & Payne 1996, p. 195).

Since the 1970s the categories of persons held to be in duty of care relationships have expanded greatly. They include teachers and students, employers and employees, hospitals and patients and police or prison officials and those in their custody. As with most areas of tort law, these categories constantly evolve and are neither fixed nor immutable.

In the alcohol provider area, two of the key (but not necessarily exclusive) factors that have led to a more stringent imposition of duty of care are that:

- a defendant derives economic benefit from the relationship; or
- there is a clear legal authority on part of the defendant to control the conduct of the plaintiff and third party defendant.

These factors will usually apply to the standard licensee, although not necessarily the social host.[69]

With regard to the second point, in both Canada and Australia a legal authority to control is clearly discerned in the relevant state liquor legislation.[70] The modern form of such legislation usually contains regulations concerning:

- underage drinking;

- overcrowding;
- promotions;
- selling alcohol to those who are intoxicated or in the process of becoming so; and
- control over who enters, drinks and remains on the premises.

For example, under section 108(c) of the *Liquor Control Reform Act 1998* (Vic) (hereinafter the Act), licensees are not permitted to supply liquor to intoxicated persons. Nor must they permit drunken or disorderly persons to remain on licensed premises (section 108 (e) of the Act). Clearly, breaches of statutory duty leave licensees open to penalty. In addition, infringements of the licensee's statutory responsibilities will be relevant to questions of common law civil liability in negligence.[71]

As with general negligence law, the particular issue of licensee's liability in negligence will often be predicated on the issue of foreseeability:

> Serving intoxicated patrons, tolerating their presence, overcrowding, adopting marketing practices that promote intoxication, and employing aggressive staff create risks that are abundantly clear. Although the exact incidents may not be predictable, Australian research has established that these practices make alcohol related harm of some kind not just foreseeable, but highly likely. Those who provide alcohol...have ample legal authority to control who may enter, remain and drink on the premises. Indeed, many of the practices that give rise to the risks are specifically prohibited under Australian liquor licensing law. In our view, the current principle of Australian law would require imposing a duty to control on alcohol providers and hosts whose conduct has created *foreseeable risks of injury* (Our emphasis) (Solomon & Payne1996, p. 200).

The High Court has also placed emphasis on the need for a relationship of *proximity* between the parties.[72] Unlike the more open-ended approach in Canada, this development has the potential to somewhat limit liability in negligence. Notwithstanding any academic or judicial criticism of this approach, however,[73] it is posited that in most, if not all, cases of alcohol providers and their patrons, the relationship will indeed be one of proximity.

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69 This paper does not intend to look at the position of the social host in any great detail. Most cases that have found the host responsible for harm caused during or after a private party or function have been American. It is unlikely in the near future that Australian courts will greatly extend the boundaries of liability in this way.

70 In Victoria the relevant legislation is the *Liquor Control Reform Act 1998* (LCRA).

71 With regard to intoxicated persons and licensees' responsibilities under the Act, Bourke makes the following comment:

> When a person comes into licensed premises in a state of intoxication, the first duty of the person in charge is not to supply them with any more liquor. Their next duty is to take reasonable steps to prevent drunkenness by getting the person off the premises altogether (Bourke 2000, p. 3570).

The above statement may be a correct reading of current law. Nonetheless, it is ironic given recent developments in licensees' liability at common law that a licensee may arguably be liable in negligence if he or she allows an intoxicated patron to leave the premises without first ensuring that the patron is not in any reasonably foreseeable danger of injury because of his or her intoxicated state. The means by which a licensee could possibly avoid such liability may include calling a taxi to take the patron home, providing a room on the premises to sober up, calling a member of the patron's family, an employer, or the police to collect the intoxicated person. See ensuing discussion in this chapter.

The development and expansion of these principles over the last 20 years has formed the backdrop for one of the more important recent cases in this area of law. *Johns v Cosgrove* is a case decided by the Supreme Court of Queensland. It is therefore not binding on Victorian courts, unless the principles enunciated therein are adopted in a later High Court of Australia decision or indeed by the Victorian courts themselves.

It should be noted that the decision in *Johns v Cosgrove* was appealed against by the defendants.[74] The court of appeal of the Supreme Court of Queensland allowed the appeal on the basis that it had subsequently been established that the previously successful plaintiff (Johns) had encouraged witnesses appearing on his behalf at the original trial to perjure themselves. As such it was felt the original decision should be overturned due to the fraud of the plaintiff. The case has subsequently been returned to the Supreme Court of Queensland for a retrial. None of the appeal judges commented upon the actual points of law as espoused by Justice Derrington in *Johns v Cosgrove.* It is submitted that these principles still arguably reflect the *trend* in which this area of negligence law will develop. As such the following discussion will be based on an analysis of the decision in the original Supreme Court trial of *Johns v Cosgrove*.

This case can be viewed as a guiding light for the trends in the Western law of negligence. It would seem that in some respects public policy is now looking to the court as a major player in reducing the economic and social costs associated with alcohol by 'hitting the industry where it hurts'.

Jordan House Ltd v Menow[75]

Johns v Cosgrove follows and adopts the principles handed down in the leading and landmark Canadian case of *Jordan House Ltd v Menow.*

In this case the Supreme Court of Canada stated there was a discrete common law duty on alcohol providers to protect their patrons. Mr Menow was a regular patron of his local pub. He had a reputation for becoming intoxicated, belligerent and irresponsible. At one stage he was banned from the hotel. After the ban had been lifted staff were instructed not to serve him alcohol unless he was accompanied by a responsible adult. On the night of the accident, Menow was drinking alone for three hours. He became increasingly and visibly intoxicated. Eventually, after he was seen annoying other patrons, the staff ejected him. Menow staggered home along a highway and was hit by a driver who himself was negligent. Menow sued the driver and the hotel. He argued that the hotel had a common law duty to protect him in his intoxicated condition. The court upheld his suit stating inter alia:

- Hoteliers and licensees owe a common law duty of care to their (intoxicated) patrons.
- Despite provincial legislation requiring hotel staff to eject intoxicated patrons, it was subject to a 'higher obligation' not to eject any person 'if doing so would expose him or her to a foreseeable risk of injury'.

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72 See, *Sutherland Shire Council v Heyman* (1985) 157 CLR 424.

73 See, for example, the discussion in Solomon and Payne 1996, pp. 202-203.

74 *Cosgrove and Anor v Johns* (2000) QCA 157.

75 (1973) 38 DLR (3d) 105.

- The court refused to accept the defence of voluntary assumption of risk. It stated that Menow was simply too intoxicated to 'appreciate let alone assume responsibility for his own conduct'.
- The court did, however, accept the defence of contributory negligence and apportioned liability at one-third each to the driver, the hotel and Menow.

Two aspects of this case warrant particular attention and were to be revisited in *Johns v Cosgrove*. First, Justice Laskin emphasised the fact that the hotel and its staff had particular knowledge of Menow's drinking habits, history, and particularly his irresponsibility when intoxicated. The inference one may draw from this is that liability of the hotel may not be so easily established if the patron was a complete stranger to any particular establishment.[76]

Second, Justice Ritchie, whilst agreeing with the court's result, seems to be positing a broader and more stringent test of provider liability. For Ritchie J the liability seems to flow from serving Menow with alcohol past the point of intoxication in the first place. One can infer from his judgement that for Justice Ritchie the duty lies in *preventing* intoxication not merely protecting patrons after they have become intoxicated.

In a series of Canadian cases that adopted *Menow,* Justice Laskin's narrow test was soon superseded. Canadian courts now prefer to follow the broader test espoused by Justice Ritchie.[77]

Johns v Cosgrove[78]

In the Queensland case of *Johns v Cosgrove*, the facts were strikingly similar to those in the Canadian case.

The plaintiff Johns was a well known drinker at a pub in Surfers Paradise. On the relevant night in question he had been drinking steadily at this bar from late afternoon to closing time. This was in accordance with his usual habits, which were well known to hotel staff. He soon became intoxicated, which was also in accordance with his usual habits. At closing time he left the pub to catch a bus home from a bus stop on the other side of a busy highway. This was also his usual practice and was known to at least some of the staff. On this night he unexpectedly staggered into the roadway and was struck by a vehicle and seriously injured.

Johns sued the driver of the vehicle and the hotel. Justice Derrington in the Supreme Court of Queensland apportioned liability amongst the driver, the hotel and Johns, and found Johns' negligence contributed to the extent of 45%. The apportionment of blame is not important for the purpose of this Inquiry.[79] What *is* noteworthy is the fact that the Queensland courts have shown themselves willing to follow the *Menow* principle. The following points are worth stressing:

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76 This may be particularly the case in circumstances where the drinker arrives at an establishment (Hotel A) after having drunk heavily at one or many prior establishments. If the drinker does not present as noticeably intoxicated and he or she has only one or two drinks at Hotel A, it may be arguable that any injury he or she sustains after leaving Hotel A may not be reasonably foreseeable on the part of Hotel A and they would not therefore be liable.

77 For a discussion of these cases, see Solomon and Payne 1996, pp. 216ff.

78 (1997) QSC 229, Supreme Court of Queensland.

- The fact that the plaintiff was 'grossly at fault' in deliberately becoming heavily intoxicated does not absolve either the driver or the hotel from taking all reasonable care to prevent the plaintiff sustaining reasonably foreseeable injury.
- A publican cannot continue to supply a patron with the means of greater intoxication 'without regard to the danger to which he is thereby contributing'.
- The publican's duty of care requires him or her to ensure that the patron is not injured because of his intoxication. This duty will be more stringent when the publican or his or her staff are aware of the patrons habits etc. The court quoted with approval the following passage from *Menow*:

  > No inordinate burden would be placed [on the licensee] in obliging it to respond to Menow's need for protection. A call to the police or a call to his employer immediately come to mind as easily available preventive measures; or a taxi cab could be summoned to take him home, or arrangements made to this end with another patron able and willing to do so.[80]

- Statutory injunctions and licensing laws will have some bearing on whether the publican has acted in breach of their duty of care. This will be particularly the case when State laws prohibit the serving of alcohol to intoxicated persons.
- Justice Derrington qualified the above statement by making the following remarks:

  > It is not negligence merely to serve a person with liquor to the point of intoxication; but it is so if because of the circumstances it is reasonably foreseeable that to do so would cause danger to the intoxicated party, such as, for example where the intoxication is so gross as to cause incapacity for reasonable self preservation when it is or should be known that he or she may move into dangerous circumstances and where no action is taken to avert this.[81]

- Conversely, obiter from Derrington's judgement suggests that even if the licensee was in violation of State liquor legislation, this fact alone would not be enough to extend liability to the provider, if the injury or harm sustained by the plaintiff could not be said to be reasonably foreseeable. It would, however, be strong evidence tending to suggest that a publican was in breach of his or her duty of care.
- On the facts of this case, it was known that the drunken Johns would be negotiating a dangerous and busy road unescorted to reach the bus stop. Given his intoxicated state, it was reasonably foreseeable by the staff of the hotel that Johns may come to some harm, even if they could not predict the exact course it might take. On the principles of vicarious liability, the hotel licensee/owner would bear responsibility.

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79 The driver was apportioned 30% of the blame and the hotel 25%.

80 (1973) 38 DLR (3d) 105 at 111-112, per Laskin J.

81 (1997) QSC 229, at 235 per Derrington J. The cases suggest, however, that on balance whilst *some* form of harm or injury needs to be reasonably foreseeable, the *exact* type of harm or injury does not have to be predicted or envisioned.

Preston v Star City Pty Limited [82]

In this case the plaintiff sued the Star City Casino in negligence and for breach of statutory duty when he suffered economic loss as a result of gambling at the casino. He argued inter alia that the casino was negligent in allowing him to gamble knowing he was in a highly intoxicated state. Although the judgement primarily concerned procedural and interlocutory matters, Master Harrison of the Supreme Court of New South Wales did not rule out the possibility that the plaintiff may have a reasonable claim in negligence. Citing the relevant sections of the New South Wales legislation that forbids intoxication within the gaming area, gambling by intoxicated persons and the serving of alcohol to intoxicated persons, he stated:

> At the relevant time there was a relationship between the casino as provider of gambling facilities, services and alcohol on the one hand and the plaintiff as a consumer of such facilities, services and alcohol on the other. The plaintiff submitted that there are causal connections between the acts of the defendant complained of... (namely inducing the plaintiff to gamble and allowing him to gamble whilst intoxicated from alcohol provided by the defendant to him on its premises) on the one hand and the injuries and economic loss which he suffered in consequence of such acts on the other...I accept that [this premise] ...is arguable and that there is a relationship of proximity that can be seen as special as between the casino license operator and the gambler who is offered with inducements in excess of that which can be expected in the commercial world and allows or encourages a gambler to continue to gamble while he is intoxicated (at paras 35 and 37).

Although much of the reasoning of Master Harrison can be linked to the specific prohibition against gambling inducements in the *Casino Control Act 1992* (NSW), obiter dicta of Master Harrison suggest that the liability may be more generally founded:

> The defendant may owe a greater duty of care where the patron is heavily intoxicated, his reasoning is impaired, and he does not appreciate the consequences of offering inducements where the defendant knows the plaintiff is heavily intoxicated may be considered to go beyond ordinary commercial activity.
>
> It can also be argued that the risk of a psychiatric injury and economic loss to a patron of the defendant's casino as a result of a failure to take reasonable care by the casino operator was reasonably foreseeable by a reasonable person in the position of the defendant. It can also be argued that the risk of injury was not far fetched or fanciful (at paras 38 and 39).

Although none of the above cases including *Johns v Cosgrove* are binding on Victorian courts they do have far reaching implications. As Burke states:

> [t]hey demonstrate a recent trend towards such liabilities on licensees, and have the potential to impose massive orders of damages and costs against licensees. Furthermore, the trend of holding licensees liable is still in a state of

82 *Preston v Star City Pty Limited* (1999) NSWSC 459.

> flux and may extend to licensees other than holders of a general licence in future, such as packaged liquor licensees or vignerons licensees. It also appears a licensee will be held vicariously liable for acts and knowledge attributable to the licensee's staff (Bourke 2000, p. 1226).

The above discussion has not canvassed the more traditional areas of tort liability that may apply to licensed premises found liable for harm occurring to patrons or third parties. Occupiers' liability and actions under the Wrongs Act[83] are obvious examples. This is because this is a general form of liability that has no bearing on the type of premises or the product (ie. alcohol) with which the premises is associated.

Instead, the above discussion focuses on the burgeoning area of a distinct category of tort liability applicable to licensees and other alcohol providers. These recent developments in the law of negligence are still in an embryonic and evolutionary form. That they have worrying and potentially burdensome implications for the alcohol industry is apparent from the submissions and anecdotal evidence given to the Committee by licensees and other representatives. Crown Casino has been particularly concerned about the even greater potential for licensees to be held liable in negligence should public drunkenness offences be decriminalised.[84]

Crown acknowledges that it and other licensees owe a duty of care to its patrons, which it attempts to fulfil by maintaining scrupulous Responsible Serving of Alcohol practices. They argue that Police support is a necessary element of fulfilling these obligations:

> [b]ecause the law imposes an obligation on an occupier of licensed premises to take steps to care for and protect its patrons, it is inappropriate to decriminalise public drunkenness without providing increased resources into areas which address the underlying problems associated with alcoholism and over consumption of alcohol. Otherwise the burden on licensees for individual behaviour is too onerous...
>
> As Crown is located in the heart of the City, close to major arterials and river ways, it recognises that it is not always in the best interests of intoxicated patrons to simply refuse entry or evict them from the premises, without being able to ensure their safety upon departure.
>
> In Crown's experience, where a person is intoxicated and unaccompanied by others, it has few alternatives open to it for the removal of drunken patrons, other than calling for police assistance. It is Crown's view that the transport of vulnerable members of the public into safe custody is a social issue. Members of the police force who are on the front line are frequently the only resource occupiers of licensed premises can call upon at any time.
>
> It is not feasible for a licensee to detain an intoxicated person in a safe room on its premises. Such conduct under the current legal framework leaves the

83 *Wrongs Act 1958* (Vic).

84 Submission of Crown Limited to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, November 2000.

> licensee exposed to allegations of false imprisonment and claims for compensation.[85]

It is envisaged that public liability will increasingly be extended to cover other areas where alcohol can have problematic effects and result in various harms. Such areas may come to include off the premises purveyors of alcohol such as bottle shops and licensed supermarkets. It is not unthinkable that social and private hosts will eventually be held liable for any harm befalling their guests arising out of alcohol being provided at that function. The trends are premised on the growing concern of government, social agencies and individual citizens about the levels and cost of alcohol related deaths, injuries, violence and associated harm. As these trends continue, government, policymakers and the courts will search for new means to address alcohol related problems. Solomon and Payne rightly note that in many common law jurisdictions, and particularly Canada, the use of the courts and the new civil liability precedents have assisted in deterring irresponsible hospitality practices and resulted in a variety of responsible server education programmes. How far Australia goes down this track remains to be seen.

85 Submission of Crown Limited to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, November 2000, p. 7.

8. Current Law and Legal Procedure in Victoria

The Current Laws

The key provisions with regard to public drunkenness offences in Victoria are to be found in the *Summary Offences Act 1966* (Vic) as follows:

Section 13. Persons found drunk

Any person found drunk in a public place shall be guilty of an offence and may be arrested by a member of the police force and lodged in safe custody.

Penalty: 1 penalty unit.

Section 14. Persons found drunk and disorderly

Any person found drunk and disorderly in a public place shall be guilty of an offence.

Penalty: For a first offence – 1 penalty unit or imprisonment for three days; For a second or subsequent offence – 5 penalty units or imprisonment for one month.

Section 16. Drunkards behaving in riotous or disorderly manner

Any person who, while drunk:

a) behaves in a riotous or disorderly manner in a public place;

b) is in charge, in a public place, of a carriage (not including a motor vehicle within the meaning of the *Road Safety Act 1986*) or a horse or cattle or a steam engine shall be guilty of an offence.

Penalty: 10 penalty units or imprisonment for two months.

The current law allows for an ascending scale of crimes and penalties.

Section 13. Drunk in a Public Place

Section 13 simply allows for the offence of being found drunk in a public place. No disorderly, disruptive or obnoxious behaviour is required. The penalty is 1 penalty unit or a maximum fine of $100.00.

To be found drunk in a public place simply means to be discovered or seen drunk in a public place and arrested contemporaneously by a police officer.[86]

Drunkenness has been judicially defined as where a person's: 'physical or mental faculties or his judgement are appreciably and materially impaired in the conduct of the ordinary affairs or acts of daily life'.[87] Each case will be dealt with upon its own

86 See *Sheehan v Piddington; Ex Parte Piddington* (1955) QSR 574.

87 *R v Ormsby* (1954) NZLR 109, at p109 per Fair J.

particular facts,[88] although there is South Australian case law to the effect that 'drunk' is not 'a term of art'.[89] It is not necessary to prove complete or absolute incapacity. A leading commentary on Victorian criminal law, however, states:

> But it must be borne in mind that being drunk requires more than proof of being 'under the influence'…it appears that a substantial degree of incapacity must be proved before an offence under this section is established.[90]

Finally, the South Australian Supreme Court in a case that interprets a comparable public drunkenness provision of the legislation then in existence,[91] held that the prosecution in public drunkenness cases is not required to prove that that the defendant either *intended* to get drunk or realised that he was in a public place.[92] Nor was it a defence for the defendant to claim that he had been removed from private to public premises against his will as long as that removal was done by lawful means.[93]

Section 14. Drunk and Disorderly

Section 14 requires something more in the conduct of the person arrested. The person needs to be drunk *and* disorderly. Disorderly in this context includes noisy, disruptive and generally objectionable behaviour.[94]

In *Kruger v Humphreys*[95] it was stated that behaviour short of conduct that actually provoked the peace, or was designed to do so, could form the basis of this charge. According to this case it could cover situations which would 'disturb the quiet and good order of the neighbourhood or the peace and comfort of the homes of other persons'.[96] The penalty on conviction is a maximum fine of $100.00 or imprisonment for three days. For a second or subsequent offence, the maximum penalty is $500.00 or imprisonment for one month.

Section 16. Drunk and Riotous Behaviour

Section 16 provides for the arrest and charge of people who behave in a *riotous* or *disorderly* manner in a public place whilst drunk. Note that this is a disjunctive and not

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88 *Brown v Bowden* (1900) 19 NZLR 98.

89 See *Normandie v Rankine* (1972) S.A.S.R 205, discussed this chapter under 'Miscellaneous Considerations'.

90 H. Storey, *Paul's Summary and Traffic Offences*, 5th edn, Law Book Co., 2000, p. 51.

91 *Police Offences Act 1953* (S.A).

92 *O'Sullivan v Fisher* (1954) S.A.S.R. 33.

93 For example, if the occupier of private premises removes the defendant from the residence.

94 *In Barrington v Austin*, the judge stated:

> I have no doubt that the words disorderly behaviour refer to any substantial breach of decorum which tends to disturb the peace or to interfere with the comfort of other people who may be in, or in the vicinity of, the street or public place (1939) SASR 130 per Napier J at p. 132.

95 (1968) SASR 75.

96 In the New Zealand case of *Melzer v Police* it was stated by Justice Turner that:

> Disorderly conduct is conduct which is disorderly; it is conduct which while sufficiently ill mannered, or in bad taste, to meet with the disapproval of well conducted and reasonable men and women, is also something more – it must…tend to annoy or insult such persons as are faced with it – and sufficiently deeply or seriously to warrant the interference of the criminal law (1967) NZLR 437 at p. 444.

Importantly, however, Turner J stated that once this threshold had been passed it was not necessary to produce witnesses who had actually been so insulted or alarmed.

conjunctive provision. In other words, one does not have to be both disorderly *and* riotous, either one will be sufficient to sustain the charge. The effect of this provision is that the person can be charged under this section for drunk and disorderly conduct, and receive a higher penalty for behaviour that constitutes the same offence under Section 14. It may be that this section would be used in cases where the police judge the behaviour of the drunk person as having a higher degree of disruption or disorderliness than that which would warrant charges under section 14.

Riotous behaviour has been defined as: 'of a character likely to occasion alarm of some kind to some of the public'.[97] In a later case this definition was expanded to include:

> behaviour of a kind to cause alarm to some members of the public of a reasonable courageous disposition, that alarm amounting to a fear that a breach of the peace is likely to be occasioned.[98]

Section 16 also deals with offences such as being drunk in a public place whilst in control of a carriage (which includes a bicycle), steam engine, a horse or cattle.

The penalty for a section 16 offence is a maximum of $1000.00 or imprisonment for two months.

Public Place

The definition of a public place for the purposes of public drunkenness crimes is to be found in section 3 of the *Summary Offences Act 1966*.

The concept of public place consists of specific definitions which include well frequented locations such as public streets, schools, footy grounds and theatres. The legal definition also embraces catch-all provisions of general import.[99]

Miscellaneous Considerations

It is very rare that anyone charged with being drunk in a public place would contest the charge in a court of law. As Chapter 13 discusses, most people charged with the offence would be convicted and discharged in their absence. Thus problems of proof and evidentiary matters are rarely considered.

In the South Australian case of *Normandie v Rankine*[100] the meaning of the term 'drunk' was considered. In this case, the respondent had been charged with being drunk in a

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97 *Burton v Mills* (1896) 17 ALT 262.

98 *Ex parte Jackson: Re Dowd* (1932) 49 WN (NSW) 126.

99 For some interesting cases that have interpreted what is meant by public place in the context of the *Summary Offences Act 1966*, see *Mc Ivor v Garlic*k [1972] VR 129 per Newton J; *Mansfield v Kelly* (1972) VR 744, Full Court Supreme Court of Victoria.

Other related laws of relevance to public drunkenness are those found in the *Vagrancy Act 1966* (Vic) and in regulations under the *Transport Act 1983* (Vic) (drinking alcohol on public transport).

Most municipal and shire councils also have by-laws prohibiting the consumption of intoxicating liquors in public places except when permitted to do so – see *Local Government Act 1989* (Vic). (See also extended discussion with regard to public drinking and municipal regulation in Part F, Chapter 16, this Report)

For offences involving driving or being in control of a motor car whilst being incapable due to intoxication, see the more serious offences under section 49 of the *Road Safety Act 1986* (Vic). For provisions relating to being drunk on licensed premises, see *Liquor Control Act 1987* (Vic).

100 (1972) 4 S.A.S.R. 205.

public place. Evidence was given by the police prosecutor that the respondent had exhibited signs of drunkenness such as slurred speech, unsteadiness and the smell of liquor on his breath. The magistrate found that whilst there was some evidence that his faculties were impaired by the consumption of alcohol, he was nonetheless not drunk as 'he was not so affected by alcohol as to be incapable of giving proper consideration to his own safety and the safety of others'. On appeal, Walters J. rejected the proposition of a precise formulation as to what being 'drunk' is. He commented that the correct approach was for the magistrate to determine as a matter of fact whether the person was drunk in the sense of 'what an ordinary reasonable person would consider such'.[101] In his view in this particular case there was sufficient evidence to justify a conviction and therefore a retrial was required.

Furthermore, it was also held in this case that the usual rules with regard to expert evidence do not apply in hearing evidence with regard to public drunkenness offences. As such, the opinion of a police officer who has observed the drunk person's behaviour is admissible to determine the condition of the defendant. Mr Justice Walters approved and adopted the views of Chief Justice Napier in an earlier South Australian case that an experienced police officer is qualified to express opinions as to whether a defendant is intoxicated.[102]

It is this rather 'fluid' way in which drunkenness is interpreted that has given rise to criticism from some commentators, lawyers and civil libertarians. For example, the Committee received evidence during its public hearings that the subjective discretion of police officers to determine whether a person is drunk be replaced with some form of objective test measuring the type and level of intoxication.[103]

101 Ibid at p. 212.

102 His Honour stated in this case that 'in the ordinary course of his life a policeman sees quite a lot of common garden drunks'. See *Warming v O'Sullivan* (1962) S.A.S.R 287 per Napier C.J.

103 Messrs T. Munro and R. Inglis, Victorian Aboriginal Legal Service and Mr Garry Sullivan, Federation of Community Legal Centres (Vic). Public Hearings of the Inquiry into Public Drunkenness, Drugs and Crime Prevention Committee, Victoria, 13 November 2000.

PART C:
Statistical Review of Public Drunkenness

9. Policing Public Drunkenness: A Statistical Profile

The following statistical analysis is somewhat limited. This is because comprehensive data and figures with regard to public drunkenness offences have not been thoroughly nor accurately compiled centrally. Therefore reliable data trends in public drunkeness apprehensions are not readily available. In particular, it is difficult to give an historical overview of statistical figures and patterns of public drunkenness because:

- Until 1998 there was no overall central collation of attendances for public drunkenness by Victoria Police.[104]
- Since the LEAP (Law Enforcement Assistance Programme) database system was established in 1993 public drunkenness offences were only recorded when the offender was subject to other associated charges.
- From 1998, when an offender is charged with a public drunkenness offence only, a record is placed in the Attendance Register of the police station and then an entry made into the LEAP system. This entry is for the purposes of collation only and does not form part of official Victoria Police annual crime statistics. The Committee draws no conclusions from the accuracy of the information placed on the Register, although the Committee did receive evidence from various sources suggesting that Victorian Police procedures were not always followed in relation to the recording of details of persons lodged for public drunkenness.

104 We have been informed from police sources that data that was available was taken from individual police station Attendance Registers and stored at District Level. There was no central collection of these statistics.

- Comprehensive analysis of the demographic details of attendees is not possible, as it is Victoria Police Policy 'to record a minimum of personal information on persons lodged only for public drunkenness offences'.[105]
- Until 1997, Magistrate's Court statistics only counted and reported public drunkenness offences as part of their statistics when offenders actually presented at court.

Moreover, there is very little attention paid in the official figures to the ethnic or racial background, including Aboriginality, of the offender. A secondary analysis of the data paying specific attention to Aboriginal people and public drunkenness is discussed in Chapter 10 of this Report.[106]

Nonetheless, limited but valuable material has been obtained from Magistrates Court statistics (Department of Justice 1999) and a study undertaken by the Criminal Justice Statistics and Research Unit (CJSRU) of the Department of Justice. Both sources of data provide only a snapshot of a limited period and therefore caution should be exercised in generalising the findings.

The Studies

An analysis of the Magistrate's Court statistics shows that there were 17,414 charges of drunk in a public place heard in 1998/1999, which was the third most common charge heard after 'theft' (35,654) and 'obtain property by deception' (23,056). These figures are down from the 1997/1998 total of 21,903 charges of drunk in a public place (Department of Justice 1999, p. 60).

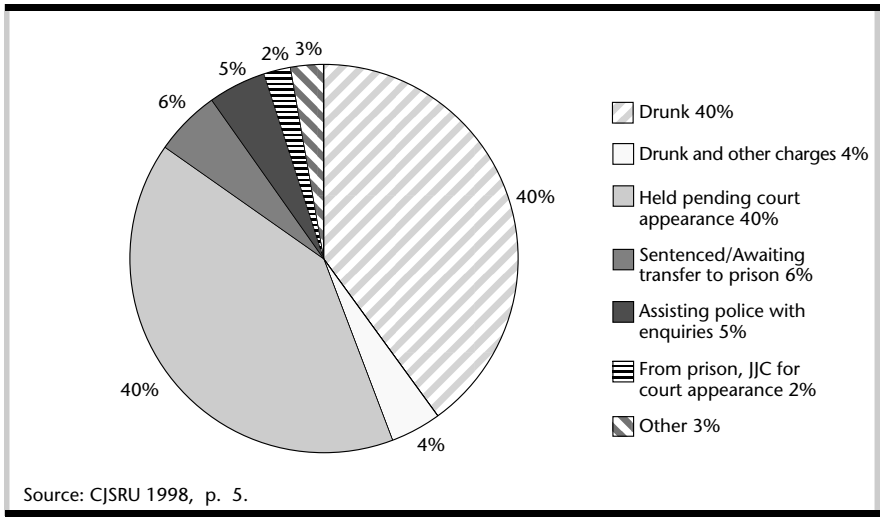
In 1998 the CJSRU conducted a study of police cell use in Victoria from January–June 1997.[107] Whilst the study only examined a six-month period, it provides us with valuable insights into the policing of public drunkenness during that period.

The study showed that 40% of the police cell population held over the six-month period were people found drunk in a public place (9,512). An additional 4% were held for being drunk but they also had additional charges (see Figure 1).

105 Correspondence to the Committee from Deputy Commissioner Peter Nancarrow, 18 May 2001.

106 This data was prepared by academics and researchers primarily from the Koorie Research Centre (now the Centre for Australian Indigenous Studies) based at Monash University.

Figure 1: Reason for being in police custody January–June 1997

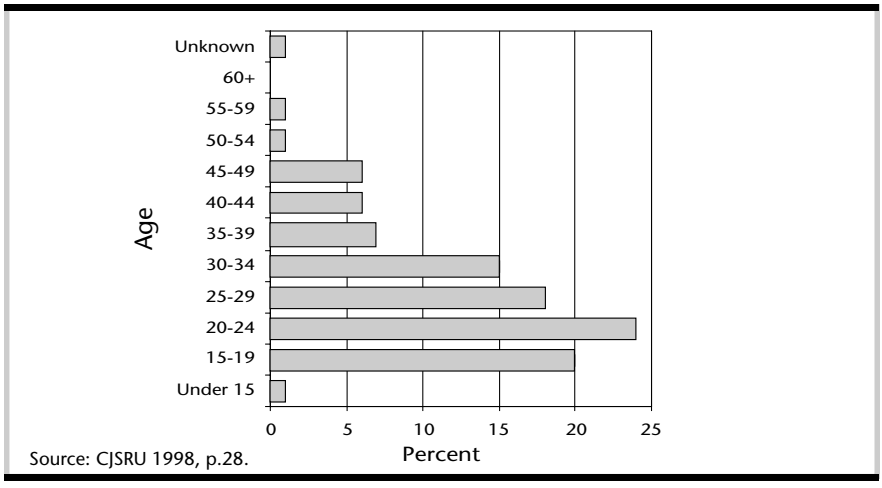


Source: CJSRU 1998, p. 5.

Characteristics of prisoners held in police cells

Ninety-two percent of the persons being held in police cells for public drunkenness were male. Most of the people being held (79.1%) were aged between 15–34 years, with the most frequent category being the 20 to 24 year age group. A further 18.7% were aged between 15 and 19 years of age and a small proportion was under 15 years of age.

Figure 2: Age of 'drunks' being held in police cells January–June 1997



Source: CJSRU 1998, p.28.

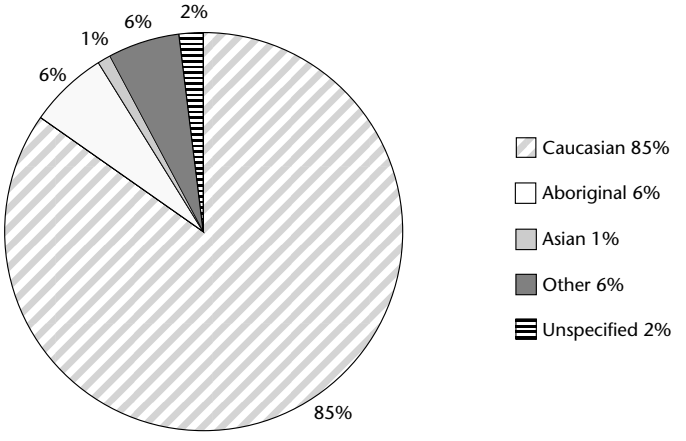
The overwhelming majority of intoxicated people being held in police cells were recorded as being of Caucasian appearance. Six and a half percent of intoxicated prisoners were recorded as being Aboriginal. This is a relatively high number when one considers that Aboriginal people are such a small proportion in the community

107 Data was obtained from 62 Victorian Police stations (from a total of 79). These stations are divided into those which have A cells, B cells, and C cells. In general terms, A cells are those which have the capacity to house greater numbers of inmates. All A cells and most B cells were included in the study. No C cells (generally those in small police stations) were included in the data.

(0.5%) (CJSRU 1998, p. 29). Even so, this figure is unlikely to be accurate because police 'attribute ethnicity on the basis of racial appearance' (CJSRU 1998, p. 18). If in the police officer's view the Aboriginal person doesn't look Aboriginal, she or he would not identify the person as such on the form. In addition, there is some 'ambiguity in the register forms on where to record if the prisoner is of Aboriginal status – the box where this should be recorded also has MPB (which stands for Missing Persons Bureau)' (CJSRU 1998, p. 164).

The report also showed that Aboriginal people 'were significantly more likely to stay longer in police cells than other groups' (CJSRU 1998, p. 31). In an analysis of the 100 longest staying prisoners, Aboriginal people constituted 13% of drunk prisoners held.

Figure 3: Ethnicity of 'drunks' held in police cells January–June 1997

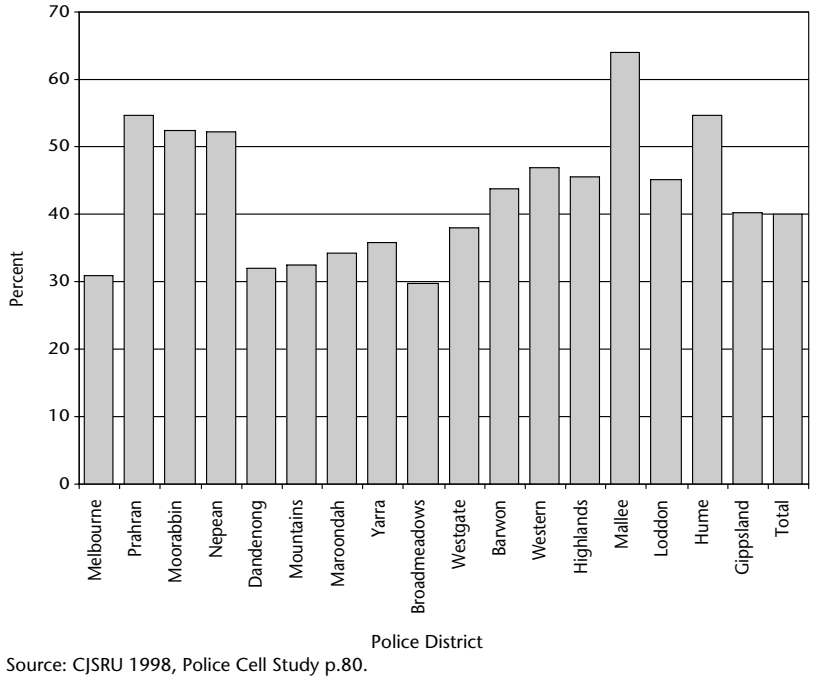


Source: CJSRU 1998, p. 28.

Intoxicated people held in police districts

Within the B (Prahan), C (Moorabbin), D (Nepean), N (Mallee), and P (Hume) police districts more than 50% of all prisoners being held were drunk. Overall there were proportionally more intoxicated people held in police custody in country districts than in metropolitan districts.

Figure 4: Percentage of drunk prisoners held in police district January–June 1997



Source: CJSRU 1998, Police Cell Study p.80.

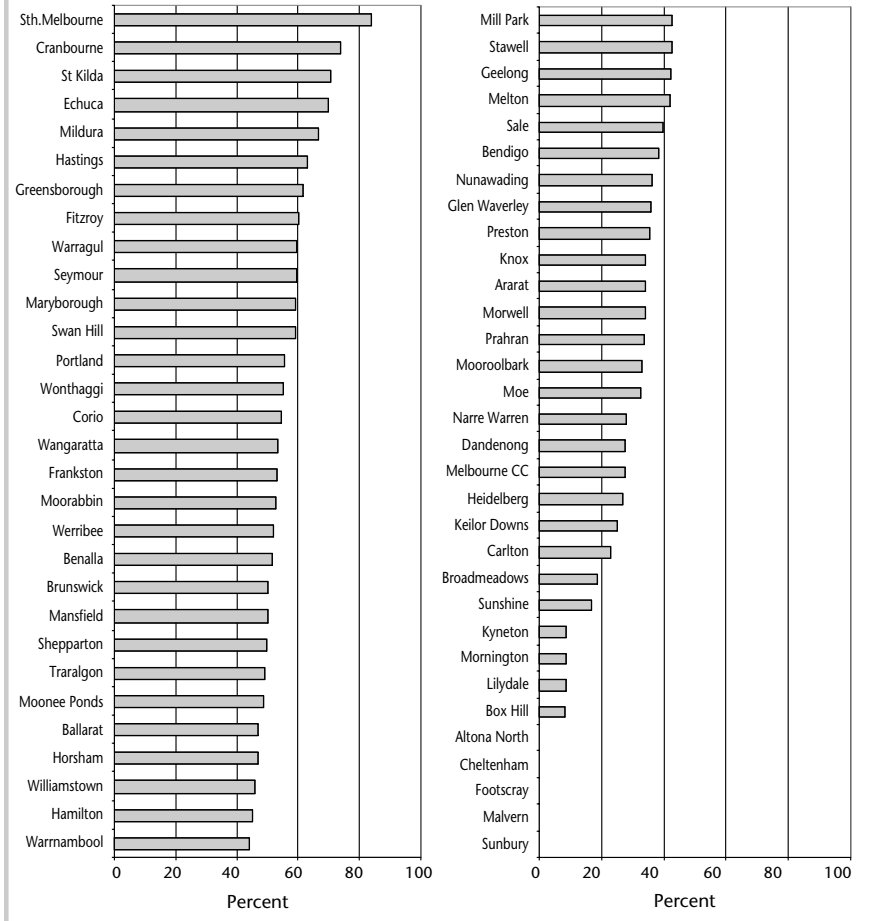
Intoxicated people held in police cells

In terms of the proportion of people held in police cells for being drunk in a public place, there was wide variation: ranging from stations which recorded no 'drunks' held (Cheltenham, Malvern, Footscray, Altona North and Sunbury) to stations where intoxicated people represented about three-quarters of prisoners held (South Melbourne, Cranbourne, St Kilda, Echuca and Mildura). The Melbourne Custody Centre tended to have proportionally fewer intoxicated people among its prisoners compared to other police stations: 27.5% compared to around 40% for the total sample of stations. A number of regional police stations held more than 50% of prisoners classified as drunk. These were Echuca, Mildura, Warragul, Seymour, Maryborough, Swan Hill, Portland, Corio,Wonthaggi, Wangaratta and Benalla.[108]

108 The report could not provide any definite explanations as to why these regional police stations held so many drunks. However, the following suggestions were postulated:

- There is a greater incidence of intolerance to of public drunkenness in rural Victoria.
- There is less crime there than in metropolitan areas.
- There are correspondingly fewer offenders apprehended, charged and therefore held in custody.
- The transfer of country non-drunk offenders to urban police stations for holding purposes (CJSRU 1998, p. 56).

Figure 5: Percent of prisoners held in police stations for being drunk in a public place January–June 1997



Source: CJSRU 1998, pp. 55-56

Length of stay in police cells

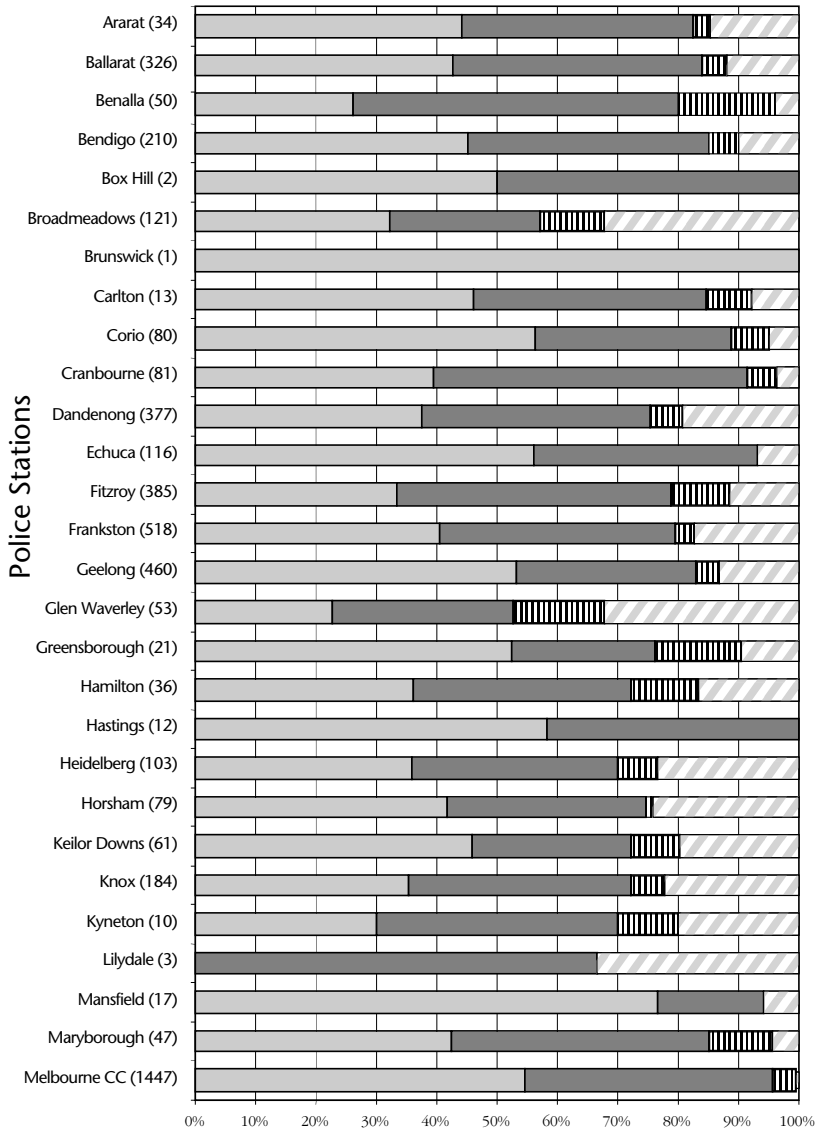
On average 'drunks' stayed in police cells just over four hours. Specifically:

- 41.5 percent of all intoxicated people were held in custody for 4 hours or less;
- 39% percent stayed more than 4 hours but less than 6 hours;
- 6.0% stayed more than 6 hours; and
- 13.4% were held longer than12 hours.

The study showed that 'considerable variation exists between police stations in terms of how long 'drunks' tend to be held in custody' (CJSRU 1998, p. 57). Nunawading (45.1%), Mooroolbark (45.0%), Mill Park (35.1%) and Broadmeadows (32.1%) had relatively high proportions of 'drunks' being held in cells for longer than 12 hours. In another eight police cells, close to a quarter of the 'drunks' stayed longer than 12

hours. Without further research, any further comments regarding the reasons for this remain speculative. Nonetheless, one would expect that the practice could be due to police discretion.

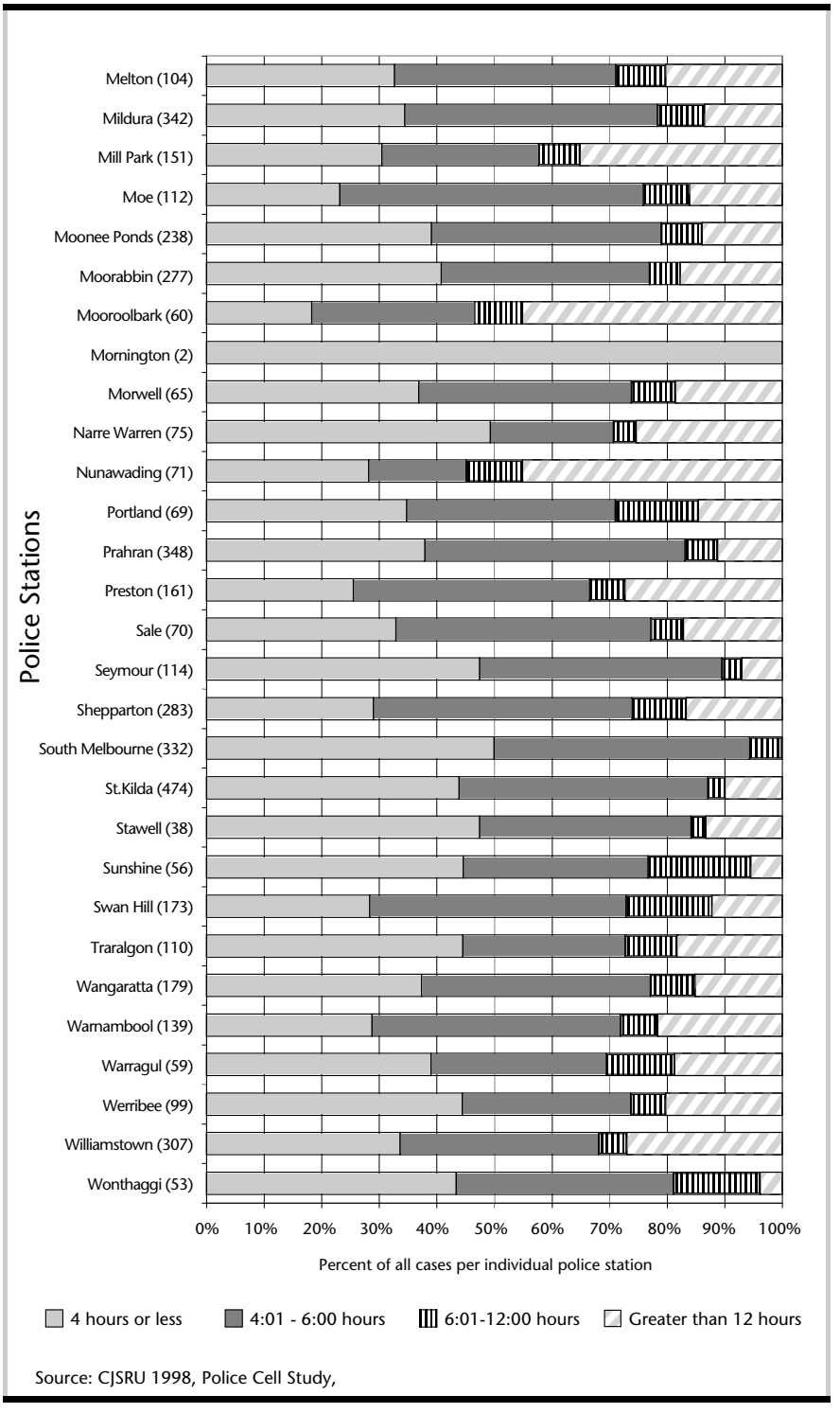
Figure 6: Length of stay for drunk prisoners held in police cells January–June 1997



Source: CJSRU 1998. *Police Cell Study*. p. 59

Cont'd

Length of stay for drunk prisoners held in police cells January–June 1997 cont.



Source: CJSRU 1998, Police Cell Study,

Time of the day intoxicated people are held in police cells

The arrivals and departures of intoxicated prisoners showed a different pattern and corresponded more to social drinking times – later in the week, in evenings and at the weekend. In general, 'drunks' and non-'drunks' tended to occupy police cells at different times of the day and week (CJSRU 1998, p. 137).

10. Victorian Aboriginals and Public Drunkenness Offences[109]

Arrest and Imprisonment Rate of Indigenous Offenders for all Offences

Some commentators and the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) have commented on the extraordinarily high rates of Aboriginal people processed through the criminal justice system in proportion to non-Aboriginal Australians. The over-representation of Aboriginal people in custodial deaths is claimed to be directly related to the over-representation of Indigenous people in all forms of custody. Such a claim is supported by a comprehensive and extensive research monograph that was recently published by the Centre for Australian Indigenous Studies at Monash University (CAIS). *Indigenous People and Criminal Justice in Victoria: Alleged offenders, rates of arrest and over-representation in the 1990s* (2001) was written by Dr Greg Gardiner of CAIS. It presents the following key findings:

- that there has been a 21% increase in the number of Indigenous alleged offenders processed between 1993/94 and 1996/97;
- that Indigenous juvenile offenders experienced almost twice the level of arrest experienced by non-Indigenous juveniles;
- that Indigenous people were five times more likely to be arrested for an offence than non-Indigenous people in the period of review.

Most importantly, from the perspective of this Inquiry, is the finding:

- that arrests of Indigenous people for charges related to drunkenness rose by 24% between 1993/94 and 1996/97 (CAIS 2001).[110]

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109 In the following account of the interaction of Aboriginal Victorians with the criminal justice system we use the Victoria Police definition of Aboriginality, as that is what their statistical analysis is based upon. According to Victoria Police, the racial appearance of any offender is 'based on the subjective assessment of the attending police' (Victoria Police 2000, *Crime Statistics 1998/1999*, p. 56).

Such an assessment is questionable as it excludes from consideration those Aboriginal alleged offenders who may not 'appear' Aboriginal to the processing officer even if they are or so identify. Yet,

> Whilst this system of subjective identification by Police cannot be considered to provide a perfect measure of Aboriginal contact with the criminal justice system it is the only measure currently available (Mackay & Munro 1996, p. 2).

According to Gardiner, however, since November 1997 all Victorian police officers have been instructed to ask all formal interviewees: Are you of Aboriginal or Torres Strait Islander descent? (1998, p. 4).

110 The monograph's methodology is based on analysing statistics pertaining to Indigenous contact with the Victoria Police in the period 1993/94 to 1996/97. It provides details of Indigenous and non-Indigenous alleged offenders, outlines methods of processing, rates of arrest (alleged offenders processed) per thousand population, provides data on drunkenness offences and over-representation ratios for arrests.

Earlier research undertaken by Gardiner made equally disturbing findings. In May 1997, for example, the total Australian prisoner population nationally was 17,157. Of these, 3409 inmates were Indigenous, representing almost 20% of the total, or one in five of all prisoners. For the same month the imprisonment rate per 100,000 adult Indigenous population stood at 1,641.7. This compares to a rate of 123.4 per 100,000 for the total adult population. In other words, at the national level, Indigenous Australians were 16.5 times more likely to be in prison than non-Indigenous Australians (Gardiner 1998, p. 3).

For the same period, the Indigenous prisoner population for Victoria was 131, approximately 5% of the total prisoner population of 2,458. Allowing for a smaller Indigenous population in Victoria, both numerically and in proportion to the rest of Australia, and a much smaller average total prisoner population rate:

> [I]ndigenous people in Victoria were still 15.2 times more likely to be in prison than non-Indigenous Victorians (Gardiner 1998, p. 3).

Similar studies have shown that the rate of imprisonment of Indigenous people is also directly related to the rates at which they are arrested. Drawing from the Report of the ATSI Social Justice Commissioner into Indigenous Deaths in Custody, Gardiner and Mackay (1997) state that Indigenous people are 17.3 times more likely to be arrested than non-Indigenous people and much more likely to be arrested for 'trivial' offences (Gardiner & Mackay 1997, p. 4).

> As the Royal Commission noted, it is the early construction of criminal histories that form the basis for high levels of future imprisonment with its consequent risk of death. As has previously been shown, Victoria's Indigenous juveniles are almost twice as likely to be actually arrested (rather than cautioned) than non-Indigenous juveniles (Gardiner 1998, p. 4).

Arrest Rate of Indigenous Offenders for Public Drunkenness

Gardiner and Mackay have shown that between 1994/95 and 1995/96 there was a 41% increase in the number of Aborigines processed in cases where public drunkenness was the major offence. In Alpha district (Melbourne CBD and inner suburbs), arrests for drunkenness offences rose by 350% over one year.

> Overall, country Police districts had a 15.5 per cent increase in Aborigines processed for this offence, compared to a 91.7% increase for metropolitan Police districts…(Gardiner & Mackay 1997, p. 18).[111]

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111 The Alpha district includes Fitzroy, an area in which a proportionately high number of Aboriginal people reside or commute to. Anecdotal evidence suggests that the apparently huge rise in the numbers of Aboriginals appearing on the police register can be explained by greater adherence to following entry procedures. Since 1999, Police Districts have been reorganised into a group of five major police regions.

Earlier research by Mackay (1996a) found that arrests for drunkenness are concentrated along Murray River towns. Cunneen and McDonald (1996) also report that submissions and statistics from the Victorian Aboriginal Legal Service show great concerns with former Police District N (Mildura, Robinvale, Swan Hill):

> 'The Victorian ALS data indicates that the arrest rate for drunkenness in this area was 232 per 1000 of the Aboriginal population, while about 40% of all arrests of Aboriginal people for drunkenness in Victoria occurred in this region' (Cunneen & McDonald 1996, p. 112).

Furthermore, the authors comment:

> The Victoria Police LEAP database recorded 3,451 arrests of Aboriginal people in 1995/96. The separate database for arrests for drunkenness of Aboriginal people in 1995/96 shows a total of 1,066. Adding these two totals reveals that 23.6% of Aboriginal arrests in 1995/96 were for public drunkenness…These statistics (which may yet prove to be under reporting of actual custodies) highlight the continued seriousness of the Victorian Government's refusal to decriminalise public drunkenness…and the disproportionate effect these laws have on the Aboriginal community in Victoria (Gardiner & Mackay 1997, p. 19).

In a separate study, Gardiner has analysed the police statistics pertaining to Indigenous people processed for public drunkenness for the period 1995/1996 and 1996/97. He claims that:

> In recent times there have been huge rises in the number of Indigenous offenders processed for these offences, with a 41% increase in 1995/96. The total number of arrests in 1996/97 was 1,059, only a handful less than the figure for the previous year. As a proportion of total arrests this figure represents just over 23% of total offenders processed in 1996/97 (1,059 out of a total 4,589), or almost a quarter of all Indigenous offenders processed. Nearly 85% of arrests for drunkenness were of Indigenous males, including 30 processings of Indigenous juveniles (Gardiner 1998, p. 13).

Gardiner states further that:

> The Koorie community has argued for many years that the decriminalisation of public drunkenness offences would greatly assist in reducing Indigenous contact with the criminal justice system. These figures show that the potential exists for such a reduction of a little under a quarter of the entire total, which would be a major advance (Gardiner 1998, p. 13).[112]

Unfortunately there is little comprehensive data that expresses how many people in Victoria (Aboriginal or non-Aboriginal) are transported or transferred to sobering-up centres from police cells. Nor has it been possible until very recently to compare the levels of arrests for public drunkenness between Indigenous and non-Indigenous offenders. As the recent CAIS monograph states:

> Since the early 1990s complete statistics pertaining to drunkenness are no longer kept within the main LEAP database maintained by Victoria Police. Instead the Statistical Services Division keeps a separate database on Aborigines taken into custody where the most serious offence is public drunkenness. No corresponding database in the period under review (1993/94–1996/97) was

112 In response to the types of findings outlined in the above section, the Victorian Government recently released the Victorian Aboriginal Justice Agreement. The Government jointly developed the Agreement, with the two Victorian Regional Councils of ATSIC and the community based Victorian Aboriginal Justice Advisory Committee. One of the key aims of the Agreement is a commitment to implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It is clearly too early to evaluate how effective the Agreement is in achieving its aims and objectives. Nonetheless, the Committee believes it is imperative that this policy should be monitored to evaluate its effectiveness.

> kept for non-Aborigines arrested for drunkenness, making comparisons impossible (CAIS 2001, p. 88).

The Tumbukka and Binjirru (Victoria) Regional ATSIC Councils were highly critical of the irregular, haphazard and unreliable data collection methods used until very recently in collating these figures. In their joint submission to the Drugs and Crime Prevention Committee, in the context of this Inquiry, they stated:

> Prior to 1998, there was no centralised collation of information relating to public drunkenness offences, police and court records were inconsistent, inadequate and misleading. In many cases, arrests for public drunkenness were not recorded unless other more serious charges were laid, or unless the offenders actually presented at court. Even the figures now being obtained lack qualitative data on individual cases and are limited to statistics only useful for internal policing purposes. The lack of meaningful figures makes a mockery of trying to determine the exact nature of the problem (the reasons behind Aboriginal drunkenness, the affect of current policing practices upon the individuals and communities affected, barriers to utilising current alternatives or treatment options) and renders impotent the likelihood of developing strategies to address it.[113]

Moreover, Gardiner and other researchers[114] are concerned about the potential for Indigenous people charged with public drunkenness offences to be incarcerated in Victorian lockups and prisons:

> The Victorian government has previously argued that a lack of alternative facilities to police custody, and the high proportion of non-Aboriginal people charged with offences in this category make it impractical to remove the relevant laws [public drunkenness] from the statutes. However as [Table 2a] demonstrates, Indigenous Victorians are being charged in increasing numbers for offences relating to intoxication. While many of these charges do not lead to convictions being recorded, there is evidence that in some jurisdictions imprisonment is the end result, particularly in circumstances of default on fines imposed under local by-laws. *Vitally important is the availability and use of sobering-up centres as a diversion from police custody* (Our emphasis) (CAIS 2001, p. 84).

113 Submission of the Tumbukka and Binjirru (Victoria) Regional ATSIC Council to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 3.

114 See also Cunneen and McDonald (1996) and Mackay (1996a, 1996b).

Table 2a: Indigenous persons on attendance register taken into custody for drunkenness, 1993/94 to 1996/97

District	1993/94	1994/95	1995/96	1996/97	% change*
A	76	50	225	287	227.6
B	111	101	113	59	-46.8
C	5	4	5	2	-60.0
D	8	8	9	9	12.5
E	8	6	29	7	-12.5
F	3	8	9	13	333.3
G	1	1	4	4	300.0
H	18	42	56	30	66.7
I	10	21	15	8	-20.0
J	7	9	14	14	100.0
K	16	3	6	6	-62.5
L	20	32	36	36	80.0
M	15	19	15	25	66.7
N	342	219	279	316	-7.6
O	126	126	144	115	-8.7
P	8	15	10	8	0.0
Q	78	92	97	119	52.6
TOTAL	**852**	**756**	**1066**	**1058**	**24.2**

*Percentage change, 1993/94 to 1996/97

Source: *Indigenous People and Criminal Justice in Victoria: Alleged offenders, rates of arrest and over-representation in the 1990s* written by Dr Greg Gardiner for the Centre for Australian Indigenous Studies at Monash University (CAIS 2001).

Whilst Dr Gardiner is combining the criminal charges of public drunkenness with local government municipal laws in this quote, his point is well taken. People who infringe local by-laws can be ultimately imprisoned for fine default in these circumstances.[115]

Recent figures, provided to the Committee by Victoria Police, of Aboriginal attendances for drunkenness 1997/1998-1999/2000 (see Table 2b) show that the rate of increase continues. Whilst there has been some variation in attendance numbers within each district, overall the number of attendances has risen significantly since Gardiner's report.

115 See Chapter 16 on local government.

Table 2b: Indigenous persons on attendance register for drunkenness, 1997/98 to 1999/2000 by police district[116]

District	1997/98	1998/99	1999/00	% Change *
A	81	31	50	-34.2
B	46	42	25	-77.5
C	6	18	10	100.0
D	10	8	6	-25.0
E	19	18	20	150.0
F	11	12	5	66.7
G	4	1	1	0.0
H	56	28	26	44.4
I	32	24	23	130.0
J	6	23	10	42.9
K	5	7	3	-81.3
L	33	61	56	180.0
M	48	60	45	200.0
N	489	433	429	25.4
O	242	247	218	73.0
P	38	16	27	237.5
Q	278	294	187	139.7
Other**	188	179	159	
Total	**1592**	**1502**	**1300**	

Source: Victoria Police Attendance Register LEAP, 25 May 2001.

* 1993/94 – 1999/00

** Includes traffic units and pre LPP station codes

Notes: 1. Table includes attendees who were coded as drunk (01) or drunk and disorderly (04) or who had the word 'drunk' entered in the description field.

2. The Aboriginality field is filled in by members as 'yes' or 'no'. These correspond to 'Aboriginal' and 'other'.

3. Figures provided by Victoria police showed that in 2000, 22 percent of Aboriginal attendances were for drunkenness compared to 9 percent of non-Aboriginal attendances.

The findings of Dr Gardiner and the researchers of the Centre for Australian Indigenous Studies are distressing. It is sadly ironic that this publication coincides with the ten-year commemoration of the Royal Commission into Aboriginal Deaths in Custody. This monograph concludes with the dispiriting message that:

> [t]he primary conditions which lay at the heart of the Royal Commission into Aboriginal Deaths in Custody investigations are still in place in Victoria, that is: The numbers of alleged offenders processed is rising, disparities in processing continue to persist, and the over-representation in contact with police in comparison with the rest of the community is vast (CAIS 2001, p. iii).

116 The term 'attendee' refers to a person taken to a police station for interviewing and/or held in custody.

PART D:
Health and Medical Issues

11. Alcohol Consumption – Patterns and Problems in Australia and Victoria

This chapter will deal specifically with the patterns and figures for alcohol consumption in Victoria. A brief preliminary picture, however, of the overall Australian situation bears analysis in order to contextualise the problem of public drunkenness.[117]

Alcohol Consumption Patterns in Australia – 1998[118]

In 1998 Australians consumed 7.8 litres of absolute alcohol per capita per year which was ranked as twentieth in the world in terms of per capita alcohol consumption.

The direct and indirect costs of alcohol misuse has been conservatively estimated in Australia as $4.485 million in 1992 (Collins & Lapsley 1996; Hanlin et al. 1999). This has been estimated as 24% of the total cost of drug abuse to the Australian community.

> This cost estimate includes factors such as premature death, treatment costs, loss of productivity in the workplace and increased law enforcement. The costs of alcohol related crime, violence and other antisocial behaviour are not included in this estimate (cited in National Expert Advisory Committee on Alcohol (NEACA) 2000a, p. 20).

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117 Information for the dissemination of Australian alcohol consumption patterns and data is taken primarily from the Consultation Paper *Alcohol in Australia: Issues and Strategies* (2000) prepared by the National Expert Advisory Committee on Alcohol (NEACA) under the auspices of the National Drug Strategic Framework 1998-99 to 2002-2003. This paper is viewed as a major component of the National Alcohol Plan 2000-2003, the leading blueprint for Australian alcohol policy.

118 This is the most recent year for which NEACA has supplied comprehensive and reliable data.

The consumption patterns of alcohol are not evenly spread amongst the Australian population. It has been estimated by the Australian Institute of Health and Welfare that in 1998, 83% of alcohol was consumed by 20% of the population and that 60% was consumed by only 10% of the population.[119] Therefore:

> [I]t is…important to consider the particular drinking patterns of groups and individuals in planning a response to the misuse of alcohol in the Australian community (cited in NEACA 2000a, p. 4).

Frequency and Quantity of Alcohol Consumption

The National Drug Strategy has chief responsibility for monitoring alcohol and other drug use in Australia through regular household surveys. The 1998 Survey found the following:

- 49% of the population aged over 24 were *regular* (at least once a week) drinkers;
- 32% of the population were *occasional* (less than weekly) drinkers;
- 84% percent of men and 77% of women were *current* drinkers (regular and occasional).

Gender Patterns

As indicated above, men drink more frequently than women. More specifically:

- 15% of current male drinkers drink at least every day (compared to 6% of women);
- 70% of current male drinkers drink at least every week (compared to 51% of women);
- 87% of current male drinkers drink at least every month (compared to 74% of women);

Men usually begin drinking at an earlier age than women (16 years compared to 18 years of age).

Men drink at high risk levels more frequently than women.[120] However, the figures for the percentage of Australian men and women who as current drinkers consume alcohol in a hazardous manner are approximately the same (38% for women, 33% for men).

Women are more likely to be non-drinkers and less likely to suffer alcohol related health problems than men (Australian Institute of Health and Welfare 1999, *National Drug Strategy Household Survey 1998*).

Age Differences

The 1998 National Drug Strategy Household Survey has stated that 66% of adolescents between 14-19 years are recent drinkers (at least yearly) and around 30% drink regularly (at least weekly). Of those who were recent drinkers, 23% of 14-19 year

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119 Australian Institute of Health and Welfare, *National Drug Strategy Household Survey: First Results*, Canberra, 1999.

120 Defined as more than four standard drinks per day for men and two standard drinks per day for women (National Health and Medical Research Council 1992, as cited in NEACA 2000a, p. 5).

olds consumed seven or more standard drinks at least once per week compared with 10% of adults (cited in NEACA 2000a, p.5; 1998).

Binge drinking or deliberate drinking to intoxication is common amongst young people.[121]

Aboriginal and Torres Strait Islander Populations

Generally a smaller proportion of Aboriginal people are current drinkers than the rest of the Australian community (62% compared with 72%).

> However those Aboriginal people who do drink tend to consume alcohol in higher quantities. Among Aboriginal people who drink, 68% consume alcohol at harmful levels, compared to 11% of drinkers in the general population. Aboriginal men tend to have more hazardous drinking patterns than women. Hazardous drinking is most common amongst 25-34 year olds in Aboriginal communities, whereas in the general population hazardous drinking is most common in the 14-24 year age group (cited in NEACA 2000a, p. 6).

The Aboriginal and Torres Strait Islander Supplement of the National Drug Strategy found that 8% of current Aboriginal and Torres Strait Islander current drinkers do so daily, 49% at least weekly and 78% at least once per month.

The number of Aboriginal people charged by police for crimes committed whilst under the influence of alcohol is estimated as being twice as high as that of the general population (cited in NEACA 2000a, p. 17). The Aboriginal and Torres Islander Supplement to the National Drug Strategy Survey found that of the Aboriginal people surveyed in the previous 12 months:

- 50% reported they had been a victim of theft; the perpetrator being someone affected by alcohol or had their property damaged by someone affected by alcohol;
- 25% reported having been physically abused by someone affected by alcohol; and;
- 33% reported that they had been verbally abused or threatened by someone affected by alcohol (Australian Institute of Health and Welfare 1995, *National Drug Strategy Household Survey, Aboriginal Supplement 1994*).[122]

Alcohol misuse is viewed with particular concern by Aboriginal Communities themselves.

> Ninety five per cent of the urban Aboriginal and Torres Strait Islander population regard [alcohol] as a serious problem, and sixty-three per cent regard either alcohol or alcohol related violence as the most serious issue facing the Aboriginal community today. Two-thirds believe it is the leading cause of

121 Defined as drinking more than seven drinks for males or more than five drinks for females in one sitting (Makkai & McAllister 1998).

122 For further discussions of Indigenous people as both victims of and perpetrators of alcohol related violence and social disorder, see Hennessy and Williams 2001.

> drug related deaths in the Indigenous community and 55% cite it as the drug of most concern (Australian Institute of Health and Welfare 1995).

Many Aboriginal communities, particularly in the more remote areas of Australia, have sought to make their communities 'dry' in order to minimise the harmful effects of alcohol.

Ethnic Communities

There is a dearth of systematic or comprehensive data with regard to alcohol consumption patterns of non-English speaking groups living in Australia. The studies done thus far, however, tend to show that the proportion of people from a variety of non-English speaking backgrounds who drink alcohol is considerably lower than the general population (Department of Health and Human Services (DHHS) 1994):

> The issue of alcohol misuse and ethnicity is widely considered to be a characteristic of locally-born rather than overseas-born Australians. The data suggests that non-English speaking groups are more likely to have higher proportions of abstainers than English speaking groups (NEACA 2000a, p. 6).

Poly-Drug Use

More recent studies tend to show that people who use alcohol to dangerous levels often have problems associated with the consumption of other licit or illicit drugs. Research shows that there is a high co-morbidity rate between alcohol misuse and the misuse of other drugs, particularly marijuana (Swift, Hall & Copeland 1998).

> A Sydney study of long term cannabis users found that alcohol was almost universally used on a regular basis with more than half of them consuming alcohol at hazardous or harmful levels.
>
> Frequent abuse of other drugs is often seen in people being treated for alcohol problems, including adolescents, complicating the issue of treatment and resulting in a higher risk of relapse to alcohol or substitution of another drug for alcohol (NEACA 2000a, p. 8).

One key issue for service providers, particularly those associated with sobering-up centres and their equivalents, is whether we can speak of an alcohol problem or alcohol related harms, or indeed whether the concept of a discrete alcohol treatment or service agency makes sense any longer.[123]

Alcohol Use: Its Relationship to Violence and Crime

The relationship between alcohol, crime and violence is complex. Numerous research studies have been published exploring the links.[124] Common questions asked in these studies include: Does alcohol use cause violence? If so, to what extent? What types of violence or crimes?

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123 For further discussion of this issue, see Chapter 12.

124 See, National Committee on Violence, *Final Report* 1990; Graham, Schmidt & Gillis 1996; Stevenson 1996; Lang and Rumbold 1997; Makkai 1997; Makkai 1998; Bryant and Williams 2000; Teece and Williams 2000; Brinkman et al. 2001; Carchach 2001; Hennessy and Williams 2001; Lynskey 2001; Williams 2001b.

The National Committee on Violence in its Final Report in 1990 concluded:

> The suggestion that 'drugs cause violence' is an oversimplification. The effect of a drug on an individual's behaviour is the product of a range of drug and non-drug factors which include the pharmacological properties of the substance in question, the individual's neurological foundation, personality and temperament, his or her expectations of the drug's effects and the social setting in which the individual is located.
>
> A close association exists between alcohol and violence, but the relationship is complex. It is probably less a result of alcohol's pharmacological properties and more a product of co-existing psychological, social and cultural factors (National Committee on Violence 1990, pp. xxv-xxvi).

The connections between drugs and violence are still not fully understood.[125] Nonetheless, a recent monograph published by the Australian Institute of Criminology suggests that there is overwhelming evidence that alcohol and violence are proximate:

> Violence is more likely to occur in the presence of alcohol consumption than when alcohol is not consumed (both as victim and perpetrator). Similarly, levels of alcohol consumption and violence are higher among younger than older persons, and particularly so for young males (Australian Institute of Criminology, ed. Williams 2001, p. 1).

The comparatively high levels of violence amongst young (male) people is of particular concern. Issues pertaining to alcohol use and related violence amongst young people, including youth in rural areas, will be discussed more fully in Part I, Chapter 24, in the section pertaining to youth. Issues with regard to Aboriginal people and alcohol related crime and violence have been addressed in the previous chapter.

Excluding public drunkenness offences per se, there is a noticeable correlation between crime and alcohol misuse. NEACA has found that criminal offenders generally have a high incidence of alcohol misuse and that many offenders use alcohol before committing a crime (NEACA 2000a, p. 7).[126] Lynskey, for example, states that an estimated 50% of all violent crimes are committed by intoxicated assailants[127] (Lynskey 2001).[128]

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125 Common sources attempting to measure the correlation between alcohol and violence include hospitalisation records (morbidity and mortality data); police records (in particular assaults); emergency room data and surveys. Each of these measures has their own strengths and weaknesses. An examination of this data is beyond the scope of this Inquiry. For a discussion of the methodologies used in exploring the connections between alcohol and violence, see Brinkman et al. 2001.

126 This is particularly true of homicide. In New South Wales alcohol was found to be a factor in 42% of homicide incidents (Wallace 1986).

127 See also English et al. 1995.

128 Recent figures reported by Graycar show that between 1996-1997 and 1998-1999, just under 2 out of 5 male offenders and just over 1 out of 5 female offenders were under the influence of alcohol at the time of a homicide incident (Graycar 2001, p. 8).

Furthermore:

> The majority of prisoners in Australian jails have significant problems related to alcohol and/or drug use. Of those sentenced to prison in Australia in 1991, 16% were sentenced for alcohol and other drug related offences. Of these offences more than 50% were arrests for being drunk and under the influence of alcohol (NEACA 2000a, p. 70).

Alcohol misuse has been indicated as a key contributor to domestic violence, interpersonal assaults, child abuse and, in some cases, suicide (NEACA 2000a, p. 17). The National Drug Strategy Household Survey 1998 reported the responses of the proportion of adults surveyed who reported they had been the victims of alcohol related antisocial behaviour as follows:

- 29% had experienced at least one instance of verbal abuse by someone affected by alcohol;
- 16% were in fear of abuse by someone affected by alcohol;
- 8% had property damaged by someone affected by alcohol;
- 6% had been physically abused by someone affected by alcohol;
- 4% had property stolen by someone affected by alcohol.[129]

NEACA has stated that alcohol can play a number of roles in regard to violence and criminal behaviour:

> It may foster an environment where violence occurs, it may be used to cope with a violent incident or it may directly exacerbate the violent nature of an incident…In general the risk of adverse social consequences is directly proportional to the quantity of alcohol consumed (NEACA 2000a, p. 7).

There have been numerous research studies that examine various situational determinants of alcohol related violence. Drawing from these studies, Lynskey states:

> For example, such acts have been shown to be influenced by the location in which drinking occurs, with alcohol related violence more probable in public rather than private locations. Additionally, research has shown that a number of factors, including crowding, smoky or noisy environments and group intoxication, are associated with greater likelihood of alcohol related violence. [Graham and Homel 1997] have suggested interventions and preventive strategies that have been shown to be effective in reducing the incidence of alcohol-related violence (Lynskey 2001, p. 166).

A detailed discussion of alcohol related violence in and around licensed premises is found in Chapters 14 and 17.

Other important situational factors to be taken into consideration in addition to the location of the violence include the temporal aspects (time of the day, day of the week, month of the year). The significance of a particular festival or celebration cannot be

129 See also the recent study done by Makkai for further figures pertaining to perpetrators and victims of alcohol related violence (Makkai 2001).

discounted either. Some prime examples may include, New Year's Eve, 'Schoolies' Week, Melbourne Cup or other sporting carnivals.[130]

From all the available evidence, alcohol related violence and harm is clearly a major health and safety concern to the Australian community. Being drunk in a public place is one fact that on occasion may incite or exacerbate such violence.

In their recent study of alcohol related violence, Brinkman et al. concluded that despite the prevalence of the alcohol related harms, outlined in this section, 'most instances of alcohol related violence involve people who only occasionally drink to excess' (Brinkman et al. 2001, p. 77). Given this, the best way of dealing with alcohol related violence is through prevention policies and programmes aimed at particular target groups (youth, licensed premises, Indigenous people inter alia).

The Committee concurs that prevention policies are certainly *one* aspect of dealing with public drunkenness and alcohol related violence. They need to be employed in combination with a number of the strategies outlined in this Report, including the criminal justice system, where necessary.

Victorian Consumption Patterns

A major study of Victorian alcohol consumption patterns and alcohol related harms was recently conducted by the Epidemiology Unit at the Turning Point Alcohol and Drug Centre in Melbourne. The areas of research undertaken by the Unit that were most relevant for the purposes of this Inquiry included:

- an analysis of alcohol consumption and related harm in Victoria (Alcohol Epidemiology project, funded by the Victorian Department of Human Services); and
- an evaluation of local community initiatives to reduce problems in and around licensed premises.

Much of the data drawn upon for this chapter comes from *The Victorian Alcohol Statistics Handbook 1999* (hereinafter cited as Hanlin et al. 1999). This handbook has been produced by Turning Point in conjunction with the Victorian Department of Human Services. The figures and data relate to alcohol consumption and alcohol related factors for the period 1994/95 to 1995/96. Data is provided for state-wide, regional, and local areas.[131] The following analysis is based primarily on Victorian Health Regions data.[132]

130 See Carchach and Conroy (2001) for a discussion of these variables, particularly in the context of Homicide.

131 Regional information is based on statistics taken from Department of Human Services, Victorian Health Regions. Local information is taken from Local Government Area statistics. An account of the methodologies used in the collation of this data is beyond the scope of this paper. Interested readers are referred to the introductory chapter of the *Alcohol Statistics Handbook* (Hanlin et al. 1999).

132 A list of the local government areas in each health region in provided in Appendix 4.

Table 3: Victorian health regions and their populations

Melbourne Metropolitan Region	
Northern	726, 385
Eastern	934, 729
Southern	1,037,193
Western	552, 534
Regional/Rural	
Loddon (North West)	279, 951
Grampians (West Central)	201, 097
Barwon (South West)	326, 045
Hume (North East)	237, 909
Gippsland (South East)	235, 383
Total Estimated Victorian Population	4, 530, 866

Source: Table adapted from figures in Hanlin et al. 1999, p. 7.

Licensed Premises in Victoria[133]

For the period in question, there were 6,456 licensed premises in Victoria. Premises include pubs and bars, clubs, bottle shops, hotels and cafes etc. The Southern metropolitan district had the most premises for the Melbourne regions. The Hume district (Wodonga, Wangaratta, Shepparton) had the most premises for a regional area.

These raw figures are not to be confused with outlet density (number of licensed premises per 10,000 people aged 15 and over in the region). The Western metropolitan district had the highest outlet density of the Melbourne area (25.76) and Hume and Grampians Regions had the highest outlet densities for rural regions (32.43 and 32.50 respectively).[134] In summary, the Turning Point study made the following findings.

Rural health regions tended to have:

- a greater percentage of hotels and bars;
- a greater percentage of clubs; and
- higher outlet densities (number of licenses per head of population).

In contrast, the metropolitan health regions tended to have:

- a greater percentage of bottle shops;
- a greater percentage of on premises type licenses (eg. restaurants); and
- lower outlet densities (Hanlin et al. 1999, p. 8).

133 For further discussion on licensing issues, see Part F, Chapter 17.

134 Note, however, that figures for the Western region are skewed as they include the Melbourne Central Business District, which contains the largest number of licensed premises and a small population within its boundaries.

Alcohol Consumption Patterns

Table 4: Per capita alcohol consumption patterns (litres of pure alcohol)

Barwon	8.59 (litres per capita)
Grampians	8.15
Hume	9.43
Loddon	8.46
Gippsland	8.99
Western Metro[135]	8.84
Northern Metro	6.75
Eastern Metro	6.24
Southern Metro	8.31
Victoria Total	**7.82**

Source: Table adapted from Table 1b: Hanlin et al. 1999, p. 9.

The Turning Point study makes the following comments with regard to Victorian alcohol consumption:

> There was considerable variation in consumption figures across the metropolitan regions, with per capita consumption for the Western and Southern metropolitan regions being much greater than the Northern and Eastern metropolitan regions. Indeed, the Northern and Eastern metropolitan regions were the only regions with figures lower than the Victorian average. In comparison to the metropolitan health regions, the rural health regions had:
>
> - higher per capita consumption figures for ordinary and low alcohol beer;
> - a higher proportion of beer drunk on premises (hotels, bars, restaurants and clubs);
> - lower per capita wine consumption figures; and
> - generally higher total per capita consumption figures (Hanlin et al. 1999, p. 9).

Alcohol related harm (Measured according to hospital admissions)

The study found that more people in metropolitan areas were admitted to hospital for alcohol related conditions than people living in rural regions. However, the rates of alcohol related hospital admissions per 10,000 residents were higher in the regional areas. The Standard Morbidity Ratio (SMR) takes into account the age and sex composition of a population and allows direct comparison of a region to the Victorian average. SMRs greater than 1 indicate a higher number of admissions compared to the average. SMRs less than 1 indicate fewer admissions than the average. SMRs tend to be higher in rural regions.

135 Again, Western metropolitan figures must account for the Melbourne CBD within its borders.

Table 5: Alcohol related hospital admissions

	Total Cases	Rate per 10,000	SMR
Barwon	2035	31.21	1.00
Grampians	1358	33.78	1.09
Hume	1504	31.62	1.03
Loddon	1774	31.72	1.03
Gippsland	1657	35.20	1.15
Western Metro[136]	3631	32.86	1.04
Northern Metro	4293	29.55	0.93
Eastern Metro	4675	25.00	0.78
Southern Metro	6635	31.98	1.01
Victoria Total	**27562**	**30.42**	

Source: Adapted from Table 1c: Hanlin et al. 1999, p. 10.

Thus the health regions with SMRs significantly above the State average are Gippsland, Grampians and the Western metropolitan region. Health regions with SMRs significantly below the State average are Northern and Eastern metropolitan regions. These figures generally correlate to the per capita consumption figures listed previously.

The study has broadly separated hospital admissions into *external cause admissions* (injuries, poisonings, accidents) and *disease admissions* (cancers, strokes, alcohol dependence etc).

Table 6: Alcohol related disease and external cause and hospital admissions

	Disease Rate per 10,000	Disease SMR	External Cause per 10,000	External SMR
Barwon	16.67	1.04	14.54	0.95
Grampians	15.45	0.98	18.33	1.21
Hume	15.51	0.99	16.10	1.07
Loddon	16.43	1.03	15.29	1.03
Gippsland	17.55	1.11	17.64	1.20
Western Metro	15.97	1.07	16.89	1.02
Northern Metro	14.58	0.96	14.97	0.90
Eastern metro	11.70	0.74	13.31	0.82
Southern Metro	16.45	1.04	15.54	0.98
Victoria	**15.09**		**15.33**	

Source: Adapted from Table 1d: Hanlin et al. 1999, p. 12.

The regions with disease admission rates significantly above the State average were Gippsland and the Western and Southern metropolitan regions.

The regions with external cause admission rates significantly above the State average were all in rural regions, namely Gippsland, Hume and Grampians.

136 Again, Western metropolitan figures must account for the Melbourne CBD within its borders.

The regions with disease admission *and* external cause admission rates significantly below the State average were Northern and Eastern metropolitan regions.

Conclusion

Generally, the Gippsland and to a lesser extent Grampians rural regions and the Western metropolitan region had the highest levels of alcohol consumption, hospital admission and morbidity rates in Victoria. Conversely, the Northern and Eastern areas of Melbourne consistently show figures that are significantly below the Victorian average in these categories. Further quantitative and qualitative research work will be needed to explain these data patterns.[137]

137 Clearly there will be variations occurring across and within regions. Variables such as socioeconomic status of local government areas, services and facilities provided within areas and general demographic patterns are important factors. An analysis of these figures is beyond the scope of this study. Later chapters of the *Alcohol Statistics Handbook* (Department of Human Services) provide a more detailed breakdown of the statistical data based on local government areas within the health regions.

12. Health and Medical Issues Pertaining to Public Drunkenness in Victoria

There is a voluminous literature that looks at the nexus between alcohol consumption, alcohol misuse and alcohol related harms. Chapter 11 has examined the figures with regard to (harmful) alcohol consumption patterns and their consequences and has also looked at the linkages between alcohol misuse and violent behaviour. The primary purpose of this chapter, however, is to:

- Discuss the problems facing those who may have to come into contact with intoxicated people in their professional lives. In particular, the experience of ambulance officers, medical officers, police and custody officials will be examined;
- Examine the general Victoria Police policy and operational guidelines regarding medical and health issues, paying particular attention to the care of intoxicated prisoners;
- Discuss the current Victoria Police Medical Services and their operation in this area;
- Look at Victoria Police training with regard to drugs and alcohol issues;
- Note the operations of the Melbourne Custody Centre regarding intoxicated prisoners.

There are some general and common themes that cross over these sections. The chapter will:

- Examine some of the health and medical risk factors that may affect certain people who are intoxicated in public places;
- Consider the impact that the decriminalisation of public drunkenness would have in the context of these issues; and
- Canvass any alternative procedures or processes that may need to be put in place should the offence of public drunkenness be decriminalised.

Much of the material gathered for this chapter comes from the evidence of professionals in the health and medical field with whom the Committee has recently met.

Issues relating to mental health and public drunkenness are discussed in Chapter 24.

Alcohol Related Injuries and Harms: The experience of those working in the field in Victoria

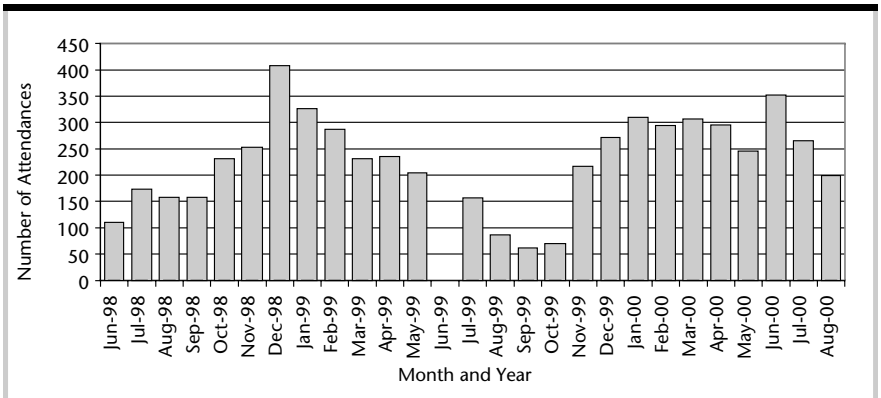
Ambulance Officers[138]

An analysis of the alcohol consumption, morbidity and mortality figures (Chapter 11) and the association between alcohol and violence (Chapter 11) clearly reveals that alcohol misuse with or without the use of other drugs poses a serious problem for those working in health, welfare, medical and policing fields. This is particularly true for ambulance officers. Mr Greg Cooper, Clinical Coordinator of the Melbourne Metropolitan Ambulance Service (MAS) makes the following comments:

> Although I'm in the management stream, I've been a paramedic for twenty something years and I think of any drug we deal with alcohol is the most insidious and behind many of the horrific things we deal with – particularly trauma wise. That's my brief summation and I think we should never underestimate the impact of alcohol on society and certainly from an ambulance service point of view it takes up a lot of our time both directly and indirectly, in treating patients for alcohol related injuries or crime.[139]

The Metropolitan Ambulance Service in conjunction with the Turning Point Alcohol and Drug Centre collates comprehensive figures with regard to alcohol affected cases attended by ambulances in metropolitan Melbourne. The Committee has been given data covering the period June 1998 to August 2000.[140] Although a thorough presentation and analysis of these figures is beyond the scope of this Report, it is salient to present a snapshot of ambulance attendance for this period.

Figure 7: Monthly totals of alcohol affected cases attended by ambulances in metropolitan Melbourne (June 1998–August 2000, excluding June 1999)



Source: Metropolitan Ambulance Service and Turning Point Drug and Alcohol Service 2001

138 Most of this section draws upon the views of officers from the Melbourne Metropolitan Ambulance Service (MAS). The Committee has also met with St John's Ambulance Service (Victoria). The views of St John's officers with regard to public drunkenness are more suitably discussed in Chapter 14, 'Policing Big Events'.

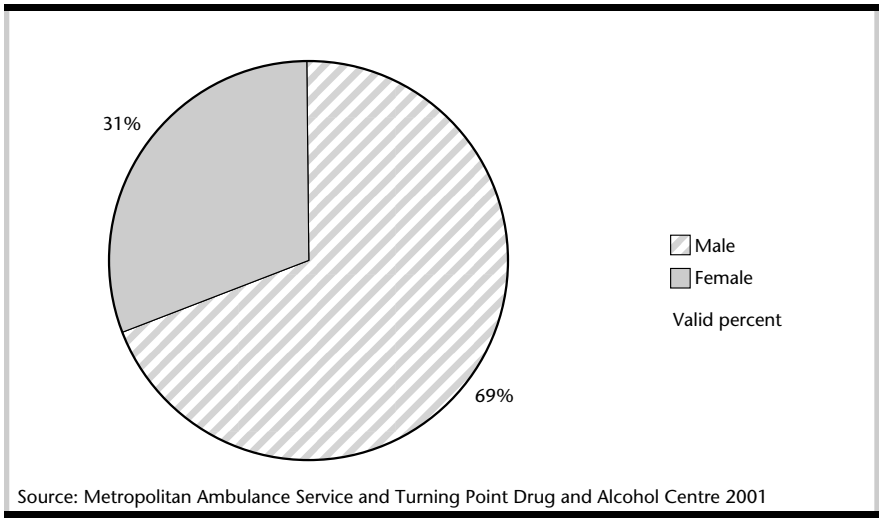
139 Mr Greg Cooper, Clinical Coordinator, Melbourne Metropolitan Ambulance Service in conversation with the Committee, 13 February 2001.

140 These are the most recent figures available. They exclude the month of June 1999. Unfortunately comparable figures for rural and regional areas have not been readily available.

For the period in question there were 5903 alcohol related cases attended by ambulances in metropolitan Melbourne. The mean per day measured over this entire period was 7.45 attendances with a standard deviation of 5.56. The daily range over the total period was between 0 and 44 attendances. As can be seen from Figure 7 there seems to be little discernible pattern in the attendances relative to the different months of the year, although in general terms attendances in the winter months are fewer than those in summer.[141]

A sex distribution for the same period reveals that 4045 males (68.5%) were attended and 1826 females (30.9%), with 32 persons not classified (see Figure 8).

Figure 8: Sex distribution of alcohol affected cases attended by ambulances in metropolitan Melbourne (June 1998–August 2000, excluding June 1999)

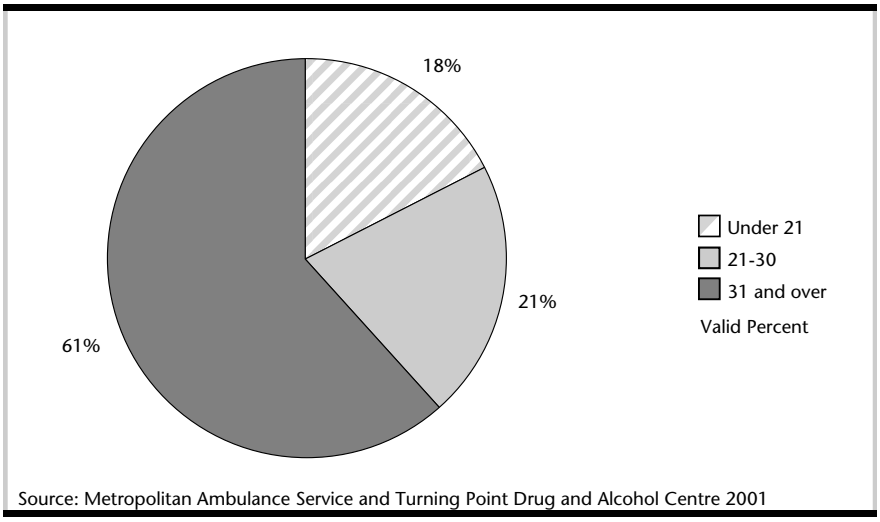


Source: Metropolitan Ambulance Service and Turning Point Drug and Alcohol Centre 2001

The mean estimated age for male attendees over this period was 38.32 and for females 35.23. Sixteen per cent of the sample (males and females combined) were under 21 years of age. Nineteen per cent of the combined sample was between 21 and 30 and 57.2 per cent of the combined sample were 31 and over (see Figure 9).

141 However, even with regard to summer figures some discrepancies can be noted. For example, it is difficult to account for the differences between December 1998 and December 1999. Ms Kate Cantwell, a paramedic with MAS, believes a possible explanation may be that December 1999 was a wet month and there were few Christmas parties or festivities outside. Conversely, December 1998 was warm and dry and 'everyone was partying outside', thus increasing the possibilities of accidents and injuries (Ms Kate Cantwell, Paramedic, Metropolitan Ambulance Service in conversation with the Committee, 13 February 2001.)

Figure 9: Age distribution of alcohol affected cases attended by ambulances in metropolitan Melbourne (June 1998–August 2000, excluding June 1999)



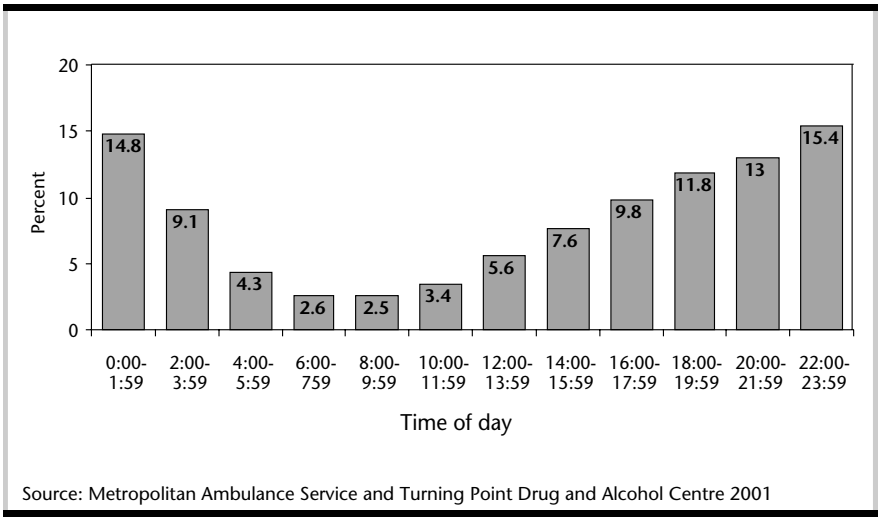
Source: Metropolitan Ambulance Service and Turning Point Drug and Alcohol Centre 2001

When a distribution of the figures is made according to metropolitan postcodes, it is clear that the overwhelming majority of attendances over the period take place in the Central Business District of Melbourne, including Southbank/Casino. Other areas in which 'call outs' are high include Footscray and the inner west, Prahran/St Kilda, Richmond, North Melbourne, Brunswick/Coburg, Thornbury/Preston, Dandenong and Frankston.[142]

As one might expect, a distribution of alcohol affected cases attended by ambulance officers in Melbourne according to the time of the day and the day of the week shows that the majority of attendances take place between 11 p.m. and 3 a.m. and from Friday to Sunday nights inclusive (see Figures 10 and 11).

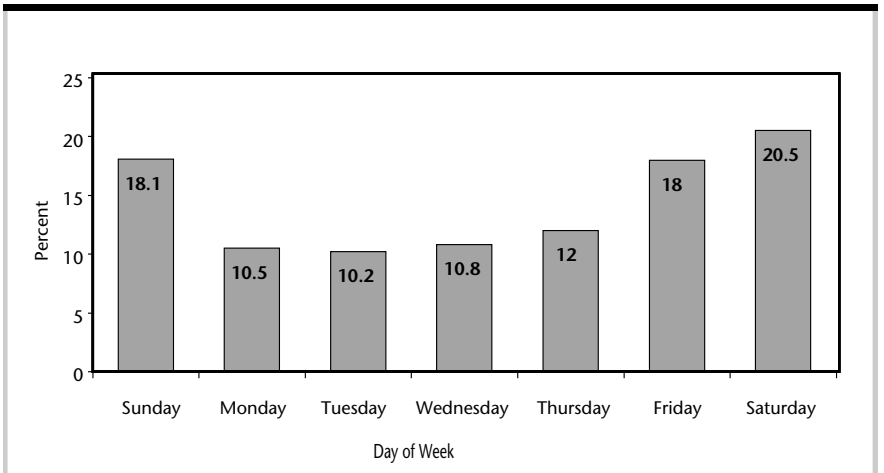
142 Note the following aggregates are based on combining the totals of the figures given for the individual postcodes of the specified areas. For example the figure for Brunswick/Coburg is the combined total for the postcode areas of Brunswick and Coburg respectively. CBD (601); Southbank/Casino (108); Prahran/St Kilda (379); Footscray/Braybrook/Maidstone (189); Collingwood/Fitzroy (184); Thornbury/Preston/Reservoir (162); Dandenong/Noble Park (164); Richmond (149); Frankston (130); Brunswick/Coburg (120); North Melbourne (113).

Figure 10: Time of day distribution of alcohol affected cases attended by ambulances in metropolitan Melbourne (June 1998–August 2000, excluding June 1999)



Source: Metropolitan Ambulance Service and Turning Point Drug and Alcohol Centre 2001

Figure 11: Day of week distribution of alcohol affected cases attended by ambulances in metropolitan Melbourne (June 1998–August 2000, excluding June 1999)



Source: Metropolitan Ambulance Service and Turning Point Drug and Alcohol Centre 2001

This data is reflected in the anecdotal evidence given to the Committee by officers of the Metropolitan Ambulance Service. Mr Lindsay Bent, the Team Manager for the Central Ambulance Depot based at St Vincent's Hospital, commented:

> From personal experience, just me only, I find that working in and around the city, I would go so far as to say 80% of my patients have some degree of alcohol involvement – whether that be a little bit or a lot. Something like 80% and I think that the laws that we're looking at at the moment are in place to protect the patient from any harm to themselves or to others and there have

> been many, many times where myself and other ambulance crews have activated the panic button because we've come unstuck because of an intoxicated patient. And I think that that law in itself is a fantastic thing to support us in our work and is a very powerful tool for us and for the police as well in their day to day activities.
>
> Because, as I say, it's just a big, big problem with all sorts of ramifications and it does protect us and it protects the public and I think the big consideration is if we have somebody who's intoxicated in the streets, they don't want to go to hospital and the police can't or don't want to take them. Well, effectively they've refused, they're not certified mental, so therefore we legally have to let them go and then they can endanger themselves by walking out in front of a car and getting skittled or getting involved in brawls or other unsocial behaviour such as that. So, it is a very big problem, and as I say we just see from the …perspective a huge amount of alcohol out there in the community to various degrees.[143]

The ambulance officers caution, however, that the statistics enumerated above do not necessarily tell the complete picture. For example, they do not reflect those patients who are the *victims* of alcohol related violence but who had not themselves been drinking or misusing alcohol. Greg Cooper commented that nonetheless, the victims of alcohol related crime are a substantial component of their overall workload:

> There are many assault cases that our patient isn't drunk but has been assaulted by drunks and that isn't reflected in our statistics but it's a fact that we know about... we don't keep the statistics on the patient we take that may not be drunk. So, if I was drunk and belt you up and you go to hospital in the ambulance that's not reflected in our statistics because you're not drunk, you're not alcohol affected only the person that inflicted the injuries, not the person we take so it wouldn't be seen in our statistics.[144]

Mr Bent and his paramedic colleague Ms Cantwell agree from their personal experience that Friday and Saturday nights are the most frantic with regard to alcohol related calls, and that being based in the central city many of their calls come from the entertainment areas of Southbank and the Casino. In evidence to the Committee, Mr Bent has commented that his crews would do an average of 40 jobs on Friday and Saturday nights in the central city area:

> I think 30-35 of those had alcohol involved somehow. So they go from anything from pubs, parties, in the street, car accidents, the Casino, it is just everywhere.[145]

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143 Mr Lindsay Bent, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

144 Mr Greg Cooper, Clinical Coordinator, Melbourne Metropolitan Ambulance Service in conversation with the Committee, 13 February 2001.

145 Mr Lindsay Bent, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

The ambulance officers the Committee met with believe that in attending patients who are, or subsequently become, violent there is an even higher incidence of alcohol related harm. In response to a question with regard to the incidence of assault towards ambulance officers in their daily work, Mr Cooper responded:

> I say almost 99% of the time it's because of alcohol – somebody's drunk. They're not in proper judgement, they see the uniform, it's an authoritative figure – they don't determine police or ambulance and bang they just go for you.[146]

The emergency medical officers that the Committee has met with have also commented on this high correlation between violent behaviour and alcohol.[147]

As the paramedics and ambulance officers the Committee have met with are based in the central city, it is clear that their experience of public drunkenness and alcohol related incidents is, to a large degree, related to parties, entertainment venues, nightclubs and the like. In particular, Southbank, the Casino surrounds and the nightclub strips are areas in which the 'revelling drunk' is most common. Whilst the ambulance officers stressed that the Casino itself has excellent alcohol management plans, the areas surrounding Crown Casino were a major 'pick-up area'. It is not unusual for 25% of the ambulance case-load to come from the Casino and its surrounds on a Friday or Saturday night. According to these officers, this is explained in part by the fact that intoxicated persons, particularly males, may be evicted from Casino premises when they are drunk. The ambulance service will often then collect the 'drunks' from nearby locations:

> The Casino seems to be quite on the ball with their alcohol management. They will throw the people out so then we will pick them up...So we'll pick them up down by the river, on the various walks and the various cross bridges. The Aquarium, down by the rowing sheds. Some of them even make it all the way to Flinders Street station. We pick them up from the surrounds.[148]

A major concern of many medical and allied professionals working with alcohol affected people is that in a variety of cases alcohol intoxication, with or without the combination of other drugs, can mask the symptoms of other (serious) illnesses or conditions. Common conditions mistaken for (mere) intoxication may include, brain trauma, diabetes, or aspiration pneumonia. Such persons may be in severe danger of choking on their vomit or internal bleeding. This is a complex phenomenon that will be examined in more depth below. It is sufficient at this stage to remark that one of the reasons that some ambulance officers and paramedics may be opposed to the decriminalisation of public drunkenness is their reluctance for

146 Mr Greg Cooper, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

147 Several research reports have discussed the correlation between alcohol use and violence. These are discussed in Chapter 11.

148 Ms Kate Cantwell, Paramedic, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

untrained or insufficiently trained people to be given the responsibility of making judgements about the clinical state of an intoxicated person.[149]

> The problem with alcohol is it masks a whole lot of other things. It's a very dangerous thing. It masks other diseases, it masks other injuries and so why we have a preference to transport these people who are unresponsive is because you don't know why they're unresponsive. Yes because they smell of alcohol but they may have taken, and there's plenty of evidence to say they've taken something else, they've taken other drugs. They've got significant head injuries that aren't obvious and so for us for people who don't respond or don't respond appropriately even, our preference is always to take them to hospital because we've been caught out numerous times on not transporting people who've had significant injuries or significant other medications... My personal experience would suggest that there is a significant risk with [sobering-up centres] taking someone you've assumed is in fact drunk and that's why they're semi-conscious or unconscious and waiting for them to wake up when they might not wake up because they've suffered a significant head injury or have other drugs. There is an enormous risk. I would be happier making an assessment on a heroin overdose let's say than I would on someone who is suffering from alcohol problems because it is easier to diagnose correctly that a patient has a heroin problem than it is to diagnose that their problem is only alcohol rather than something else that is clearly masked by the alcohol.[150]

From an operational perspective Ms Cantwell added the following caveat:

> I want to know what kind of medical support was going to be at this sobering-up centre. If it turns out that the patient is groggy and appears drunk. Yes, they've had six beers and ...then they've been hit with a chair and they're really bleeding into their brain which is why they're kind of a little bit – I want to know that if in a reasonable period of time this patient doesn't respond then they can be very quickly x-rayed and that there is suitable [treatment], not just like a nurse, but a fully qualified doctor who's willing to take responsibility for the patient, so it's just not a centre full of chairs like a waiting room but it is a medical facility. So, if something does go wrong a patient does go unconscious and has a huge vomit that they have the appropriate level of care to be able to clear the airway and suction the airway and give the right amount of drugs.
>
> Now, hopefully 99% of the time, the patient will just sober up and go home but I'd hate to take someone there as opposed to a medical centre in case something goes wrong.[151]

149 It must be stressed that although this seems to be a widespread view amongst ambulance officers including both clinical management and 'on the ground workers', it is neither the official view nor a submission of the Metropolitan Ambulance Service.

150 Mr Greg Cooper, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

151 Ms Kate Cantwell, Paramedic, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

The training of ambulance officers and paramedics stress the importance of not confusing alcohol intoxication with other forms of altered or impaired consciousness states. Paramedic training in Victoria is conducted by the Monash University Centre for Ambulance Paramedics Studies (MUCAPS). Mr Mark Chilton, Senior Lecturer at MUCAPS discussed paramedic training with regard to alcohol and drugs as follows:

> The course is composed of both academic stages at Monash, and in-field work with Clinical Instructors. Alcohol is discuss[ed] in Stage Five of the course along with the management of the patient who has taken illicit drugs. More specifically students discuss the role of alcohol within our society as a legal drug, and the implications for the provision of ambulance care. It is also mentioned throughout the course, both in lectures and scenarios in the context of clinical problem solving, such as in the management of the patient with altered consciousness, seizure, diabetes and so forth. We do not have a stand-alone lecture on the question of alcohol, its use and abuse, and its effects on illness/injury.[152]

The ambulance officers with whom the Committee met felt that retaining the public drunkenness offences offered them at least a certain level of personal security in their daily work. This is because they can readily call upon police to assist them with their duties. More importantly, however, the ambulance officers felt that the current laws were the most suitable framework for ensuring the safety and protection of the intoxicated person. This is particularly the case given the generally excellent working relationship the ambulance service has with Victoria Police. The ambulance officers stress that the police will often use their discretion under section 13 of the Summary Offences Act not to take an intoxicated person into the police cells but to facilitate that person's admission to hospital. This is particularly the case when ambulance officers feel that an intoxicated person is in need of medical treatment but he or she is reluctant to go in the ambulance willingly:

> Officers are instructed if they're in any doubt, transport [to hospital]. And if they don't transport then they are required to attempt to have the patient sign the [patient release form] saying they don't require transport and that's about as far as we can go. We can't shackle them, we can't throw them in the back and all those sort of things. Sometimes you feel like that's the appropriate thing to do and sometimes you might request the police to assist you to coerce the patient to go where you believe they should go.[153]

Ms Cantwell pointed out what she perceives to be the advantages of the current laws:

> You can get the police to come and no, you don't want them to take the lead, you don't want the patient to be arrested but you feel that the patient isn't of sound mind but the patient feels that he is. We can't do anything about it. The police can kind of "Ah – go to the cells or why don't you go in this nice warm

152 Mr Greg Chilton, Senior Lecturer, Monash University in correspondence with Mr Greg Cooper provided by Mr Cooper to the Committee, 14 February 2001.

153 Mr Greg Cooper, Clinical Coordinator, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

> ambulance and they'll give you a blanket" and we can ease them into the hospital system that way.[154]

Mr Cooper stressed the excellent judgement of both ambulance officers and police under the legal regime as it currently exists:

> With the current state of affairs with the stats required at the moment, the ambulance crews and police exercise fantastic judgement. Because the law is there that they can lock up this person because he's drunk in a public place, doesn't mean that they will. We'll check him out and look at other options like does he need hospital, does he just need to be put into a taxi and the taxi driver given his $50 from his wallet to make sure he'll get home OK. The judgement is just – sometimes a police car will just say we'll just run him home ourselves because he's just a happy little drunk and he's fine. He might be with friends. Excellent judgement is used so the laws as they are now are not always exercised to arrest everybody. We sort of judge everything on it's own individual merits and go from there. And things work really well like that.[155]

All representatives of the Ambulance Service with whom the Committee met felt that any substitute system that may be put in place, should public drunkenness offences be decriminalised, must address two crucial issues.

First, the police must have the power to apprehend intoxicated persons and transport to hospital if necessary.

Second, there is a crucial need for sobering-up centre staff to have expert training in, at the very least, recognising when a person may be in need of emergency medical attention.

Medical and Nursing Staff and the State Coroner of Victoria

Medical staff with whom the Committee has met share the concerns voiced by ambulance officers. Of particular importance were the views expressed by Professor Peter Cameron, President of the Australasian College for Emergency Medicine and specialist at the Royal Melbourne Hospital, Dr Andrew Dent, Director of Emergency Medicine at St Vincent's Hospital, Melbourne, and Dr Edward Ogden, Senior Medical Officer with the Custodial Medicine Unit of Victoria Police.

The views of these doctors are particularly salutary. Dr Ogden plays a key role in the training and dissemination of information to police officers with regard to issues pertaining to alcohol and other drugs. He also acts as an adviser to police who have people ostensibly under the influence of alcohol in their custody. Dr Dent and Professor Cameron practise in inner city hospitals that treat many such patients, particularly those who may be homeless, indigent or violent.

Dr Dent states that deep (alcohol) intoxication and concern about conscious state or behaviour was the prime reason for admission for 494 patients of approximately 30,000 attendances, or 3%–4% of presentations at St Vincent's Emergency

154 Ms Kate Cantwell, Paramedic, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

155 Mr Greg Cooper, Clinical Coordinator, Metropolitan Ambulance Service, in conversation with the Committee, 13 February 2001.

Department in the year 2000.[156] These figures are separate from other cases where alcohol has contributed to or been associated with admissions (for example, motor accidents, domestic violence, and chronic alcohol related illnesses).

All doctors who presented to the Committee were concerned that sobering-up centres without expert staff and training would not necessarily have the ability to either recognise whether a seemingly intoxicated person is in fact suffering a more serious condition or deal with that situation should it escalate into an emergency. Dr Dent stated:

> The risks of intoxication hiding illness or injury are well recognised and documented in the medical literature. Similarly, illness presenting in the guise of intoxication (altered behaviour) is another diagnostic and management challenge. Specifically, such potentially preventable or treatable conditions are complications of diabetes, head injury, epilepsy or seizure...various rare metabolic conditions, meningitis and other severe infections, oxygen lack from various causes, etc.[157]

Professor Cameron took this point further:

> The issue that we're trying to highlight here is that experienced doctors let alone lay people have trouble in determining whether it's drunkenness or some other problem that's going on and I think if you were picking up people off the street and taking them directly to a cooling off centre you will get all sorts of disasters happening. They need to be medically assessed unless there is a clear sort of history associated with that person.[158]

The fact that even experienced doctors may not recognise that ostensible drunkenness is in fact masking the symptoms of more serious conditions has been commented upon in several Coronial Inquiries. There have been a number of cases concerning alcohol related deaths investigated by the State Coroner's Office (Victoria). These have included:

Duggan, Case 4676/89 – April 1991

Walsh, Case 2844/91 – May 1992

Bos, Case 2323/92 – January 1995

Williams, Case 3326/94 – December 1996

Mallee, Case 309/98 – August 1998

Weightman, Case 348/97 – May 1999

Knorr, Case 3072/98 – July 1999

Foster, Case 1886/97 – January 2000.

156 This is compared to 496 intravenous drug use presentations for the same year with or without the complications of alcohol ingestion. Notes prepared by Dr Andrew Dent, Director of Emergency Medicine, St Vincent's Hospital for the Drugs and Crime Prevention Committee.

157 Notes prepared by Dr Andrew Dent, Director of Emergency Medicine, St Vincent's Hospital for the Drugs and Crime Prevention Committee.

158 Professor Peter Cameron, College of Emergency Medicine/Royal Melbourne Hospital, in conversation with the Committee, 13 March 2001.

Most of the above cases discuss the problems associated with alcohol masking the symptoms of more serious conditions, such as brain trauma, which have resulted in the death of the person who is the subject of the inquest. Four of these deaths occurred in police cells or watch-houses. In each of the four cases in police custody the deceased was incarcerated for the offence of public drunkenness. Most of the other deaths occurred in hospital after the police had transported the deceased. One of these deaths (Walsh) was attributed to suicide (hanging in a police cell). Three of the deceased, including the case of suicide, were identified as Aboriginal. In all of these cases the deceased had been heavily drinking with or without the addition of other drugs. In at least five of these cases the deceased had a long history of being arrested for public drunkenness.

Numerous coronial recommendations were made in these cases. These concerned four broad areas:

Medical management of people 'assumed' to be drunk;

Police management of ostensible 'drunks';

Police training with regard to managing 'drunks'; and

Police training with regard to interacting with Aboriginal people (Walsh).

Most of the recommendations with regard to hospital procedures have been implemented. As a consequence of the case of *Williams*, the police medical checklist has been upgraded. As stated, however, it is of concern that the Committee has met with police representatives that do not seem to be aware of the checklist's existence. Other recommendations have not been taken up. For example, the following recommendation of Coroner Johnstone in the case of *Williams* has not been implemented:

> Where police are involved in conveying detail of injury events to medical and nursing staff it may be reasonable to consider an information sheet to be filled out by the investigating officer and presented to the hospital staff on attendance with the injured person. This may provide detail with potential value to the treating medical practitioner.

The reason for this according to Victoria Police Senior Medical Officer, Dr Edward Ogden is that:

> The police should not have a medical hand-over form because they should not be providing medical transport. The community provides an ambulance service for that and it's for the ambulance service to extract useful information at the scene to pass on to the hospital. That's not a policing function (Dr Edward Ogden in conversation with the Committee, 27 March 2001).

Whilst not overstating the case, there is clearly a link between the ingestion of alcohol (and other drugs) and deaths that require investigation by the Coroner after occurring in police custody or within police presence. Appendix 5 shows tables detailing the deaths of people in police custody and presence from 1990–2000 that were related, at least in part, to alcohol ingestion. These tables are collated from Victoria Police Form 83 which police forward to the Coroner's Office for all reportable deaths.

The Committee met with the State Coroner, Mr Graeme Johnstone who recognises that police practice is not always perfect. Nonetheless, for the most part he believes the police are reasonably well trained. They are able to at least recognise that an intoxicated person may be in need of further medical attention and accordingly they are able to make arrangements for that person to be transported to hospital or be attended by a doctor:

> I think one of the benefits of having police is that you've got at least individuals who can be trained in managing drunks but often we see instances where the issue is not appropriately recognised as to what the difficulties are, the head injuries, the potential for actually identifying somebody as being drunk inappropriately because there's a smell of alcohol or whatever when in reality they might have head injuries... The process of actually making sure they're well monitored if they're locked in the cells. The process of giving the right information about the circumstances in which they're found to the medical profession. But I think if you go down the track of decriminalising, what system do you put in place whereby you have a body of people across the State that actually are trained and at least have rudimentary training in relation to how to manage them and have the accommodation available for them.
>
> I think that's the down side of decriminalising because then you won't necessarily have your police managing them in the process.[159]

The Coroner adds that the police will still be required to take a role in relation to intoxicated persons in small country centres should the decriminalisation of public drunkenness take place. In his view it is unlikely that sobering-up centres, given their cost, could cover all areas of the State. As a state-wide agency, police are able to 'fill in the gaps' as long as they are sufficiently well trained in areas pertaining to alcohol and other drugs.

On the other hand, despite some reservations about the concept, the representatives of the medical profession that the Committee have met with see sobering-up centres (with adequate safeguards) as being preferable to having intoxicated persons in police cells.

Concerns about the medical complications associated with alcohol intoxication, and indeed other drug use, are not restricted to the medical and health professions. Those who work in sobering-up centres also share them. Mr Glenn Howard, the Director of Ngwala Willumbong, the agency responsible for the Melbourne Sobering-Up Centre for Indigenous people, is particularly concerned about the ability of sobering-up centres to deal with physically ill clients, particularly those with poly-drug use problems and/or psychiatric conditions, without appropriate staffing, training and funding levels.[160]

159 Mr Graeme Johnstone, State Coroner of Victoria, in conversation with the Committee, 20 February, 2001.

160 The views of Mr Howard are set out in the section later in this chapter, 'Problems in dealing with Poly-Drug Use'.

All relevant parties such as doctors, ambulance officers, nurses, police and the State Coroner are in agreement that if public drunkenness is decriminalised and an alternative system based on sobering-up centres is established, those centres must be of the highest quality in terms of staffing levels, training and qualifications. A variety of suggestions has been put to the Committee as to how such centres could be operated. These range from having the centres attached to hospitals or medical clinics to having a resident doctor on the premises. At the very least it is thought that sobering-up centre staff should be adequately trained to recognise when an intoxicated person is in need of emergency medical assistance. Dr Dent suggested that, ideally, a nurse experienced in triage should be employed by the sobering-up centre. The Coroner believes any alternative system of sobering-up centres must have adequate auditing systems to ensure intoxicated persons are appropriately cared for. Professor Cameron, whilst preferring the option of sobering-up centres to police cells, stated they must work to professional protocols:

> Well, if that's the choice [between police cells and sobering-up centres] then I think the sobering-up centre with protocols would be much better. Yes. There are certain things that you could add in to the protocols like maybe a finger prick glucose, breath analysis, a number of things which could be done by a lay person which would immediately ring alarm bells if they didn't co-ordinate with what you're seeing. So, there are ways you can limit your risk...
>
> I think if there's any doubt they need to go to an emergency centre because it is just difficult but in the cases where you know we've seen a guy that's had ten beers and he's now causing trouble and you want to sober him up somewhere that's where you've got a clear history and behaviour that is consistent with that – that's fine. Where you've got a guy that's lying on the footpath that's unconscious or semi-comatose, I mean even though it may be just drunkenness you run a fairly big risk taking him to a drying out centre.[161]

Dr Edward Ogden, Senior Medical Officer with Victoria Police Custodial Medicine Unit believes that whilst in theory the concept of the sobering-up centre is a good one, such centres cannot be 'done on the cheap':

> I mean the provision of sobering-up centres would obviously meet the needs of the community in that it would potentially remove some of these violent, disruptive, scary individuals from the community – somewhere where they would be safe and where the community would feel safe. The difficulty would seem to be that a sobering-up centre could not be done on the cheap, it would be very expensive – it would require a very high staff to client ratio and be a very expensive facility to run and would be hard to know what size facility to build because purely there'll be occasions like New Year and similar when the numbers might conceivably be very high. There may be lower demand during the week and higher demand Thursday, Friday, Saturdays so the concept's a good one but it would have to be done really well to be better than nothing.[162]

161 Professor Peter Cameron, in conversation with the Committee, 13 March 2001.

162 Dr Edward Ogden, in conversation with the Committee, 27 March 2001.

In response to a question from the Committee as to whether sobering-up centres should be attached to hospitals, Dr Ogden replied:

> It would have to have some sort of clinical input and...I would expect that the professionally run sobering-up centre would do the whole Glasgow coma scale not just ask someone how they responded, that they would be taking proper observations of people, looking at pupil reactions, looking at pulse and blood pressure and the whole physiological wellbeing of a person, just not can you answer questions.
>
> It has been suggested to me in other forums that we should get the police doing more clinical stuff and for obvious reasons I have resisted. I can't see how that would be done and would be done well. It seems to me that the police should be screening out those people who need medical help and then getting it – not trying to be all things to all people.

Dr Dent stated that sobering-up centres could be possibly linked to hospitals if they were not funded at the expense of a hospital's core functions:

> I think that most wouldn't see it as their core business but if anything was adequately resourced I'm sure that you would find a group of people who had parallel expertise for instance with alcohol withdrawals, de tox centres and so on, so that this would be a channelling way for rehabilitation and those sorts of things. There would be some interest from some hospitals.[163]

A major concern of health and medical personnel with regard to alcohol and drug affected persons is their potential for violent behaviour and disruption, particularly in settings such as emergency departments. Ambulance officers clearly feel they need and expect the support of police to deal with violent offenders. Hospital staff also liaise with police with regard to violent or potentially violent patients. They caution, however, that the problem should not be exaggerated and that much of the violence is associated with poly-drug users and/or people with psychiatric conditions. In the case of St Vincent's Hospital, it would be rare that staff would call in police with regard to intoxication per se:

> The next question was about what circumstances would hospital staff contact the police in relation to intoxicated people? Well, the answer to that really is only if their behaviour was in some way a threat to staff or to other patients, which does occur. Or they'd committed a crime like theft or whatever.
>
> Intoxication as it is would not be seen as a reason for calling police. Now there was [a situation] when our internal security systems were overwhelmed, so we have an internal system of dealing with people who are acutely disturbed which involves calling down people who aren't security staff… We had nearly 400 instances like that last year and about 30 instances where they were overwhelmed for some reason or other and police were called.
>
> This would be fairly similar amongst all the major hospitals in Melbourne. Usually it's not due to alcohol alone – it's in conjunction with other drugs or

163 Dr Andrew Dent, in conversation with the Committee, 13 March 2001.

> some other psychiatric issue so alcohol alone would very rarely result in this sort of outcome.[164]

St Vincent's Hospital states they have 'no objection to the decriminalisation of drunkenness per se', as long as any alternative systems put in place must safeguard the interests of both intoxicated persons and staff. They also believe there is a need for a different type of approach where the intoxicated person in question is violent, or potentially so, and/or suffering from some form of altered or disturbed behaviour. According to Dr Dent, currently there is no effective service to deal with people who are not merely intoxicated but intoxicated, disturbed and volatile. In such cases police cells and sobering-up centres are not appropriate because medical attention may be required, yet such people are disruptive of emergency departments:

> [a]s much as anything what we're talking about is acutely disturbed behaviour and this is a very difficult group of people for any reason…but what do you do with the person who requires two police to hold them down who's just trashed part of a supermarket or a bank or something, who's clearly out of their mind, you take them to an emergency department which might be on hospital by-pass or something where there might be 20 people, some with chest pain and asthma and all sorts of medical [problems] – a little old lady with a broken hip – and suddenly you bring in this sort of hoary lot of policemen and all this sort of excitement and so on going on.
>
> Maybe we should be taking them to another well facilitated area where the people who are acutely injured and acutely sick can get treated in an emergency departments and those who are acutely behaviourally disturbed get treated in a separate area...perhaps not necessarily an emergency department but an acute behavioural centre of some sort where that you've got input from psychiatrists, from drug and alcohol physicians, from emergency physicians so you can find out actually what's wrong with them.[165]

Dr Dent has presented the Committee with a draft proposal for such an Acute Behavioural Centre. Whilst the proposals may merit further consideration this is beyond the scope of this Inquiry's brief.

Violent behaviour of intoxicated persons is not restricted, of course, to emergency departments. A concern of some respondents is the potential for violence of people attending sobering-up centres. The Coroner posits some of these dilemmas:

> I think the other problem you have is that if you bring people into a drying out centre then you're going to have people that are violent, sometimes violent. Now how do you manage that in relation to the occupational health and safety of those who are managing the centre?...
>
> And then you bring the police into that so you've still got the problem of bringing the police into the process. And you've got the problem of them maybe becoming violent at any stage of their drying out process...

164 Dr Andrew Dent, 13 March 2001.

165 Dr Andrew Dent, 13 March 2001.

> So how do you handle that and how do you resource it. It's twenty four-hour service. Obviously has to be. And then you've got the attendant problem of people wanting to contact the drying out centre – relatives and that sort of thing. I agree there's a whole lot of problems, so it's complex.[166]

Clearly, whatever the outcome of this Inquiry, it is likely the police will still play a role with regard to the apprehension, detention and transport of intoxicated persons. Therefore it is crucial they are aware of the issues and potential problems that alcohol and other forms of intoxication pose.

The following section discusses police guidelines regarding care of prisoners in their custody, with a detailed appraisal of both police procedure and training in the areas of drug and alcohol related issues.

Police Policy and Practice Relating to Health and Medical Issues

Victoria Police claim that it 'constantly reviews its policies and procedures relating to intoxicated and drug affected people, and responds to the recommendations from inquests and other reviews such as the Royal Commission into Aboriginal Deaths in Custody'.[167] Policy and procedural changes that have been made subsequent to the Royal Commission in the area of drugs and alcohol include:

- placing more detailed requirements on watch-house keepers, and operational members in general, relating to the assessment, checking and treatment of prisoners who are intoxicated or drug-affected;
- introducing the Prisoner Information Record to record the health issues, injuries, medication and like information of prisoners;
- reinforcing the ability of prisoners to contact a relative or friend, to whom the police may then bail the prisoner into their care;
- requiring members to contact a medical officer as soon as they have concerns about a prisoner's health;
- creating a dedicated Custodial Nursing Service to provide a specialist clinical nursing service to people in police custody, with an emphasis on preventing suicide and self-harm in watch-houses;
- constantly reviewing relevant Victoria Police instructions, in particular Chapter 10 of the *Victoria Police Manual*, which relates to prisoner care;
- introducing a custody training package for sub-officers on their risks and responsibilities towards prisoners;
- monitoring of cells via closed circuit television; and
- producing a Drug and Alcohol Affected Persons in Custody desk pad and pocket card that has been issued to all watch-houses and summarises key procedures and specialist advice.

166 Mr Graeme Johnstone, State Coroner in conversation with the Committee, 20 February 2001.

167 Supplementary Information from Victoria Police to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, December 2000.

Victoria Police stated that the above examples 'demonstrate the *welfare focus* required of members when dealing with alcohol or drug affected people'.[168]

Victoria Police Manual – Operating Procedures

The two chapters of the Victoria Police Manual most pertinent to the custody and care of intoxicated prisoners and detainees are Chapter Ten (Prisoners) and Chapter Twelve (General Policing). The paramount consideration is to ensure the welfare, safety and security of the prisoner.

Specific provisions include:

- Watch-house keepers must be satisfied that placing the prisoner in the cells is appropriate and that they are medically fit to be detained (10.1.2.1).
- The Police Medical Checklist must be visibly displayed in the prison reception area and its instructions followed by members (10.2.1.1).
- Watch-house keepers commencing duty must liaise with out-going keeper in relation to the wellbeing of prisoners and, in particular, advise of any prisoners that:
  - are intoxicated or drug affected;
  - are a high risk (suicidal, self injuring);
  - have an existing illness or injury, or
  - have special needs.
- Generally, prisoners who are to be kept in police cells for long periods or overnight must be kept at Category A police stations. Category A stations have 24-hour operation and support services for observation of prisoners with a designated watch-house keeper. Only in exceptional circumstances should prisoners be lodged overnight in B or C category Stations.[169]

Intoxicated Prisoners

- Where practicable intoxicated prisoners should be kept apart from other prisoners and *not* to be provided with meals (10.3.2.5).
- Unless circumstances dictate otherwise, persons detained for being drunk only must be given the opportunity to communicate with a friend, relative or legal practitioner or such communication made on their behalf (10.3.2.5). Special provisions apply for Aboriginal people.
- Intoxicated persons or persons in an impaired conscious state in the care[170] of police must be assessed against the Coma Scale found in the Medical Checklist.

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168 Supplementary Information from Victoria Police to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, December 2000.

169 B stations have 24-hour operation but insufficient staff to provide support observation. C stations are not 24-hour stations and their cells must be used for overnight accommodation only in exceptional circumstances. Category B and C cells may need to be used in some country districts where the remoteness of a Category A cell makes transfer impractical.

170 This includes care, custody and control of police and would therefore also apply to circumstances where an intoxicated person comes into contact with police outside the police station.

The current Medical Checklist and policy was produced by the Senior Medical Officer of the Police Custodial Medicine Unit in November 1999 and is a modified version of the Glasgow Coma scale used by medical personnel to check the consciousness level of patients in their care. The Coma Scale ranges from scores of 1 to 5. The lower end of the scale (1 and 2) are where there is either no response or simply moans or groans. In both cases police officers are advised to send the prisoner by ambulance to hospital.[171] A score of three connotes that the prisoner's utterances are meaningless or unintelligible. In such a case a person should be transferred to hospital or urgent medical attention sought. If a person scores four they appear to be confused about their identity, time or place. In such cases if after inquiries have been made, alternative explanations cannot be found (dementia, Alzheimer's disease, intellectual disability, or language difficulties), a medical opinion should be sought and the person regularly monitored for signs of deterioration. A score of 5 means the person is clearly oriented and no action is required.

- All prisoners in custody are required to be checked by an officer at least every four hours. In the case of intoxicated persons or persons with other health problems, checks are required to be more frequent and a verbal response check done at least every half hour. If a verbal response cannot be elicited, medical attention must be sought immediately (10.3.4.3).

The Medical Checklist has been disseminated to all Victoria Police stations and members by way of display posters, desk pads and pocket versions. It is also included in the Operating Procedures Manual accessible to all police officers on the Victoria Police intranet site. Victoria Police state that the use of the Medical Checklist and associated procedures is intended to raise members awareness of:

- the signs and risks associated with varying levels of intoxication, in particular the responses required for each level of intoxication; and
- the potential for intoxication, or the signs of intoxication, to mask other medical conditions, often more serious, eg. head injuries.

Accordingly, the emphasis of the policy is on ensuring members have sufficient guidance to provide the appropriate duty of care for people in police cells, and in police custody generally, who are intoxicated or appear to be intoxicated.[172]

Notwithstanding the ostensible thoroughness with which the Medical Checklist is disseminated to police members throughout Victoria, the Committee is concerned that in the meetings and discussions it has had with police representatives and officers in Victoria and through anecdotal evidence that has come to its attention, there seems to be scant knowledge of the Checklist's existence let alone its content. The last witness

171 Police Operating Procedures and Police Training Manuals specifically state that persons in an impaired conscious state must **not** be transferred to hospital in a police vehicle unless exceptional circumstances exist. Exceptional circumstances may include an urgent need for medical treatment and there is reason to believe ambulance transportation and/or medical attention will be delayed.

172 Correspondence from Noel Ashby, Acting Deputy Commissioner, Policy and Standards, Victoria Police, 12 April 2001.

to present evidence to the Committee was Dr Edward Ogden, from the Victoria Police Custodial Medicine Unit. Dr Ogden was the only police witness who mentioned the existence of a revised Medical Checklist. The Committee has been surprised and a little puzzled that it took so long to bring this to their attention.[173]

Indigenous Prisoners and Prisoners with Psychiatric Conditions[174]

Special operating procedures apply to the care and control of such prisoners whether or not they are intoxicated. These procedures are discussed in further detail in chapters pertaining to these groups. Suffice to state that in the case of Indigenous people, police officers must make contact, where available, with a member of a Community Justice Panel, an Aboriginal sobering-up centre where the person is intoxicated, and the Victorian Aboriginal Legal Service (12.5.2.1). If appropriate, the watch-house keeper will release the person in custody to the care of the Centre worker 'who will then be responsible for the person's welfare until sober' (12.5.2.1). If a person identifies as of Aboriginal or Torres Strait Islander descent that fact must be entered on the LEAP system and the Attendance Register.

Victoria Police Medical Services

The two key services attending to and concerned with the health and wellbeing of people in police control and custody are the Custodial Medicine Unit (CMU) and the Custodial Nursing Service (CNS).

The role of the CMU is to provide general medical services to individuals in police custody on a 24-hour per day basis. The service includes medical advice, initiation of treatment, or the assessment of fitness for custody. Each Victorian police division has one or more local practitioner directly available on call for assistance and advice.

The Senior Medical Officer of the CMU is responsible for policy development and oversight of all issues pertaining to the health of prisoners in police custody. This role extends to the dissemination of medical information to police officers on relevant areas, including alcohol and drug use, and the provision of teaching and training in these areas where appropriate.

The Custodial Nursing Service plays a similar role with regard to the health of prisoners in custody. Recent communications from Victoria Police outline the role of the CNS.

The Custodial Nursing Service was formed in 1998 to assist members to meet their duty of care obligations towards people in their custody. The Service is part of the Custodial Medicine Unit, General Policing Department. The Custodial Medicine Unit is responsible for ensuring that people in Victoria Police custody receive the medical care they require. The *general* medical services that the Unit provides include:

- clinical medical services for people in police custody;
- advice to police on the health needs of prisoners;
- assessment of prisoners' mental status;

173 For a copy of the Victoria Police Medical Checklist see Appendix 6.

174 For further discussion of mental health issues see Chapter 24.

- liaison with medical officers and the Community Liaison Division, General Policing Department, on the best management of people in police custody with identified health problems; and
- education and research programmes in custodial medicine.

Within the Custodial Medicine Unit, the Custodial Nursing Service provides a *specialist* clinical nursing service to people in police custody, with an emphasis on preventing suicide and self-harm in watch-houses. This service includes:

- assessing the physical and mental fitness of persons to remain in police custody, in consultation with medical practitioners and other health providers;
- coordinating contact between police, persons in custody and health services;
- liaising with the Prisoner Coordination Unit, General Policing Department to determine the health priorities for movement of prisoners; and
- maintaining health records and statistical data.

The Service was originally established to service the Melbourne metropolitan area (ie. within one hour's drive of Melbourne City). However, since July 1999 the Service has focused on broadening its coverage to regional stations with active cells and now provides a state-wide telephone service to all stations with prisoners in cells.

The Custodial Nurses work with local on-call doctors who prescribe medication and visit cells to assess prisoners that the Nurses cannot see or who require specialist medical attention. Within the Melbourne metropolitan area, Custodial Nurses are available to visit cells to examine prisoners in person. Approximately every six months the Custodial Nurses travel throughout regional Victoria visiting police stations with active cells to provide training for watch-house keepers on the signs and required responses for various medical situations. Regional police stations use local doctors or hospitals as needed.

The Custodial Nurses are either registered nurses, psychiatric nurses or both. Accordingly, specific training in drug and alcohol issues is not required, as such issues are covered by their qualifications.

Specific information with regard to the management and ongoing care of prisoners with medical or psychiatric illnesses can be found in section 10.3.3 of the Victoria Police Operating Manual.

Victoria Police Drug and Alcohol Training[175]

Training of Victoria Police officers with regard to drug, alcohol and general medical issues can be basically divided into several types depending on the rank of the officer concerned as follows:

- Probationary Constables Training
- Constables Training
- Sergeant Training

175 Copies of training modules sent to the Committee by Victoria Police were given on an 'In Confidence' basis. As such the ensuing discussion is at a level of generality that respects this request.

- Operational Safety and Tactics Training

All modules provide information on legal requirements and Victoria Police policy with regard to dealing with intoxicated and/or drug affected persons. Training is provided by District Training Officers, Lecturers at the Police Academy in Glen Waverley and other Police training units. The level of detail and sophistication may vary depending on the level of responsibility and rank held by the relevant officer.[176]

Probationary Constables

Probationary Constables learn from modules which deal with inter alia:

- Security of Prisoners and Problem Detainees:

  This module covers the welfare responsibilities of watch-house keepers, the recording of required information in the Register of Prisoners and the care to be exercised when handling and monitoring intoxicated, drug affected, mentally ill and suicidal persons. It also instructs in the use of the Medical Checklist and responding to ill and injured prisoners;

- Roadside Impairment Assessment;
- Criminal Offences – Drugs;
- Drug Harm Minimisation;
- Field Experience Week:

  During this week recruits attend operational police stations where they have the 'opportunity to observe alcohol affected persons'.[177]

Constables Training

This training is provided to probationary constables seeking to become constables in four single weeks of training throughout their two-year probationary period. Training in the area of drug and alcohol issues build upon that taught during the recruit stage. The module includes:

- Prisoner Welfare

  This unit covers the role of the watch-house keeper, the need to identify danger signs (such as breathing difficulties, the level of intoxication, alcohol withdrawal symptoms, mimic conditions) and the procedures for when a person is found in an impaired conscious state. 'Instructors stress that when a person's level of intoxication or drug use reaches a certain level, it becomes a medical and not a law enforcement issue'.[178] Procedures involved with the prisoner Medical Checklist, and potential asphyxia and other medical complications for alcohol and drug affected persons, are re-introduced.

176 Indigenous community groups have argued that Victoria Police training at all levels and of all types needs to be conducted in a manner that respects and understands Indigenous culture. A discussion of the place of training in dealing with Indigenous people is to be found in Chapters 22 and 23.

177 Supplementary Information from Victoria Police to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness, December 2000.

178 Supplementary Information from Victoria Police, December 2000.

- *Summary Offences Act 1966*

  In this unit probationers are instructed on police powers to arrest and detain for a person's safety or protection of the public. 'The levels of intoxication are highlighted, in particular that minor impairment does not justify taking a person into custody while extreme levels of impairment are a medical issue and not a law enforcement one'.[179]

Other units of peripheral relevance which probationers undertake concern the *Liquor Control Reform Act 1998* and lectures presented by the Department of Human Services with regard to prisoners with psychiatric or intellectual disabilities.

Sergeant Training

The most important aspect of sergeant training as it relates to drug and alcohol issues is the Custody Welfare Training Package that is delivered by the Police Supervisory Training Unit in conjunction with the Custodial Medicine Unit. The Sergeant's Course was until recently an eight-week course delivered to senior constables. It has now been changed to a 20-day course that is anticipated to commence in late 2001. The Prisoner Welfare session has been extended to a 3/4 day session rather than the afternoon allocated in the previous course. Victoria Police explains the rationale for such changes as follows:

> It is intended to retain the same content but more time is available and allocated for further discussion/lecture and facilitation of high risk areas of the subject. In addition, students who will be attending the new Sergeants' Course will have already attained the rank of sergeant. Therefore discussion of the roles and responsibilities of supervisors regarding prisoners and persons in custody will be more relevant as the students would have been performing the role prior to the attendance on this course.[180]

The relevant sections of the welfare unit outline and emphasise the risks and implications of alcohol and other drug intoxication. The use of a variety of training media is utilised. These include lectures, group discussions, case scenarios, problem solving, overheads and video. Lectures canvass the welfare and care of prisoners who may be drunk, drug affected, suicidal or suffering a psychiatric condition. Some specific topics of relevance covered include:

- Medical Checklist/Coma Scale;
- Frequency and Methods of Checks on (intoxicated) prisoners;
- Monitoring/Observation;
- Risk Assessment as an *ongoing* process and not just at the time of arrest and processing;
- The symptoms of Alcohol Withdrawal (The fact that it is more dangerous than heroin withdrawal is stressed);
- Mimic Conditions (for example, the fact that heavy snoring can be a danger sign);

179 Supplementary Information from Victoria Police, December 2000.

180 Summary of Welfare of Prisoners Session Delivered by the Supervisory Training Unit. Notes supplied by Victoria Police to Drugs and Crime Prevention Committee, April 2001.

- The effect of alcohol use in conjunction with other drugs, including illicit and prescription drugs (poly-drug use);
- Blood Alcohol Content levels, stages and effects;
- Effective Communication Training in dealing with drunk, disruptive and potentially abusive prisoners;
- Overviews on common physical and psychiatric illnesses and injuries;
- Suicide Risk and Self Injury
- Relevant sections of the Operating Procedures Manual; and
- Duty of Care and Case Law.

A comprehensive 'Injuries and Illness Matrix' is also given to and explained to students. This cross-references symptoms (for example, vomiting blood) to possible conditions (for example, head injury or alcohol use).

In the context of the person found drunk in a public place, students are instructed that prior to lodgement, consideration must be given to:

- release into the care of a responsible person (including sobering-up centre worker);
- transfer to hospital;
- assessment by the Custodial Nurse and/or Medical Officer.[181]

A rigorous assessment methodology is conducted to establish whether students are competent in this subject. This includes a written exam and an 'In tray basket exercise'. The latter task consists of various forms and documents relating to the welfare, administration and management of prisoners. The students are required to correctly complete and process the forms to a competent level.

In addition to the training modules already mentioned there is currently a Victorian Law Enforcement Drug Fund project underway entitled 'Best Practice in the Management of Health Problems among Drug Users in Police Custody', which is aimed at adapting the Victoria Police Drug Guide for medical professionals. A Project Officer within the Custodial Medicine Unit is presently working on this Guide.

Finally, it should also be mentioned that the Operational Safety and Training and Tactics Unit (OSTTU), although it does not have specific training packages with regard to intoxicated persons, does instruct trainees with regard to dealing with persons who for a number of reasons including drunkenness exhibit a range of threatening behaviours.[182] Components of the course include:

- Communication and Conflict Resolution;
- Firearms Qualification;

181 Custody Welfare Training Program, Victoria Police Training Development Division, p. 14.

182 The OSST was established as a result of Task Force Victor Report (Police Shootings and Use of Police Force) identifying the need for improved training in tactical response, planning and decision making and conflict resolution. The response to the Report (Project Beacon) in 1994 was centred on the need to: 'enhance and reinforce the culture, practices, and capabilities of members to operate effectively with the minimal use of force and the risk of harm or injury to any person'. In the first year of Project Beacon, 98% of all eligible operational police had attended the initial 5-day OSTT training and many of these members have attended subsequent 2-day OSTT maintenance courses.

- Dealing with the Mentally Ill; and
- Defensive Tactics.[183]

The Melbourne Custody Centre: Policy and procedures relating to intoxicated persons

Although clearly associated with Victoria Police, the Melbourne Custody Centre is operated by a private company, Australasian Correctional Management Pty Ltd. Staff at the Custody Centre act on behalf of Victoria Police pursuant to section 9A of the *Corrections Act 1986*.[184]

Procedures and Policies with regard to intoxicated persons held at the Melbourne Custody Centre are to be found in the Policies and Procedures Manual. The provisions are similar to those found in the Victoria Police Operating Procedures Manual. Custodial officers are instructed in Prisoner Custody Risk Assessment For 'Drunks'. The key instruction is as follows:

> Any person accepted at the MCC for the offence of drunk is to have a welfare check (ie: Verbal and Movement) every half-hour whilst in the cell. An entry is to be made in the Register of Prisoners when check completed. Each drunk is to have their shoes and belt removed or any other article that may be used to cause injury.[185]

If a 'drunk' cannot give a verbal response and/or they are so incapacitated by intoxicating liquor as to be unconscious, medical attention is to be sought immediately. Staff are also advised to establish that a person is in fact intoxicated and not suffering from some other form of illness. The custodial centre nurse should be consulted if there is any doubt on this matter.

Special arrangements exist with regard to intoxicated Aboriginals. Custodial staff are instructed to contact the Indigenous sobering-up centre and make arrangements for a sobering-up centre worker to attend the Melbourne Custody Centre and take the person into their care where appropriate.

Custodial Staff have some exposure to drug and alcohol issues as part of their training, although it would seem this training is not as comprehensive as that undertaken by police recruits and officers. A unit concentrating predominantly on illicit drugs, but with some alcohol components, entitled 'Drugs and the Process of Addiction' is taught to staff and trainees at the Melbourne Custody Centre.

Despite these procedural safeguards, the use of the Melbourne Custody Centre as a lodgement place for people found drunk in a public place (without other charges) has been questioned. The manager of the Melbourne Custody Centre, Mr Kevin Birtles, supports the decriminalisation of public drunkenness. It is unclear whether in relating this to the Committee he was speaking as an individual or endorsing a policy of

183 Information provided by Victoria Police, Operational Safety Training and Tactics Unit, April 2001.

184 As such, any deaths occurring at the Melbourne Custody Centre are still recorded as deaths in police custody.

185 Australasian Correctional Management, Prisoner Custody Risk Assessment Instructions, January 2001.

Australian Correctional Management. Nonetheless, he believes it inappropriate for 'drunks' to be lodged at the Centre. His reasons are as follows:

- Duty of Care Issues: Police drop clients here because there is 24-hour nursing care. This absolves them from their own duty of care liabilities. 'But they should not be here in the first place'.
- Difficulties with the bail process make it difficult to bail Indigenous clients to sobering-up centres.[186] A bail justice could usefully be on stand by at the custody centre.
- 'Drunks' are disruptive and unruly. 'They kick the doors and stir up other prisoners. Our aim is to keep the lid on....'.
- Mr Birtles believes that the New South Wales system is ideal.[187] This is from his perspective as a former senior police officer in that State: 'After initial protests, life went on as usual... '.[188]

The State Coroner also expressed concerns about the use of the MCC for lodging intoxicated persons:

> I'd imagine I would if my mind turned to it. I'd say it's inappropriate for that purpose, totally. In fact I was quite concerned when I heard that it was being used for the locking up of people that were drunk. I suppose you had problems in the cells in police stations but it [the Custody Centre] was never designed for that... I don't think it was ever designed for that nor do I think it's appropriate.[189]

This is a view endorsed also by some senior magistrates in Victoria.[190]

Problems in dealing with Poly-Drug Use[191]

This Report has already drawn attention to studies that tend to show a high co-morbidity rate between alcohol misuse and the misuse of other drugs.

Certainly, all of the concerns that police, medical and ambulance officers and alcohol and drug workers have with regard to the transport, custody and treatment of intoxicated offenders are multiplied when the offender is also using a combination of other drugs. Frequent use of other drugs is often seen in people with high levels of alcohol use or people being treated for alcohol related problems (National Expert Advisory Committee on Alcohol (NEACA) 2000a).

This has been the experience of Dr Ogden of the Victoria Police, Custodial Medicine Unit who stated that:

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186 This is a view also endorsed by the Aboriginal sobering-up centre in Northcote. See Chapter 22.

187 For a discussion of decriminalisation in New South Wales, see Chapter 19.

188 Mr Kevin Birtles, Manager, Melbourne Custody Centre, in conversation with the Committee, 30 October 2000.

189 Mr Graeme Johnstone, State Coroner, in conversation with the Committee, 20 February 2001.

190 Ms Jelena Popovic, Deputy Chief Magistrate, and other magistrates of the Magistrates' Court of Victoria in conversation with the Committee, 25 July 2000.

191 NEACA has defined 'polydrug use' as: 'The use of more than one psychoactive drug, simultaneously or at different times. The term 'polydrug user' is often used to distinguish a person with a varied pattern of drug use from someone who uses one kind of drug exclusively' (NEACA 2000a, p. 67).

> Increasingly, there is the risk that the person has alcohol and something else – be it tablets, heroin, some other illicit substance. So that from a medical point of view, the decision to place a person who is intoxicated in custody is associated with a risk, albeit a relatively small one, in that the number of people who die or who have serious outcomes as a result of that is relatively small to the number of people apprehended. Nevertheless, the risk is there.[192]

His views are endorsed by Dr Dent, Director of Emergency Medicine at St Vincent's Hospital who told the Committee:

> As an idea, last year we had 496 people presenting – that's a complication of intravenous drug use (that's out of 30,000 again) but to those you have to add those people who use drugs but not intravenously – orally, amphetamines abuse, benzodizaphene, valium type drugs and ecstasy and others.
>
> …poly-drug use is [therefore] a significant problem and I think in the perception of emergency staff is a greater problem as far as behaviour and difficult behaviour is concerned. In other words, alcoholics are often more passive or sleep but people with poly-drug abuse – in the words of somebody I spoke to – are more likely to be manipulative, more likely to steal and so on.
>
> The perception of emergency staff, in central Melbourne at least, is that the poly-drug abuse population is more difficult to deal with than the purely alcoholic patient. They are seen to be more likely to be disruptive, abusive, manipulative...and to have friends with them with similar problem behaviour, and to be non-compliant with medical treatment.[193]

It is for the reasons expressed above that Dr Dent has expressed the view that sobering-up centres of themselves are not capable of dealing with the aggressive or acutely disturbed patient. They need to be supplemented by an acute behaviour crisis centre as described above.

Indeed, it is becoming increasingly difficult to talk of a 'traditional alcoholic'. This has flow on effects for service provision. Sobering-up centres and other facilities providing services for intoxicated people are increasingly finding that clients are also presenting with symptoms associated with the misuse of other drugs. From anecdotal accounts it would seem that in the big sobering-up centres and homeless hostels there is a hierarchy in evidence, whereby the 'traditional' or 'noble' 'wino' or 'derro' looks down their nose at the poly-drug user, particularly if a heroin user. Often this is as much a generational divide as a difference in preferred drug of choice, with younger people more likely to use drugs other than, or in addition to, alcohol.[194]

192 Dr Edward Ogden, Senior Medical Officer, Custodial Medicine Unit, Victoria Police in conversation with the Committee, 27 March 2001.

193 Dr Andrew Dent, in conversation with the Committee, 13 March 2001.

194 This view has been expressed to the Committee through a number of sources and interviews, including representatives from the Albion St Shelter and the Matthew Talbot Hostel in Sydney, and Professor Margaret Hamilton, Director of the Turning Point Drug and Alcohol Agency in Melbourne. According to Brian Lippmann of the Wintringham Centre, however, the age at which one is seeing poly-drug users coming into sobering-up centres and similar facilities is slowly getting older. The Wintringham Centre, a hostel for the elderly homeless of which Mr Lippmann is Director, is gradually seeing the first group of relatively elderly clients who are presenting with poly-drug problems including heroin use (see Lippmann 1999).

An apparent rise in mixed drug consumption amongst Indigenous Australians gives cause for concern. The 1996-1999 *Review of the Aboriginal and Torres Strait Islander Substance Misuse Programme* by the Department of Health and Aged Care indicates: '[t]hat substance abuse among Indigenous Australians appears to have moved to poly-drug consumption, though the absence of reliable recent data to confirm this is acknowledged' (cited in Hennessy & Williams 2001, p. 158).

Of particular concern is the trend for young people to combine alcohol consumption with inhalants (glue sniffing), especially in Western Australia, South Australia, and the Northern Territory. These problems are addressed in more detail in the case studies pertaining to these States and Territories.[195] Interviews with (Indigenous) leaders and community workers in Murray River towns such as Mildura and Swan Hill and provincial centres such as Morwell suggest, however, that these problems are also a concern in Victoria.[196]

Police must be increasingly cautious that the person they are picking up ostensibly for intoxication is not suffering instead (or in addition to) symptoms relating to other drug use, brain trauma, epilepsy, psychiatric illness or any number of other medical conditions.[197] Such concerns are applicable whether or not public drunkenness remains a crime or whether police are acting under (non-criminal) powers of apprehension and detention. A senior police officer explained the problem:

> The problem is, of course, we have this perception of drunk. Either someone is comatosed and they should be in hospital or they've had a little bit and they could come up swinging. So if an ambulance is going to pick them up and there is an issue about safety they would call police, and if police have a concern that a person is non compos, we would call an ambulance. And as you see on that desk pad we have a big issue with regards to poly drug use and to dual diagnosis where somebody is mentally ill or has fallen and had a head injury. So there are many other complicating factors. It is not just a simple case that someone has had a few drinks.[198]

Of equal importance is the ability of the sobering-up centre worker to be able to distinguish between alcohol and other drug use and other presenting problems such as suspected psychiatric illness.[199] The Director of Ngwala Willumbong, responsible for Melbourne's sobering-up centre for Indigenous people, expressed this concern frankly and honestly:

> There's been a change, when sobering-up centres were first set up in the 90s it was very much about dealing with alcohol related issues. Now what we're seeing is that alcohol alone is in the minority in terms of the presenting

195 See Chapter 19.

196 See Chapter 22.

197 Police have expressed concerns that there are also great problems in dealing with intoxicated people who also have mental or psychiatric illness. Such a combination is apparently not unusual. Further discussion of this problem is, however, beyond the scope of this paper. For further explication of this issue, see ABS, *National Survey of Mental Health and Well Being* 1997, cited in NEACA 2000a; Mueser et al., 1997; Teeson et al. 1998; NEACA 2000a.

198 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

199 For further discussion of alcohol use and psychiatric illness, see Chapter 24.

> problems that people have. It's more often a mixture poly-drug use, of which alcohol and other drugs have been used and sometimes it's just straight heroin or whatever else. That's causing all sorts of problems for us in that what these things were set up to deal with and what they're now being asked to deal with are two different things. It presents all sorts of training issues, it presents all sorts of staffing issues.
>
> One of the big difficulties we've got at the moment is that the police contact us about a person, we go in there, we don't know what they've been on, if they're out of it then we've got really no means of determining what they've been using. We take them back to the sobering-up centre, the person starts withdrawing. We're not licensed or set up as a withdrawal centre. I mean those have to be hospital based facilities and because of the delay in getting people into de-tox which can be up to a couple of weeks, we end up we're stuck with that person.[200]

The above discussion highlights how medical officers, police, service providers and general members of the community cannot be indifferent to, or underestimate, the medical complications associated with public drunkenness. The person in the street or lying in the gutter, who may be perceived as just another 'drunk' may in fact be in serious need of medical attention. This has crucial implications for the operation of sobering-up centres and the training of their staff. This complex issue will be discussed later in the report.

200 Mr Glenn Howard, Director, Ngwala Willumbong, Indigenous Drug and Alcohol Service in conversation with the Committee, 9 October 2000.

PART E:
Policing Public Drunkenness in Victoria

13. Police Procedures

It is difficult to state that there is any one way in which public drunkenness offences are processed in Victoria. As Chapter 15 of this Report discusses, so much of modern operational policing relies upon the use of the individual officer's discretion. Policing public drunkenness is no exception to this rule.

In general terms, if there are no other associated offences being charged, such as assault, it would seem police officers use one of two main methods of dealing with a person who is drunk in a public place:

- use their discretion not to charge or;
- charge under section 13 or, less often, section 14 of the *Summary Offences Act 1966*.

Charging under Section 13

Common procedure with regard to a person charged under section 13 (and to a lesser extent section 14) is that the person is transported to a police station cell (often the cells at the Melbourne Magistrate's Court) and kept to 'sleep it off' until he or she is judged sufficiently sober. The time this takes depends on the level of intoxication but is usually for a period of four hours. The rationale often given for such a process is that it is usually for the person's own protection.

After the person is deemed to be sufficiently sober, he or she is bailed and released, usually on his or her own undertaking.

Drunkenness and drunk and disorderly offences, where they are the only offences alleged, do not require LEAP (Law Enforcement Assistance Programme) reports to be

made. The offender's name will be entered, however, into the Attendance Register and Watch House book.[201]

Neither is a police brief of evidence required in cases of drunk and drunk and disorderly offences. Police guidelines state, however, that an informant must maintain sufficient notes to enable the compilation of a brief at a later time if required.[202]

Strict procedures are in place with regard to the welfare of intoxicated persons in custody. Section 10.3 of the *Victoria Police Manual* outlines the most important provisions with regard to the care of intoxicated prisoners:

- Particular care must be taken in looking after an apparently drunken offender. If there is the slightest doubt as to the person's condition, prompt medical attention must be sought.
- Meals should not be served to drunk persons if it is considered that a person may be at risk of medical complications in doing so (vomiting, choking etc).
- Welfare checks of intoxicated persons should be made as often as possible and at intervals no longer than 30 minutes.
- Persons detained for being drunk must be given the opportunity to contact a friend, relative or legal practitioner or this must be done on their behalf.

In short these procedures reflect that:

> [t]he emphasis on the police procedures relating to intoxicated persons is on welfare, not criminality (unless other offences are involved).[203]

In contrast, the Tumbukka and Binjirru (Victoria) Regional ATSIC Councils have quite a different perception about police involvement and procedure with regard to the arrest, process and disposition of Indigenous Victorians for public drunkenness offences. In their joint submission to the Drugs and Crime Prevention Committee they stated:

> The RCIADIC[204] report clearly recommended that police use alternatives to arrest in dealing with incidents of public drunkenness of Aboriginals (refer recommendations #81 & #87). Yet, despite the existence of Community Justice Panels and the existing protocol between Victoria Police and the Victorian Aboriginal Legal Service, Aboriginal people are twice as likely to be actually arrested as against being cautioned, than non-Aboriginal people.
>
> Current police practices actually discourage the use of alternatives to arrest. Firstly, there is significant political and media scrutiny of arrest rates, which places pressure on the police to show they are on top of crime. Secondly, the process to arrest someone for public drunkenness is very easy, much more so than that involved in using an alternative to arrest. Arrests for public

201 See Victoria Police, *Victoria Police Manual: Operating Procedures*, 2000, Section 4.6.1.2.

202 Victoria Police Manual, Section 8.2.

203 Correspondence from Acting Superintendent Tim Cartwright, Policy and Research Division Victoria Police, 28 August 2000.

204 Royal Commission into Aboriginal Deaths in Custody

drunkenness related offences, where they are the only offence, do not require the arresting officer to make a formal written report. A court briefing from the arresting officer is rarely required, as Magistrates routinely dismiss public drunkenness offences (a short period of incarceration in a police lockup being deemed sufficient punishment) and offenders often do not bother to attend court. Often all that is required is for the offender's name to be recorded in the Attendance Register of the local police station. The offender is left to 'sleep it off' and is usually discharged after four hours. For the offender, as well as the police, this is usually the end of the matter. Paradoxically, this would appear to provide a form of defacto decriminalising of Public Drunkenness, while maintaining current arrest-oriented policing practices.

ATSIC Regional Councils do not consider this to be a satisfactory situation. The performance of the police should reflect an approach where the use of arrest is the last resort. Where public drunkenness is seen as a public health issue, the role of the police should be to provide immediate assistance to ensure Aboriginal people are put in contact with the support structures available, to enable them to regain well being and physical wholeness. This is in line with the Victorian Aboriginal Justice Agreement principles. It is a practice which has been developed in NSW.[205]

Processing the Offence

An Information prepared by police is presented before a Magistrate. Rarely do offenders attend the hearing or contest the charge. Usually a list of the persons charged under section 13 is read and most offenders would be convicted and discharged or discharged without conviction. Monetary penalties are rarely given and there is no further incarceration.[206] From an offender's point of view, the worst aspect of his or her behaviour being criminalised is that he or she could receive a conviction if charged. This is unlikely to be the case if the offender has not been charged with any other offences. Up until 1998, as no LEAP record was made in cases where there were no associated offences charged, there was no lasting criminal record on police files.

By way of example, figures taken from the Department of Justice for the period 1 July 1997 to 31 December 1997 record the following dispositions for public drunkenness offences.[207]

- 1501 fines;
- 274 adjourned bonds;
- 111 Community Based Orders;

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205 Submission of the Tumbukka and Binjirru (Victoria) Regional ATSIC Councils to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 9.

The submission is referring to the Protocol between Dept Community Services, NSW Police Service and NSW Health, for the provision of services to homeless people who are affected or addicted to alcohol and other drugs. For a discussion of this Protocol see Chapter 19.

206 Anecdotal evidence given by various police officers suggest that most Magistrates consider four hours in a lockup is sufficient punishment.

207 Department of Justice, Magistrate's Court Victoria, Caseflow Analysis Section, Courts Tribunal and Registries Division, Melbourne, 1997, p. 167. These are the most recent statistics available at the time of writing this Report.

- 1185 cases not proved or struck out; and
- 3176 convicted and discharged.

Specific protocols attached to *Police Manual Operating Procedures* apply with regard to persons in police custody. They have particular significance for police officers exercising their duty of care. These include procedures for handling:

- Aboriginal and Torres Strait Islanders;
- juveniles and children;
- people with, or suspected of having, medical problems or being ill.

These protocols are discussed in further detail in Chapter 19 of this Report.

A senior Victoria Police officer explains the procedures with regard to processing public drunkenness offenders as follows:

> Now in terms of what happens today, there is very little paperwork involved in actually lodging somebody for the offence of drunk. So under Section 13…drunk is simply an information for an offence. A person is given free room and board for a period of time, usually four hours. They are supervised. Their medical needs dealt with if they have any. And they are back out into the community.[208]

Community Justice Panels

Community Justice Panels (CJPs) were established in Victoria prior to the *Final Report* of the RCIADIC. There are approximately 17 Community Justice Panel programmes throughout Victoria.

Panel members are usually Indigenous volunteers who work in conjunction with police, lawyers and legal field workers (usually from the Victorian Aboriginal Legal Service (VALS)), magistrates and corrections workers. VALS state that CJPs are particularly useful in rural areas as an initial point of contact for diverting Indigenous people from police custody, or at least reducing the amount of time spent in police custody. However, much of the success of using CJPs is dependent on them being readily available:

> There are difficulties in some areas in recruiting an adequate pool of volunteers; there are issues about the appropriateness of relying on volunteers to do this work and there are complementary strategies such as night patrols which deserve consideration (VALS Submission 2000, p. 3).

There is no Community Justice Panel in the Melbourne metropolitan region. This is seen as an enormous problem by Indigenous community agencies. It often results in sobering-up centre workers in effect doing the work of CJP volunteers. This is an aspect of their work that is not factored into their budgets.

The submission of the Aboriginal Justice Advisory Committee to this Inquiry outlines what it believes some of the problems associated with Community Justice Panels are:

> While the CJP program is repeatedly raised by Victoria Police as a best practice example of innovative diversionary practice, the pressures on the program and on the volunteers within it are consistently ignored.

208 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

> While it is acknowledged that a strength of the Community Justice Panels has been the co-operative relationship established with Victoria Police, ironically the program is recognised as being under-resourced both financially and in terms of human resources. The CJP workers who are volunteers are provided with little training and support. Not surprisingly, the CJP program is seen by Victoria Police as being cost-effective.[209]

Some Indigenous drug and alcohol workers do not believe police always observe the Operating Procedures with regard to contacting Community Justice Panels or sobering-up centres when an intoxicated person identifies as Indigenous. A staff member of a Victorian sobering-up centre states that some police stations will not count as Indigenous intoxicated persons in their statistics despite their being clear notification that this is the case:

> ...some police don't even process people through the books. So the statistics are dodgy. You've got stations like X that will tell you there's been no Aboriginal arrests. This ...is totally in conflict with the calls that we get to go and get people. Now, they are running all sorts of risks of civil litigation. If you're not going to put someone in a cell, and you're not going to put them through a watch house book and if you're not going to keep records then one day someone will get whacked with that.[210]

Sobering-Up Centres

One option after a person is apprehended is for that person to be transported to a sobering-up centre. Alternatively, a representative from such a centre may collect the person from the police station and the person may be released into their care.

Sobering-up centres where the intoxicated person can 'dry out' in a controlled environment are usually run by major charities or community agencies such as St Vincent de Paul or the Salvation Army. Their services may be contracted by government or they may operate as community partnership models. Some may be attached to hospitals or treatment clinics whilst others stand alone. Many of the bigger charities and community agencies that specialise in drug and alcohol treatment services also operate detoxification centres and ongoing residential or non-residential treatment programmes. The trend in combating problems associated with alcohol and public drunkenness is to persuade the intoxicated person, where appropriate, to enter ongoing treatment programmes after the initial period in the sobering-up centre.

Most centres in Australia which cater for Aboriginal people will provide services and programmes which are culturally appropriate.[211] In the case of Aboriginal Victorians, police operating procedures now require police to contact an Aboriginal sobering-up centre or Community Justice Panel, where available, in addition to the Victorian

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209 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p.8.

210 The Committee has decided that it would be appropriate not to cite the name of this witness.

211 For example, in Fitzroy Crossing, Western Australia, the Sobering-Up Centre is 'smoked' after former clients have died, whether or not the deaths are connected to the Centre. Smoking is a traditional Aboriginal cleansing ceremony performed after a person has died (see Wilkie 1998, p. 124).

Aboriginal Legal Service. Some members of Indigenous community agencies argue that just as police don't always notify Community Justice Panels, so too they may ignore operating protocols by failing to contact sobering-up centres. A worker from a Victorian sobering-up centre states:

> There have been too many complaints by people to us that they were held for so many hours and then they get angry and ask why didn't you guys come and get me. We didn't even know you were in there, no one rang us. No one called us. Yes, compulsory reporting, proper statistical recording, and proper medical attention systems need to be implemented to people in cells. We've often been going out to do assessment in cells and somebody's in a bad way and then our staff have to argue, look I'm not going to take this person until you get a doctor in and check them out. These are people sometime with wounds and we've had many instances of people that even where they've sort of looked OK we've ended up having to take them straight to a casualty section of the hospital and have them checked out.

A discussion of Aboriginal sobering-up centres will be presented in Chapter 23.

In Victoria the only centres that (officially) are run as sobering-up centres are in fact the ones provided for Indigenous people. This has proven problematic. Many people with whom the Committee has met in regional Victoria have been critical of the fact that the alcohol treatment facilities available for non-Indigenous Australians do not officially provide this service.

The Committee has visited a variety of sobering-up centres around the country and Victoria.[212] They share some common characteristics but there are also many differences between them. Some standard features include:

- police deliver clients to the Centre;
- clients are showered;
- client's belongings are removed and recorded (usually for their own protection);
- client's clothing is laundered;
- client is re-hydrated with a cordial or similar non-alcoholic drink;
- client is left to 'sleep it off';
- client is given a meal once he or she is sober;
- client may be given a Vitamin B tablet;
- where appropriate the client may be referred to ongoing treatment services.

As stated, not all of the above features may apply to each centre. For example, whilst many centres will not accept self-referrals there are some that do. In the Northern Territory, the Committee visited one centre in Alice Springs that firmly believed it was necessary to compulsorily shower clients on arrival, whereas a centre in Tennant Creek was philosophically opposed to such a requirement being mandatory. Similarly, some

212 A detailed discussion of sobering-up centres based on the Committee's visits to the Northern Territory, New South Wales , South Australia and Western Australia follows in Chapter 19 of this Report. A discussion of Victorian sobering-up centres is to be found in Part H.

centres in the Northern Territory provided meals whilst others did not.[213] Importantly, centres also differed as to whether they would call the police when a client had absconded from their custody.[214] To a large extent, each centre was run according to the philosophical, religious or cultural beliefs enshrined in its mission statement.

The chief benefits of sobering-up centres, according to those who manage them, are that they keep clients out of the police cells, they are run by specialists in the area, they may lead to ongoing treatment and recovery, and in the words of one manager: 'they give the police a break…they don't have to be checking the cells every twenty minutes or so…'[215]

A discussion with regard to sobering-up centres from an Indigenous perspective is given in Chapter 23. They are also extensively examined in the various State and Territory case studies in Chapter 19.

213 The manager of the Darwin and Katherine centres has stated to the Committee that providing meals and a laundry service 'encourages co-dependency and rewards drunken behaviour'. Mr Craig Spencer, Manager, Aboriginal and Islander Medical Support Services. August 3, 2000.

214 To a certain extent this was circumscribed by their duties and responsibilities under legislation to report such departures. See discussion below, Part B, Chapter 5, and Table 1 in Chapter 5.

215 Sobering-up centres, however, are not without their critics, neither in terms of the original concept nor the way they are run in practice. A critical analysis or evaluation of sobering-up centres is beyond the scope of this Report. For a discussion of some of the critical issues, see Daly et al. 1991; Daly and Gvozdenovic 1994; Wilkie 1998. The *Final Report* of the Royal Commission into Aboriginal Deaths in Custody was also in part critical of the operations of some sobering-up centres.

14. Policing the Streets, Policing 'Big Events' and Public Order

Public Order Concerns: The Victoria Police Perspective

Discussions with a variety of representatives from Victoria Police in Melbourne, Swan Hill and Mildura, the official submissions from Victoria Police, the evidence taken from Victoria Police at Public Hearings and supplementary information sent to us from Victoria Police, leave no doubt that the Police are concerned that their ability to police public order in the streets and at big public events will be severely compromised if the Victorian Parliament repeals sections 13, 14 and 16(a) of the *Summary Offences Act 1966*.

Victoria Police views the current laws (particularly section 13) as being beneficial for the maintenance of public order in that:

- they are an option that can be used to prevent the escalation of further violence;
- they are the least punitive offence that a person can be charged with;
- there are no long-term or severe consequences for the person charged with a section 13 offence (no criminal history, very rarely any sanction other than discharge and conviction); and
- they are a useful charge to have 'on stand by' or as a 'fall back option' in the case of large event management such as New Year's Eve or the Phillip Island Grand Prix.

It is the Committee's view that the Victoria Police use section 13 to quite legitimately contain or control the *behaviour* of the person who is drunk rather than the drunkenness per se. This begs the question as to what purpose section 14 (drunk and disorderly) serves or what usefulness it has, given that is so seldom used. One possible response may be that the police prefer, wherever possible, not to use the more punitive sanction because of the greater negative consequences for those charged.[216]

The Police Perspective

The Victoria Police stressed that, as with many criminal offences, whether a police officer does charge or arrest a person is purely discretionary. The Victoria Police argued that the use of the term *may* in section 13 gives the police a discretion as to whether an officer can use the arrest power or not. Similarly, they argued the term *lodged in safe custody* does not restrict the police officer's options to putting the offender into police cells. It could also mean releasing the person to the care of a friend, family member or

216 This is supposition on the Committee's behalf and has not been officially related to the Committee by Victoria Police.

sobering-up centre. In other words, the mere fact of using section 13 does not require incarceration or detention in a police cell or custody as an automatic consequence.

Furthermore, Victoria Police has made it clear that they are not by any means opposed to sobering-up centres. They do, however, have doubts as to whether enough resources could be made available to make them feasible options, particularly in country Victoria.

The other major concern of Victoria Police is that if the ability to arrest was replaced with a civil apprehension scheme, similar to those in other States, there would be no guarantee that the drain on police time, costs and resources would not be as great as in the current system. Victoria Police argued that, in fact, one could have the possible costs of transporting intoxicated persons to a sobering-up centre without necessarily the greater protections against civil liability that the arrest power gives them.[217]

Police stated that they need an effective tool to police public disorder or prevent the escalation of 'grass fires to bushfires'. Victoria Police insisted, however, that police policy and practice is not about using section 13 capriciously or as a mopping up or net widening operation. The Police stated in their submission, that in their view arrest is the option of *last* resort not *first*.

Victoria Police stated that in most cases, wherever possible, police officers seek to use their discretion in such a way as to send a drunk person on their way, as long as in doing so the person's health or safety or the health and safety of others was not thereby endangered or compromised. Victoria Police agreed that although public drunkenness and alcohol related harms should be seen as a social and health issue:

> [e]ven with greater availability and involvement of health and welfare agencies, police will nevertheless be required to respond to intoxicated people who disturb the public order or who pose a risk of harm, without committing any other offence. Legislation and legal process are needed to ensure that police are able to do this (Victoria Police Submission, November 2000, p. 7).

A continuation of the way in which discretion is used with regard to section 13 is necessary, police claimed, because of the great diversity of people that come to police attention for public drunkenness. This means:

> [t]hat in order to replace the offences with adequate responses could involve inserting provisions across a range of legislation. This complicates timely and effective police response and in some cases would transfer responsibility for dealing with intoxicated persons to other agents, such as venue security staff, who would in turn require appropriate authority, training and accountability mechanisms (Victoria Police Submission, November 2000, p. 10).

Finally, Victoria Police stated that many of the proposals that could be seen as part of a 'decriminalisation package' or that are used in States that have decriminalised are, in effect, already used by police in the exercise of their discretion, such as bailing offenders into somebody else's care:

217 For a discussion of Duty of Care issues, see Chapter 7.

> There definitely seems to be scope for working within the existing framework to bring in other ideas, because it seems we have the same objectives. The emphasis is clearly on welfare and not on criminalising people.[218]

The Committee acknowledges that these concerns of Victoria Police are sincerely held. It also understands the constraints police occasionally encounter in ensuring the safety of citizens in the public areas of Melbourne and country Victoria. To obtain at least a rudimentary idea of the challenges police face in policing Melbourne's 'hot-spots', the Committee gained first-hand experience of city night life on a busy Friday night in the period leading up to Christmas. In December 2000 the Committee took part in a 'Night Tour' of the Melbourne Central Business and Entertainment Districts visiting various licensed venues, places of entertainment and the surrounding streets and environs. This tour was organised by Ms Anne Malloch, City Safety Project Officer for the City of Melbourne and in attendance was Superintendent Tony Warren, the officer responsible for operational policing in the central Melbourne area.

Three observations of note emerge from the Committee's tour and its discussions with Superintendent Warren, Ms Malloch and representative licensees and staff from the hotels and nightclubs it visited. They are in no particular order of importance:

- the importance of Liquor Accords and Forums in diminishing alcohol related harms and street violence;
- the lack of suitable public transport options (including taxis) after certain periods of the night; and
- the operation of local government regulations prohibiting consumption of alcoholic beverages in the street and bans on or regulation of alcohol consumption at public events at outdoor locations.

These issues will be addressed to some degree in other chapters of this Report. For completeness sake and in the context of this chapter they are discussed briefly here.

Liquor Accords

In conducting the Night Tour, Superintendent Warren explained to the Committee the substantial problems associated with alcohol related violence and disorder in the nightclub district in and around King Street prior to 1995. The establishment of the Melbourne City Licensees Accord and the Licensees Forum have had extremely beneficial results for the policing of the central Melbourne district. This is predominantly for two reasons.

First, members of the Accord who do not abide by the rules and regulations of the Accord can be brought to account through the Licensees Forum and the licensing police. As a co-chair of the Accord and the officer responsible for licensing in central Melbourne, Superintendent Warren is in an excellent position to ensure licensees adhere to the agreement:

> I think the biggest key we've got over all other accords is that you have to earn the right to be a member of the Accord. In every other accord that I know of

218 Ms Eva Perez, Victoria Police Evidence to the Public Hearings of the Drugs and Crime Prevention Committee, 13 November 2000.

> there's no real sanction if they breach it. I've got the ability that if the licensees breach the Liquor Control Act or other acts and if not conducting their premises adequately I can utilise that they've also breached the Accord – that they're a member of the Accord and also breached that – so I can use that as sufficient evidence to assist me in just showing them that they can't conduct the premises…[219].

Second, the use of a carrot rather than a stick approach has been used to make venue operators and licensees feel:

- that they are equal players and stakeholders in the amenity of their city; and
- that it is in licensees' economic interests to cooperate in reducing alcohol related harm in the city.

Superintendent Warren explained the initial moves towards setting up the Accord:

> We had a round-table with the licensees and basically I said well you clean up your premises. If you don't clean up your premises, I'll charge you and we'll clean up the streets. So, we worked at cleaning up the streets. The City of Melbourne had the local law for open containers and drinking of alcohol in the streets and we utilised that by issuing penalty notices on behalf of the City of Melbourne and charged people with the appropriate offences of offensive behaviour for urinating and vomiting or whatever.
>
> We work with the licensees in going around to all the laneways cleaning up the lanes so if they identified any of alcoves and doorways with vomit and urine in them they'd clean them down and hose them down. The City of Melbourne supplied censor lights, so we'd put censor lights in the alcoves and if they walked into them, the lights came on and deterred them and over a period of time it really cleaned them up and we eventually came up with the cameras. Now, I think, the nightclubs are spread throughout the City. So, it makes it a little bit more difficult for us to police – to get from point A to point B – but it's a lot better than having a large group of premises in the one location and I think, with the discussions we had with the licensees over a period of time, it impressed on them the need to clean up their act in the matter of serving drunks and letting the drunks on to the street.
>
> And I suppose, over a period of time, we initially were probably charging around about 120 people each weekend and now we would probably arrest anywhere between 10 to 15 a week depending on the season, depending on the special event. That's really [an improvement]…the change has been pretty good and restricted the number of arrests that were made and reduced the number of assaults. We get assaults but it's improving.[220]

Superintendent Warren's comments suggest to the Committee that often administrative agreements, protocols and formalised protocols are as effective in dealing with public order and alcohol related harms as is the practice of charging

219 Superintendent A. J. Warren, Region One Headquarters, Victoria Police, in conversation with the Committee, 8 December 2000.

220 Superintendent A. J. Warren, 8 December 2000.

individuals with criminal or other sanctions. For example, Superintendent Warren mentioned that on occasion police have had problems with tour bus operators promoting 'pub crawls' in the city area. People will be brought into the city on special bus trips, travel around the city and get increasingly drunk as they visit various licensed premises. The problem was less pressing, according to Superintendent Warren, when there was a strong Tour Bus Operators' Association and a Code of Conduct agreed to by its members. Such codes of conduct can be useful as an integral part of an overall management plan that combines creative partnerships with traditional policing. As Vaughn comments in his recent research on liquor accords:

> The reality is that if inappropriate consumption of alcohol in licensed premises can be controlled, there will be a substantial impact on the police workload. This realisation has led to a change in the policing environment as police management has recognised the impacts that the inappropriate use of alcohol has on their resource requirements. This is leading to proactive planning to deal with the causes of alcohol misuse on licensed premises (Vaughan 2001, p. 206).)

A comprehensive discussion of Accords generally and the Melbourne City Licensees Accord in particular is found in Chapter 18.

Public Transport Options

Throughout this Inquiry, members have been alerted to the problems associated with limited access to safe, reliable and readily available transport.

In a submission to the Drugs and Crime Prevention Committee from Crown Casino it was stated that:

> Crown has [further] concerns that as the Victorian Taxi Association now has a policy of not accepting drunk passengers, there will be fewer options to deal with intoxicated patrons and their transport home should public drunkenness be decriminalised.[221]

It is true that the Victorian Taxi Directorate does have such a policy. Regulations under the Transport Act also permit a driver to refuse to convey a person in the following circumstances:

1. A taxi-cab driver may refuse to carry or to continue to carry a person in the taxi-cab if, in the opinion of the taxi-cab driver, the person is violent, noisy, misbehaving, filthy or offensive.
2. Despite sub-regulation (1), a taxi-cab driver must not refuse to carry a person if the person is going to or being taken to a hospital, police station or a watch-house.[222]

Despite the concerns of Crown, from the meetings the Committee has had and the evidence it has gathered, the problem does not seem to lie so much with the refusal of taxi drivers to convey drunk passengers but rather with the dearth of public

221 Crown Casino, Submission of Crown Limited to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 15 November 2000.

222 *Transport (Taxi-Cabs) Regulations 1994*, regulation 30.

transport options in the first place. When the Committee went on its Night Tour of the city, the following responses were frequently heard from venue operators:

- The concept of safe taxi-cab ranks is an excellent one.[223]
- Nonetheless, there are still far too few taxis available for patrons in the entertainment venues; particularly in the early hours of the morning and on weekends.
- The hours of public transport are too restrictive; trains and trams rarely run after midnight.
- Whilst a good idea in principle, the Night-Bus is restricted in its routes and is too infrequent.

The City of Melbourne recognises a lack of transport options as being a major problem in minimising public disorder in the central city. Ms Anne Malloch, the City Safety Project Officer, stated that:

> - In managing alcohol related behaviour in the streets, getting young people into transport and home is a major issue. Once people have finished partying, they want to go home.
> - An initial task [was] to increase the confidence and availability of taxis – particularly to go to the night club areas of town.
> - Despite the introduction of 100 new taxi licenses earlier this year, for high occupancy vehicles with the key role to operate within a 7 kilometre radius of the City, and between 4pm and 4am, there is still a major lack of services in the city.
> - The average wait for a taxi in the city late at night is $2\frac{1}{2}$ hours.
> - The Night-Rider Bus Service is excellent, but it is also difficult for passengers to arrange for a taxi at their destination point.[224]

Partly in response to these perceived problems, the Melbourne Safe City Taxi Ranks Program was established to:

> [e]ncourage more taxis into the city and to provide a safe environment for customers to wait for a taxi. The ranks operate on Friday and Saturday nights, and on special event occasions such as the Grand Prix. All Safe City Taxi Ranks are covered by the Safe City Cameras operation and incorporate miniature cameras. Four of the ranks are staffed by security guards from midnight until 6.00am on Fridays and Saturdays.[225]

The Taxi Rank Program is overseen by the Safe City Transport and Parking Committee. Its membership includes representatives from the City of Melbourne, Department of Infrastructure, Victoria Police, the Victorian Taxi Directorate, Victorian Taxi Association, Venue and Nightclub owners, and the private security industry. Venue

223 Safe City Taxi Ranks are described in detail later in this chapter.

224 Notes supplied to the Drugs and Crime Prevention Committee by Ms Anne Malloch, City Of Melbourne, City Safety Project Officer, 30 October 2000.

225 Information taken from *A Strategy for a Safe City 2000-2002*, City of Melbourne 2000.

operators contribute financially to the costs of the scheme. The safe taxi ranks also operate as pick-up and setting off points for the Night-Rider all night bus service.

The taxi rank scheme does not operate in a vacuum. It is part of an increasingly integrated package aimed at reducing the potential for violence and disorder in central Melbourne:

> The ranks represent one part of a broader strategy to improve the perception and reality of safety in the city. Other programs promoting safety in the city at night include the Alcove Lighting Scheme, Safe Car Park Design Guidelines, Safe City Cameras, a ban on the consumption of alcohol in public spaces and the Melbourne City Licensees Accord.[226]

The Committee has met with a representative of the Victorian Taxi Directorate (VTD) and discussed the problems pertaining to the lack of taxis and the refusal of taxi drivers to convey passengers in certain circumstances. Mr Drew Pingo, a Law Enforcement Inspector with the VTD, recognises that problems are caused by having insufficient cars on the road. He does believe, however, that the Safe City Ranks Program has contributed to a safer atmosphere in the central city for both drivers and patrons:

> Well, it certainly improved the situation. It provides better lighting, natural lighting in the area. The drivers themselves feel happier about going there, they know the matter is under camera surveillance. The camera surveillance itself would probably influence as a preventative measure or partially ensure that people are behaving themselves...It was hard to get them [drivers] to go there [King Street] because they were spilling out of those places, really completely drunk, some of them hadn't eaten all night, there were little fast food bars there, as soon as they got a stomach full of that, got in the cab, they had a tendency to vomit like mad. A lot of drivers didn't like that sort of thing so it took a lot of publicising and the Victorian taxi…leaflets left at motor registration branches and places like that to introduce to them the idea that things were better there and they could go there with a certain element of safety. So from that point of view I think that worked.[227]

Mr Pingo's personal view is that public drunkenness offences should be decriminalised:

> I think that public drunkenness is a pretty archaic sort of offence. Look, if it wasn't but for the large venues where you see it happen you would never actually see it. Some of the pubs in the country that you might find the odd drunkard outside, you never see it in most of the suburbs, it seems to be a group thing more than anything. I don't think there is any problem getting rid of it, a public drunk is probably a danger to himself.[228]

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226 Notes supplied by the Department of Infrastructure (Victoria) February 2000, p. 2. For further discussion of some of these initiatives, see Chapter 16 of this Report.

227 Mr Drew Pingo, Senior Law Enforcement Inspector, Victorian Taxi Directorate, in conversation with the Committee, 20 February 2001.

228 Mr Pingo stresses that his views on this matter are personal and do not necessarily represent those of the Victorian Taxi Directorate.

Mr Pingo stressed that from the point of view of *driver safety* both bus and taxi drivers would actually still be protected from legal provisions permitting drivers from picking up passengers.[229] It also seems likely that taxi-cabs will be fitted with cameras in the near future. These measures may protect the drivers but still they do not address the problem of not providing drunk persons with sufficient transport options to go home.

Mr Pingo stated that training schemes for taxi drivers are in the process of being reviewed, upgraded and streamlined with the object of giving drivers better training on dealing with drunk and drunk and disorderly passengers. This is a development to be encouraged.

Drinking in Public Places Local Law

The Melbourne City Council has in place a local law making it an offence to drink or have unsealed alcohol containers in public areas within the central area of Melbourne, 24 hours a day, every day of the year. The supporters of this type of regulation claim that it is one of the best mechanisms in controlling alcohol consumption and related harm in streets and public places, particularly during the holding of outdoor events, festivals, concerts and sporting fixtures. It is therefore salutary to discuss the problems and challenges associated with policing these types of events, including the operation of the local law.

Policing 'Big Events'[230]

An area of particular concern to events organisers, police and local councils is the ability to maintain public order at events at which large numbers of the public are gathered. These concerns are heightened when alcohol is served at such events. Superintendent Warren stated that sporting venues are the most problematic of these venues in this regard. Of the sporting fixtures regularly played in Melbourne, cricket, and particularly one day cricket, is viewed as the event most likely to be associated with alcohol related disorder. The following discussion concentrates primarily on the Melbourne Cricket Ground (MCG) as being the most representative of the sporting venues in terms of numbers attending sporting fixtures and the associated problems with alcohol and public disorder.

Certainly there have been positive moves in recent years to address these problems at the Melbourne Cricket Ground and other stadiums: These have included:

- limiting the amount of alcohol served to each person;
- serving light beer instead of full strength beverages;
- the setting aside of 'dry areas' in the stadium; and

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229 In the case of bus drivers – 'A driver may refuse to carry a person in the vehicle if, in the opinion of the driver, the person is so intoxicated that he or she is liable to cause offence, or is causing offence to other passengers', regulation 28, – *Transport (Passenger Vehicles) Regulations 1994*. In the case of taxi drivers, regulation 30 – *Transport (Taxi-Cabs) Regulations 1994* cited above.

230 In using the term 'big events' the Committee is generally referring to a gathering, usually in public space to which large members of the general public are invited or attend with or without payment. Common examples of 'big events' include sporting fixtures, music concerts, community festivals and the like. New Year's Eve is also an example where there may be potential for alcohol fuelled public disorder.

- prohibiting patrons from bringing their own alcohol to the game.[231]

Nonetheless, the combination of cricket being played in hot summer weather, for a full day, and the fact that patrons are often on holiday can be a volatile mix. This will invariably be the case when there are uninteresting sessions of play. This is to be contrasted with sports such as football, which are played in cold weather and for limited periods of time. Superintendent Warren described the problems that Victoria Police face in dealing with such crowds:

> We have a substantial problem with some of the sporting venues – particularly cricket and we have the Boxing Day Test and then we'll have the first Day/Nighter, the one day games they're always pretty bad and we would probably charge, probably eject about 80 to 100 persons from the MCG on a Boxing Day or a one day game and one of the major problems we have is drunkenness and we have three cells at the MCG for four drunks and we transport if we get too many in the cells. We transport them to the Melbourne Custody Centre. If we have under ages – and you get a lot of under age drunks at the cricket because they import alcohol in to the ground – we usually get in touch with their parents and get them picked up.[232]

Police utilise both Melbourne Cricket Club (MCC) regulations and public drunkenness offences such as section 13 of the *Summary Offences Act 1966* in dealing with disorder at the MCG. Police are also assisted by private security forces engaged by the Melbourne Cricket Club or the Australian Football League.

Melbourne Cricket Club regulations, that commenced effect in 1994, provide for a wide range of ground management contingencies, including throwing objects, blocking aisles, standing on seats, and unauthorised consumption of liquor. Police and MCC authorised employees have the power to evict people from the ground for breach of the regulations. This is a power exercised frequently by police in lieu of arrest.

Members of the Drugs and Crime Prevention Committee have had first-hand knowledge of police operations at the cricket. Members attended the day/night final of the one day cricket match between Australia and West Indies. The Committee was impressed with the ability of Victoria Police to control potential disorder at this match,

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231 Contrast this with recent events at Colonial Stadium, Melbourne in which patrons were apparently offered 'free beer' (a two for one offer) between 4.30 p.m. and 6.00 p.m. before an Australian Rules football match. The offer was apparently made to entice people into the ground to avoid a repetition of a 'queuing debacle' that took place the previous week. The Australian Football League and Colonial management were criticised by drug and alcohol groups for irresponsibly promoting excessive alcohol consumption. Of particular concern was the fact that during this 'happy hour' period full strength alcohol was served. Australian Drug Foundation, Chief Executive Bill Stronach was quoted in the Melbourne *Herald Sun* as stating:

> It's an incentive to drink twice as much...It's a crazy thing to do just when they seem to have alcohol problems at the footy under control...It has the potential to start brawls, and there's the chance people will drink and drive (Edmonds, M. 2001, 'Free beer blast', *Herald-Sun*, 22 February, p. 1).

Melbourne newspaper editorials were uniformly opposed to this 'ill considered offer' ('*Herald-Sun* Editorial, 23 February 2001, p. 23). This is a view with which the Committee concurs.

232 Superintendent A. J. Warren, 8 December 2000.

particularly during periods in which the crowds were restless due to 'boring' patches of play. Victoria Police, in conjunction with private security companies, use a variety of methods to defuse potential disorder. These include:

- regular patrols of the entire ground. In particular, the liquor bars and outlets were staffed by police during all breaks in play and regularly patrolled at other times;
- the use of sophisticated closed circuit television monitors in a central operations room to focus in on behaviour which is disruptive, disorderly or potentially so;
- being dispatched to the trouble spot to deal with the behaviour once the disruptive behaviour is spotted by central command and police patrols are notified by radio;
- police may issue a warning to an offender;
- police may remove offending objects from an offender (for example, inflatable beach balls);
- police (or authorised personnel) may evict the offender under MCC regulations;
- police may arrest an offender and place him or her in the MCG cells or transport to the Melbourne Custody Centre;
- hotels in the immediate vicinity of the MCG are also patrolled before, during and after play to ensure patrons do not spill out into the road or otherwise jeopardise their own safety or cause a disturbance to others.

The Committee was surprised by the disruptive behaviour of the crowds and the number of evictions from the ground the night Members attended the cricket. This is despite the police observing that it was a relatively quiet night.

Superintendent Warren is of the opinion that it would be difficult for police to effectively control sporting crowds without the ability to arrest for public drunkenness under the Summary Offences Act. He states:

> We'd have to have something in its place. I have put in a report in regard to some of the offences but if you had nothing for drunkenness – you've got the welfare of the actual drunk themselves and some of them are under age persons, a lot of them aren't, you got no way of controlling their behaviour or what's going to happen to them – then we'd be in serious difficulties. And you've also got the problem that if you are not in a position to arrest them and lock them up in the cells at the MCG, if you go to this sobering-up centre or something like that, then you are taking your personnel away from their main duty which is to try and retain some sort of peace in the 'G'.[233]

The Committee is sympathetic to these legitimate concerns. There is a fine balance in giving the police the necessary tools to deal with public order and not creating offences that are unnecessarily wide, vague or punitive in approach. This dilemma is exhaustively canvassed in Chapter 26.

As recent publicity has shown, elite sports people and alcohol can be a potent mix. Footballers in particular seem to have a propensity for disruptive and, on occasion,

233 Superintendent A. J. Warren, 8 December, 2000.

violent behaviour after indulging in too much alcohol.[234] Football, cricket and other team sports are of course played at a variety of levels across Victoria. It is at the community club level that most people play sport and therefore it is at this level that there is the most potential for after game revelries to get out of control. An encouraging initiative therefore is a programme run by the Australian Drug Foundation. The Foundation's 'Good Sports Program' works with Victorian community based sporting clubs to help them manage alcohol problems with their clubs and leagues. Such an initiative is another example of creative partnerships working pro-actively to curb or lessen alcohol related problems before police intervention or criminal charges are needed.

Events such as the Australian Grand Prix and the Motor Cycle Grand Prix are also occasions that give Victoria Police concern with regard to crowd control and public disorder. During the public hearings of this Inquiry, the Committee viewed footage supplied by Victoria Police of scenes of disorder and bad crowd behaviour outside a Cowes hotel during the 1999 Motor Cycle Grand Prix at Phillip Island. The Committee was told that in terms of arrests for drunkenness, injuries sustained and general disruptive behaviour, 1999 was a far worse Grand Prix than the one held in 2000. According to Superintendent Adrian Fyfe who was responsible for Grand Prix operations in 2000, this was in part attributable to a different emphasis in planning and approach:

> In 1999, under local priority policing, I assumed responsibility for the Bass Coast shire area. Prior to 1999 that was under the control of a different police command structure. Under my control — this was my first grand prix — we adopted a different strategy to try to prevent the problems from occurring in the first place. It basically is excessive use of alcohol and teenagers going down there — to use the grand prix as an example — with no intention of attending the grand prix; they just want to come down for the free party.
>
> What you saw outside the Isle of Wight in 1999 is what the people were looking for at the 2000 grand prix and it was not there. The Bass Coast shire and also the promoters of the grand prix provided entertainment at the end of Thomson Avenue for the people who congregated there. Under my supervision and control the Victoria Police Force used the authorities under the terms of the local by-law in enforcing the no drinking of alcohol much more vigorously. We would start by an education process of media publicity. They had what they call variable message signs at the top end of Thomson Avenue

234 See for example:

- [a] 'Everitt to contest charges', *The Age*, 31 October 2000, p. 14.
- [a] Walsh, Courtney & Edmonds, Mark 2001, 'AFL trio rampage', *Herald-Sun*, 26 March, p. 1.
- [a] Edmonds, Mark 2001, 'Footy fame has its price', *Herald-Sun*, 26 March, p. 19.
- [a] 'Robinson, Mark 2001, 'Pathetic Blues clear to play after drunken rampage', *Herald-Sun*, 27 March, pp. 69, 72.
- [a] Denham, Greg 2001, 'Drunk St Kilda star jailed', *The Age*, 2 April, p. 3.
- [a] Mickleburough, Peter 2001, 'Footy star drunk arrest', *Herald-Sun*, 2 April, p. 1.
- [a] Gardner, Ashley 2001, 'Bustling Barry's drinking charge is given the boot', *Herald-Sun*, 19 April, p. 7.

> that explained to people coming onto the island that there was no illegal camping, no alcohol, and no fireworks. Any person found in possession of fireworks was charged. Any person found in possession of or drinking from open cans of alcohol, depending on the discretion of a member of the police force, was either given a penalty notice or had the cans tipped out.
>
> We adopted other strategies to show that we were not just persecuting people. As part of our strategy we had sobering-up centres provided for the teenage or other drinkers who might need some help.[235]

Notwithstanding 2000 being a quieter year generally for the Motor-Cycle Grand Prix, 53 people were still arrested for public drunkenness. For these reasons Superintendent Fyfe was also loathe to countenance the decriminalisation of public drunkenness offences without an alternative method of policing potential public disorder. He stated:

> I think what is required is a fall-back option for the Victoria Police Force to remove people who are creating a problem either for themselves or the community. To decriminalise or just abolish the offence and not have a fall-back option for the Victoria Police would create an unfair burden and the community would suffer. There must be a fall-back option for the Victorian Police Force to deal with people who are a problem to themselves or the community.[236]

Yet Victoria Police were agreed that in the context of this event the people taken into custody were arrested not so much for being intoxicated per se but because of their disorderly and, at times, criminal behaviour. It is arguable that the alternative charges canvassed in Chapter 26 (offensive conduct) could equally apply in this case and at similar 'big events'. Another possibility, particularly for the less disruptive 'drunk', is that mobile sobering-up centres or shelters be established at these venues and festivities. These facilities could be staffed by agencies such as St John's Ambulance or the Salvation Army or, as was the case in 2000 at Phillip Island, by qualified youth workers. Indeed St John's Ambulance has been instrumental in suggesting the use of such centres at big public events and at certain times of the year such as New Year's Eve. A senior officer of St John's Ambulance described his efforts to establish a temporary sobering-up facility for New Year's Eve at Southbank in 1999:

> And I went to the Salvation Army and they were quite comfortable after discussing it with the Council and Department of Health Services to provide a sobering-up centre. So the concept is well used and something that I totally support personally and it takes the pressure off us. From our point of view, we can then go about looking after those who really do need our help in a sense that they have much more serious injuries. The Salvation Army people, who do have some health care professionals, have the ability to look after people that just need to be monitored, as opposed to be given any sort of medical

235 Superintendent Adrian Fyfe, Victoria Police, Division 3, Region 5, Gippsland. Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. 13 November 2000.

236 Superintendent Adrian Fyfe, 13 November 2000.

> treatment – just to be monitored so that they don't lapse into sort of a drunken sort of unconsciousness state and something worse happens to them. They were there and they were given tea and coffee. They could sit there as long as they wanted and it was an initiative as opposed to putting them into a crowded cell where you know it wasn't going to solve the problem. So, it is a good idea.[237]

A combination of partnership planning, the provision of entertainment and the strict enforcement of local government regulations against public drinking were seen as beneficial ways of minimising public disorder at Phillip Island. Similar strategies are used at public and community events and festivals run by, or at least in conjunction with, local government authorities. Events held in public spaces during New Year's Eve, for example, are clearly occasions at which there is potential for public disorder.

Members of the Committee attended one such event run in part by the City of Stonnington in Melbourne's inner south. The Chapel Street Festival is an event that has been going for some 10 years and sees the closure of Chapel Street from Toorak Road to Dandenong Road, a stretch of just over two kilometres. In that area up to 250,000 people come to the event which goes between 10.00 a.m. and 10.00 p.m.

The Chapel Street Festival reflects a trend for community festivals and the like to be run by events management companies in conjunction with other government and non-government agencies. For example, the planning of the Chapel Street Festival had input from, amongst others, the following agencies:

- Stonnington Council;
- Victoria Police;
- State Emergency Service;
- St John's Ambulance;
- Local Traders; and
- Private Security Companies.

The trend is to make the planning of these events pro-active rather than merely reactive, looking at preventing possible disorder and problems rather than attending to them once they have occurred. This is, or at least should be, an ongoing process. During the Chapel Street Festival, for example, the State Emergency Service audited the festival to use as a case study for future planning requirements.

Such a rational approach to events coordination is laudable. It does not of itself, however, completely solve the problem of alcohol related disorder at festivals of this nature. Police involved at last year's festival believe there are some basic reasons for this problem continuing.

First, different stakeholders involved with the festival approach the planning from perspectives that may not be complementary. For example, promoters and events staff may look at it from a commercial perspective whilst police and emergency services view it in terms of community and event safety.

237 Mr Arthur Uren, Operations Planning Officer, St John's Ambulance (Victoria) in conversation with the Committee, 13 March 2001.

Second, there is no real incentive for alcohol providers, including the liquor stores in the area, to cooperate in a responsible manner. As one Council officer involved in the festival stated:

> Council and the police have spoken to those liquor outlets, but you know, we can't stop them from trading, we can't stop them from selling, some of them co-operate in selling only cans and plastic, others don't.[238]

Less responsible traders may choose to flaunt the law because a healthy day's takings may prove more profitable than the relatively inexpensive fine they may incur, notwithstanding that they may run the risk of losing their license if they are summonsed to the Liquor Licensing Tribunal.

Inspector Steve Dennis, responsible for police operations at the festival, stated:

> The licensed premises have a duty of care, but the perception of some is, 'We can have people on our premises and they can drink, but once they leave our front door that is the end of it'. We all accept that their duty of care and responsibility goes far beyond that and extends to damage committed outside the premises and human debris and the like left outside the premises, which is part and parcel of their being licensed premises. Licensees have to accept their responsibilities, rather than saying, for example, about the Chapel Street Festival, 'This is great. This is a grab for cash! We are going to sell as much alcohol as we can because we had a couple of pretty poor weekends last month'. That should not be seen as the objective of the festival, but it seems to be part of the attitude that permeates those sorts of events.
>
> Organisers have a significant responsibility in those sorts of public events, as do the people who run licensed premises.[239]

Third, police believe there is no clear understanding of what this festival stands for. It may be promoted and indeed run as a family festival during the day but at night it deteriorates into a 'drunken free for all' and becomes much harder to police. Inspector James stated in this regard:

> The main thing with a festival is what is the objective, what is the theme of the festival, and the way festivals are marketed. If we are talking about something that is marketed towards family groups, for example, the focus should not be on running till 10.00 p.m. and then the focus becomes moving to licensed premises where there is alcohol available. Families tend to leave those areas at around the 6.00 p.m. to 7.00 p.m. mark. By then most families are gone. It really comes down to how those sorts of festivals are marketed. Discussions with the organisers are important, and the focus of a festival is very important from a policing and community perspective. They are the issues that have to be addressed with all festivals. The issue of entertainment is ...also pertinent. The entertainment for children and family groups ceases at 6.00 p.m., and it

238 Ms Cherie Le Cornu, Business and Cultural Development Co-ordinator, City of Stonnington, Victoria, accompanying Committee at the Chapel Street Festival, 12 November 2000.

239 Inspector Steven Dennis, Victoria Police, Region 1, Prahran, Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. 13 November 2000.

> is located in one area only. What then happens is that people walk the length and breadth of the street consuming alcohol at various venues and looking for something to do and somewhere else to go where they can have more alcohol. That is the unfortunate aspect of that sort of event.[240]

This is in contrast to street and other festivals that are thematically very defined, have a specific focus or purpose, or provide various forms of entertainment. Ethnic and cultural festivals, the gay and lesbian community's Midsummer festival, and festivals that come under strict planning requirements, such as the Lygon Street Festival in the Melbourne suburb of Carlton, fall into this class.

According to the police, alcohol was clearly a problem at the Chapel Street 2000 Festival. Nonetheless, for the whole of the festival only five arrests were made for public drunkenness. This was partly due to the sheer number of people attending the festival and the amount of alcohol involved. In circumstances such as these it is thought that in some situations to arrest someone runs the risk of inflaming the situation. Discretion can and is used in such circumstances, although arrests are made when people have clearly breached the criminal law. Inspector Dennis explained the rationale for the use of discretion:

> There is a combination of factors. There are some people who are in a situation where they just cannot move. They are on the ground — they cannot move; they cannot go anywhere. We exercised considerable discretion in having people who were intoxicated to various degrees of having to go to people who were sober and move them away from the area and get them home. There were instances of people being placed in taxis and the like to be moved from the area, to get them away from there. These people become very vulnerable victims as the night goes on, which is also the situation for us too. If assaults were committed, people were charged with offences of assault. If offences of offensive behaviour were committed, people would be charged with those offences. To arrest for drunkenness in that situation is one that we use as a last resort...People can become extremely ugly after two glasses of alcohol, and confronting people who are ugly and angry after they have had something to drink can be a very uncomfortable experience, not only for our people but also for members of the community. We have to decide whether they are committing other offences, and if the answer is yes, they are committing other offences, they are charged for those offences.[241]

Despite some unfortunate incidents at the Chapel Street Festival, the Committee believes that cooperative partnership planning for community events and festivals is a trend to be encouraged. In Western Australia the Police Service are well experienced in facilitating such coordinated strategies. Assistant Commissioner Standing told the Committee during its recent trip to Western Australia of the success of such strategies in the context of the 'Perth Lotto Skyworks' held on the banks of the Swan River:

240 Inspector Steven Dennis, 13 November 2000.
241 Inspector Steven Dennis, 13 November 2000.

> We are placing more responsibility on the organisers of events and holding them totally accountable for setting clear guidelines in conjunction with local governments, the police and government agencies such as the Health Department, the Fire and Emergency Services Department and the Western Australian Office of Racing, Gaming and Liquor. They must ensure that they address all legislative requirements relating to duty of care, training of staff and providing sufficient security personnel and procedures.[242]

The best example of this type of coordinated approach that the Committee has become aware of is that overseen by the City of Melbourne's 'A Team'. The 'A Team' is part of the Council's Events Planning and Management Department. The role of the 'A Team' is to assess all aspects of an event proposed for the City of Melbourne and its impact upon city residents, businesses, amenity and management. Members of the 'A Team' include the following agencies:

- Police, Fire Brigade, Ambulance and other Emergency Services;
- Transport Services;
- City of Melbourne Departments; and
- State Government Departments and Agencies (for example, Parks Victoria).

One of the key strategies used in planning event management in this process is that all interested parties who seek to plan an event within City of Melbourne boundaries must submit to the 'A Team' a detailed plan outlining its organising strategies, the purpose of the event, emergency contingencies and proposals that will facilitate the smooth running of the event. This plan is then scrutinised by the team and permission is either granted or withheld. For very big events such as New Year's Eve or St Patrick's Day the planning process may commence as much as eight months beforehand. The process was explained to the Committee by Brian Anderson, the City of Melbourne's Team Leader for Development and Statutory Services:

> For New Year's Eve last year we commenced about eight months out and designed New Year's Eve. What we felt was, we would ask all event organisers what they were planning to do so that involved people who worked at the Docklands, Exhibition Buildings. We had three committees. One on transport and traffic, one on emergency management and one on road control. Those committees simply looked at the issues and obviously the traffic control were looking at the alcohol related type issues. But we've had people such as Tony Warren, the Police Superintendent, on that committee and that was to see if we could get him to say okay all recommendations will go through the committee and be signed off by Council. So what I'm getting at is the serious approach the Council takes to using open space, or public space, and that we design things around being family orientated. Now I think New Year's Eve is probably the best example and over the last five years the Council...has now found it a bit more comfortable. Last year we asked the Department of Infrastructure to allow all night travel, free travel…to allow lots of people to

242 Assistant Commissioner John Standing , Western Australian Police Service in conversation with the Committee, 6 March 2001.

> come into the city. So people come into the City, have a good time and even though the crowd is big they still get away. So our role is to try and get the City as safe as possible for the family. Don't advertise the public component or the alcohol component of it, but you can come and you can drink in a licensed premises but you can't drink on the street.[243]

The other main measure the City of Melbourne has in place to curtail alcohol related harm during public events within its boundaries, is the use of its local law against drinking in non-licensed public places. Many local government authorities have in place a local law making it an offence to drink or have unsealed alcohol containers in public areas within their boundaries. Penalties for breaching the local law consist of monetary infringement notices.[244] In the central business district of Melbourne, the local law applies 24 hours a day, every day of the year. The law can be extended to cover other parts of the city on particular occasions. This is usually done, for example, during the Melbourne Grand Prix and the Melbourne Moomba Festival.

The City of Melbourne's Activities Local Law[245] (local law) is described in its accompanying protocol as:

> [a]iming to provide for the responsible management of public places so as to enhance the enjoyment of them by the general public, *especially during major events*[246] (Our emphasis).

The Consumption of Liquor Protocol between Victoria Police and the City of Melbourne (hereinafter referred to as the Protocol) has the following elements in place:

1. The local law does not concern criminal activity, violence associated with drinking or drunkenness – 'Victoria Police will continue to take appropriate action under State and Federal laws wherever there are offences related to the consumption of alcohol'.[247]
2. The City of Melbourne will monitor the control and sale of alcohol at kerbside cafes. Cafe permits will be granted by Liquor Licensing Victoria in consultation with the Council.
3. The City of Melbourne and Victoria Police agree that: 'a positive effort will be made to establish contact between at-risk groups and organisations who assist vulnerable individuals or groups or others affected by social problems'.[248]
4. Victoria Police accept that it is the intention of the Council that the local law 'should be used as a pro-active measure to deter antisocial behaviour'.[249]

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243 Mr Brian Anderson, Team Leader for Development and Statutory Services, City of Melbourne, in conversation with the Committee, 30 October 2000.

244 Currently a one hundred dollar fine applies for each infringement.

245 Activities Local Law Number One of 1999, Part Three.

246 Protocol for Consumption of Liquor, Explanatory Memorandum, Doc 261360, City of Melbourne.

247 Protocol for Consumption of Liquor, Explanatory Memorandum, City of Melbourne.

248 Protocol for Consumption of Liquor, Explanatory Memorandum, City of Melbourne.

249 Protocol for Consumption of Liquor, Explanatory Memorandum, City of Melbourne.

One of the important features of the City of Melbourne's local law is that it is monitored and enforced by Victoria Police. This is to be contrasted with the position in many other local government areas.[250]

The protocol also takes a more educative and less punitive approach to enforcing its ban on public alcohol consumption:

> So the local laws in place are...to actually enable police and council to have the tool to manage behaviour before it became antisocial in terms of its association with alcohol.[251]

Infringement notices for the most part will not be issued as a first course of action. Members of Victoria Police are advised to use their discretion in exercising their powers according to the following steps:

- seek an explanation as to why the offender is breaching the local law;
- explain the restrictions operating within the central business district;
- instruct the offender to empty out the remaining contents of the alcohol container;
- in appropriate circumstances issue an infringement notice to the offending consumer;
- if appropriate use penalties under the *Summary Offences Act 1966*;
- record action taken including any referral services offered to the offender; and
- report to the Council the extent of use of the local law over a two-month period.[252]

The last two instructions are designed in part to enable the City of Melbourne to monitor the problems associated with alcohol in the city and accordingly develop strategies and services to best deal with these.

The supporters of a local liquor consumption law claim that it is one of the best mechanisms in controlling alcohol consumption and related harm in streets and public places, particularly during the holding of outdoor events, festivals, concerts and sporting fixtures. When the Committee met with members of St John's Ambulance they were told that such laws and alcohol restrictions generally had done much to minimise and diminish the disorder, injuries and violence associated with big public events and festivals:

> It is not alarming by any stretch of the imagination but it is certainly a factor that exists at those types of events. If you look at open air public events and I suppose New Year's Eve 1999 was an outstanding example where there was fairly large celebration here in the City. If you compare the levels of

250 Indeed one of the misgivings of police involved in the Chapel Street Festival was that for the most part police officers were not able to issue infringement notices under the City of Stonnington's by-laws without specific endorsement. They saw their job as being potentially much easier if they were able to give hefty on the spot fines for consuming alcohol in the non-licensed parts of Chapel Street. Observations made to members of the Drugs and Crime Prevention Committee by Victoria Police officers during its visit to the Chapel Street Festival, 12 November 2000.

251 Mr Tony Miauto, Program Development Co-ordinator, Development and Statutory Services, City of Melbourne, in conversation with the Committee, 30 October 2000.

252 Consumption of Liquor Operational Protocol between Victoria Police and the City of Melbourne.

> drunkenness or issues relating to alcohol or alcohol affected people that we attended compared to say going back ten years ago in the City Square or the GPO, they're markedly reduced and we've put that simply down to the Local Government authority implementing alcohol free zones; the limited use of high alcohol or high percentage level alcohol, or low alcohol I suppose is a better way to put it, in these types of events.
>
> So, what we've seen is a trend over the last five or six years, ten years that our incidents are reducing – particularly alcohol related ones. And in fact, over the board overall, we don't get the amount of work that we used to get say in the early 90s as compared today. It's just not happening. We were saying before, we put that down to simply that the legislation and the ban on the sale of full strength beer or that type of thing.[253]

This view is endorsed by another St John's Ambulance officer:

> When we first initiated New Year's Eve in the first aid coverage going back probably 10 or 15 years, we used to look at the City Square and the GPO. They were the only two venues in the City – that was well before Southbank was developed and we put our people in at 9 o'clock at night and we'd pull them out at about 3.30, 4 o'clock in the morning and we were treating somewhere about 300-400 people a night for varying injuries.
>
> Once the alcohol restrictions came in, our casualties numbers dropped down to probably 30-40 a night and we used to have in the early days ambulances backed in outside the old Regent Theatre – backed in just loading patients up. Then towards the end of it when the alcohol restrictions came in, we used to just call the ambulances when we needed them because there just wasn't the work.[254]

In summary, the establishment of the A Team and the enforcement of the local law reflects the view of the municipal authorities that problems such as public drunkenness and associated harms can only effectively be tackled through cooperative and coordinated approaches. According to the City of Melbourne, this needs to be done with those key stakeholders who share a common interest in making Melbourne a safe and enjoyable place in which to live.[255]

To a limited extent these co-operative ventures and strategies are replicated in some rural shires and councils in Victoria. Physical, economic, social and demographic differences between these areas and the capital city will clearly have a bearing on the scope and type of activities conducted by local government in country (and indeed municipal) districts.

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253 Mr Arthur Uren, Operations Planning Officer, St John's Ambulance (Victoria) in conversation with the Committee, 13 March 2001.

254 Mr Wayne Deeks, St John's Ambulance (Victoria) in conversation with the Committee, 13 March 2001.

255 There are clearly many groups and individuals within the community who support the use of local laws to address the problems associated with public consumption of alcohol. Such schemes also have their detractors. In particular, Indigenous community groups, some legal organisations and civil libertarians are concerned at the potential for municipal regulation to penalise offenders, particularly the homeless and the poor. These arguments are canvassed in Chapter 16, which deals more broadly with local government.

This chapter has demonstrated that whilst criminal sanctions may be *one* of the ways in which the community addresses the issue of drunkenness in its streets and at its public gatherings, it is not the only method. Nor is it even the one most practised. A range of other measures is employed on a more frequent basis. The combination of cooperative partnerships, rational planning procedures, the provision of services ensuring city safety and the use of municipal liquor consumption laws are presented by their supporters as part of the bigger picture contributing to the safety and wellbeing of Victoria's residents.

15. Police Attitudes to Public Drunkenness and Related Issues

Every policeman [sic] knows that, though governments may change, the police remain
– Leon Trotsky 1922

It is difficult to discuss the question of 'the' police attitude to an issue such as public drunkenness, or indeed any crime, just as it is impossible to speak of a 'police culture'.

From the outset it should be stated there is no one monolithic or immutable police culture nor one fixed or unitary set of attitudes to any aspect of police work. Rather, there are various cultures and sub-cultures, attitudes and responses within police work that can be contradictory or even in opposition to each other (Johnston 1997).

For example, one could talk of a 'cop' or 'street' culture on the one hand and a command or operational culture on the other. The attitudes of the cop on the beat, in other words, may not necessarily be those of the policy echelons at Police Headquarters.

Clearly the constables and other officers doing nightly patrols of our city streets and rural areas are going to be the 'front line troops' in the battle against alcohol related violence and associated harms. Their views therefore *as well as* those responsible for making and administering policy at a higher level are important to the deliberations of the Committee.

The following account is drawn from Committee discussions with individual police officers in Victoria and interstate, official submissions from police agencies and relevant literature. We do not assume that the account is representative, at this stage, of a unified police view or position. The discussion is merely illustrative of some of the issues, concerns and debates with regard to this area of police practice.

Attitudes of Victoria Police regarding Police Discretion, Decriminalisation and other Public Drunkenness related Issues

It is axiomatic to state that as Victoria has not decriminalised the offence of public drunkenness, the views of police officers, particularly those on the ground, will not be the same as police working in jurisdictions where decriminalisation has taken place, nor will they have their benefit of hindsight. It may well be that police officers in States that have decriminalised the offence had different attitudes prior to decriminalisation than those that they now hold. Initial resistance may have been replaced with something approaching acceptance, albeit with reservations. That certainly seems to have been the case in New South Wales with regard to the police officers and management with whom the Committee has already met.

A 'knee jerk' response from some sectors of the community has sometimes been that the police are *never* willing to give up any area for which they hold responsibility, administer or exercise power in relation to. Such a view is somewhat simplistic. Dealing with 'drunks', for many police officers, is messy, irritating and on occasion violent and dangerous work. It is certainly neither 'exciting' nor 'glamorous'.

The reasons why certain sections of the Victoria Police may be reluctant to see the public drunkenness offences excised from the statute books are far more complex.

One of the key reasons why police view the area as so complex is because 'the various manifestations of the intoxication of alcohol that the police deal with is very broad'.[256]

Policing of 'drunks' can be broadly classified into a number of areas including:

- the habitual and or homeless or itinerant 'drunk';
- youth 'binge' drinking;
- sports and large event crowds;
- licensed premises that provide entertainment;
- poly-drug users; and
- the harmless or 'quiet' drunk.

Different approaches can and are applied to the different categories of intoxicated persons. In the case of the homeless and itinerant person, it is thought that the ability to invoke section 13 of the *Summary Offences Act 1966* can play a useful social role with regard to the homeless. Indeed, it has been mentioned to the Committee by more than one informant that when the offence of being a habitual drunkard was extant many homeless people were glad to spend a 'month inside':

> And what you found is that around Christmas time and winter time when it is cold out there, people are sleeping on the doorstep of the police station to be able to get a room and board. So it has assisted those people, homeless people, in the past who actually get some quality of life.[257]

A totally different approach may be taken with a young person or group of young people. To quote Inspector James again:

> We would look...at trying to get that young person home to someone who can look after them.[258]

On the other hand a different approach may be warranted with regard to an aggressive adult:

> If it is an adult, we've got to be very mindful of putting an intoxicated person back into the home because of the possibility of the escalation of domestic violence.[259]

256 Acting Chief Inspector Steven James and other officers, Victoria Police, in conversation with the Committee, 7 July 2000.

257 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

258 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

259 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

Situational and resource factors are also important. For example, a paucity of sobering-up centres and equivalent facilities in rural regions will often mean police have no choice but to put people in police cells or lockups.

The key approaches of police in dealing with public drunkenness seem to be the use of *flexibility* and *discretion*.

The exercise and basis of police discretion is one of the most theorised areas in the writing on modern policing. From a criminological perspective, Inciardi offers a comprehensive and useful definition of what is meant by police discretion:

> To define police discretion in a single phase or sentence would be difficult, for the term has come to mean different things to different people. In the broadest sense, discretion exists whenever a police officer or agency is free to choose among various alternatives – to enforce the law and do so selectively, to use force, to deal with some citizens differently than with others, to provide or not provide certain services, to train recruits in certain ways, to discipline officers differently, and to organise and deploy resources in a variety of forms and levels (Inciardi 1997, pp. 209-210).

Inciardi also makes the pertinent point that police discretion appears paradoxical as it appears to flaunt legal demands:

> In most jurisdictions the police officer is charged with the enforcement of laws – all laws! Yet discretion in terms of selective enforcement is necessary because of limited police resources, the ambiguity and breadth of criminal statutes, the informal expectations of legislatures and the often conflicting demands of the public. The potential for discretion exists wherever an officer is free to choose from two or more tasks relevant alternative interpretations of the events reported, inferred or otherwise observed in any police civilian encounter (Inciardi 1997, p. 210).

La Fave (1965) argues that police discretion arises in one of three main circumstances:

- First, in situations where the behaviour may be illegal, but the police officer has reason to believe the legislature (and public opinion) never intended rigorous enforcement. In the public drunkenness arena, it may be more likely that the violent or aggressive 'drunk' is arrested but not the polite and quiet inebriated person.
- Second, in situations where the enforcement of the law would place onerous and unreasonable demands on police time, personnel and budgets.
- Third, in situations in which it may be technically appropriate to arrest, but such a course may be ineffective or inappropriate (arresting the homeless) or may cause long-term harm to the offender. This will be the case with youth and children particularly. Many jurisdictions such as Victoria, therefore, have cautioning programmes enabling police officers, wherever possible, to use their discretion not to arrest young first time offenders.

The crucial stages of police decision making generally involve three essential elements:

- whether to get involved in an event (this is not a choice if the officer is sent by their organisation or directly contacted by a member of the public);
- how to behave in an event, or how to interact with members of the community; and
- selecting alternatives to deal with the matter at hand and ultimately presenting some resolution to the problem.

Each of these steps is relevant in the policing of public drunkenness. They are underlined in the following evidence given to the Committee by a senior Victorian police officer:

> I mean, the problem is you probably can't mandate one solution. If they're 6'5 and a league footballer full of testosterone causing trouble outside a nightclub, then maybe four hours in the cells is exactly what he needs, his medicine till he calms down and goes home. So that is one way. If he is a paralytic drunk in the corner, an inoffensive sort of fellow, then perhaps all he needs is tucking up in bed and four hours later they're let out again. So there is a whole range of people who come into contact. …I think at the moment we are lucky that we have a range of options and how to deal with them.[260]

The principle underlying the notion regarding discretion is that all laws *cannot* be enforced at all times and that, fundamentally, people do not want or expect them to be. The plausibility of enforcing all the laws all the time is brought into question on the grounds of rationalism by Pike:

> It is quite obvious that it would be impossible to enforce all breaches of the law in all situations since this would fail to take into account any special circumstances in particular cases, quite apart from placing an intolerable burden on the courts. It is recognised, therefore, that the police operate a policy of selective enforcement based on fairness and reasonableness (Pike 1985, p. 65.[261]

Although it is expected that police must exert a certain level of latitude in their dealings with members in a community, their job is not made easy when it is considered that, unlike many other areas within policing that are defined precisely by judicial or statute interpretation, such precise limits are almost non-existent when it comes to exercising discretion in areas such as public drunkenness:

> The choices of working cops are rarely made on the basis of clear cut legal standards…the law as it unfolds to the average street policeman [sic] is unarguably ambiguous. What, for example, constitutes disturbing the peace? When is a man drunk and in violation of the law? When he has passed out in

260 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

261 Pike's suggestion that selective enforcement is based on rational and reasonable choices (such as cost effectiveness) rather than emotive or irrational reasons (such as racial prejudice) has been questioned by critics such as Smith and Klein 1984; James and Polk 1989; Cunneen 1991; Senna and Siegel 1993; Palmer 1991; James 1992; Hazelhurst 1996; and Mackay and Munro 1996. The common theme of most of these commentators is that the police have *policy making powers* by virtue of their power to decide what laws will be enforced, when and against whom.

> the street, when he is seen staggering down the street, or when he merely responds to a patrolman's interrogations with a slurred voice? The law defines only the outer limits of discretion and tells a policeman what he may do – rarely what he should do (Brown 1988, p. 4).[262]

Brown's comments apply to the American context, but are arguably applicable to the Victorian situation. His thesis is that the 'cops on the beat' effectively through their discretionary choices determine the meaning of law and order. Or as Brogden et al. argue, by employing their discretionary judgement as to whether a crime or a disorderly act has taken place, they define criminality (Brogden, Jefferson & Walkgate 1988, p. 2).

Lawyers from the Northern Australian Aboriginal Legal Service told the Committee that the use of police discretion needs to be taken into account in any discussion with regard to the decriminalisation of public drunkenness and the use of substitute diversionary programmes:

> If you were thinking of adopting a similar model to the Northern Territory a positive model would be to engage in some kind of education program about some of the dangers that can exist in the use of [police] discretion, because the discretion to divert, the manner of the diversion to the sobering-up shelters and that sort of thing, the way it is done, how you judge who is the appropriate target to be picked up and put into the sobering-up shelters – they are all wide areas of discretion. I am not trying to say our view must be right [for Victoria], but in Europe they have had amazing results in learning about how police use discretion.[263]

One of the key determinants that Victorian police use in deciding to exercise their discretion with regard to arresting for public drunkenness is whether by doing so this will avoid the escalation of violence and a potentially much more serious confrontation. Although anecdotal and inconclusive, the following account that was recently related to the Committee by Professor Van Groningen illustrates this:

> And I went out one night and just stood around King Street…and we watched the drunks spilling out of the places at 2 and 3…in the morning…and the number of people that I thought could have been arrested for doing some damage to property was quite high, breaking off antennas of cars and knocking off mirrors, but they were only arrested for being drunk…I said [to the policeman] why don't you arrest him for, you know, breaking property and damaging all that and he said look mate, it's all too hard. He said if I arrest him for being drunk I've got him off the street, that's all I'm trying to do. If I get him for criminal damage…I have got to go to court, I've got to do a brief, I've

262 This discretion will be more circumscribed if the laws in question are accompanied by an official departmental policy or there are police standing orders or directives indicating how the law should be policed. For example, in Victoria today official protocols to be followed in cases of family violence give the individual police officer less opportunity to use their own initiative or discretion, (see Johnston 1997). As indicated in an earlier chapter, there are no substantial police guidelines with regard to the policing of public drunkenness.

263 Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee, 3 August 2000, Transcript, p. 35.

> got to stand around for hours [in court] …all I am trying to do is get him off the street, and the easiest way to get him off the street is to arrest him for being drunk in public…to prosecute [other public disorder crimes] is going to take a lot of time on my part …I've got to have evidence…for public drunkenness I've just got to say he is drunk.[264]

In other words, a substantial degree of police opinion prefers to retain the offence of public drunkenness as a means whereby:

- further violence is prevented; and
- an offender is processed according to a very low level of criminal liability with few serious or ongoing consequences.

One could state that the offence has a functionality that goes beyond its surface value.

If there *are* alternatives available, however, police are prepared to use them:

> But our understanding is, if there is an alternative to actual incarceration, that's what we encourage, and that's what in practice happens. Now unfortunately in some cases you don't know who the person is, you've got nowhere else to put them at 3 o'clock in the morning, they've got to go in the cells. But where there's an alternative, by all means, that is encouraged and that's utilised.[265]

The above comment reveals one of the most pressing concerns some police have if Victoria was to decriminalise the offence of public drunkenness – the issue of resources. This concern is felt on two levels:

First, a concern that there will simply not be enough financial resources put into facilities such as sobering-up centres, resulting in intoxicated persons still being held in police cells. Aligned to this is the fact that police officers are not social workers or welfare professionals nor should they be expected to act as such.

Second, depending on how the decriminalisation goes ahead, concerns have been expressed as to how police resources will be used in administering any new system. Such concerns may centre on the issue of police travel time. For example, if police are expected to transport an inebriated person to a sobering-up centre this may result in a substantial drain on police resources:

> [I]t ties up resources for quite a long time. You might find that you're in Springvale and you've got to drive into Melbourne, and you've taken a divisional van off the road for two hours, three hours. It's a very tight resource issue. It sounds good if you can drive five minutes, dump a person and you're gone again. It doesn't happen like that in practice. Then you've got to sit with them to be assessed and then turn around and [they] say the person's got a crack on the head, so take him to hospital.[266]

The Inquiry into Public Drunkenness in 1989 by the Law Reform Commission of Victoria (LRCV) investigated the cost of decriminalisation with regard to the use of police resources, particularly police time:

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264 Professor Van Groningen, in conversation with the Committee, 13 June 2000.

265 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

266 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

> Estimates of time spent in policing public drunkenness demonstrate that a typical transaction would occupy an individual officer for one hour and nineteen minutes. This period extends from the initial call and arrest until the court hearing. If the offence of public drunkenness is abolished, this time might be released. However, this assumes that police effort in this area would cease completely. In fact police involvement may continue at the same level, at least in the apprehension and initial processing activities (LRCV 1989, p. 16).

This last point is certainly true of the jurisdictions that the Committee has visited. In New South Wales and particularly the Northern Territory a substantial amount of police time is still spent in transporting intoxicated persons to proclaimed places or sobering-up centres.[267] Victorian police have indicated that if decriminalisation was to go ahead, it would be preferable for sobering-up centre staff to collect intoxicated persons from police stations rather than police drivers 'waste' time in transporting them in police vehicles that could be used for more serious cases.[268] Concerns remain, however, as to whether sufficient resources can be allocated to sobering-up centres and other facilities:

> A network of personnel and infrastructure would be required to replicate the system that is working for the Aboriginal community, on the larger scale within the broader community of Victoria. Careful consideration would be needed of how people would be transported to such centres, who would operate them and whether they would require some form of power of arrest to convey people to their Centre. Police do not have the resources to provide transport services to Sobering Up Centres and the current practice of carrying out this role diverts police from other more important duties (Victoria Police, 2000, Submission, p. 4).

Other issues that some police see as problematic or of concern with regard to the issue of public drunkenness are:

- *Duty of Care Issues*

  The concerns of Victoria Police with regard to Duty of Care have been fully expressed in Chapter 7,

- *Poly Drug Use*

  Similarly, a discussion of police attitudes with regard to poly-drug use is to be found in Chapter 12.

- *Regional and Rural Differences*

Police have expressed concern that it is much more difficult to deal with intoxicated people in rural areas than in Melbourne or other large cities and towns. Obviously, one reason for this is the greater availability of services such as detoxification and treatment centres in the city. A common theme that runs through the evidence of many of the agencies the Committee has visited is that police in remote and rural

267 To a certain extent this problem of time allocation is alleviated when Aboriginal Night Patrols take over these duties, see Part G.

268 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

areas, however reluctantly, often have no choice but to lodge intoxicated people in police cells.

But the lack of services also applies to police personnel and affiliated staff such as medical workers. The types of duty of care issues referred to earlier are felt even more acutely in the country where there are fewer doctors, nurses and psychiatrists on call. Consequently, there is often no one available who can make an expert assessment as to whether someone is just intoxicated or also suffering from a mental illness, or suicidal or suffering a head injury or should be transported to hospital:

> [n]ow at our metropolitan police stations, when there are cells involved, there's generally a sergeant on duty. In the country it's…different…But in the metropolitan area there is generally a sergeant and I guess he may well be somebody who could call [for] an assessment.
>
> We have a system of custodial medical officers and we have also increased now forensic nursing and they dual diagnose in relation to psychiatric as well as medical. And they are available for police to contact and use as a resource. So when in doubt they can contact people who are appropriately medically trained to supervise these people or for advice. So again it is probably easier for the metropolitan area than the country.[269]

Summary of Police Attitudes and Concerns

On the basis of official submissions and unofficial interviews and evidence, the three main concerns of police in Victoria if the offence of public drunkenness was to be decriminalised in this State seem to be that:

- First, there be sufficient resources put in place to enable health and welfare agencies to take a major role in the detention, care and treatment of people found intoxicated in public places:

The official police submission states in this regard:

> Without the funds to provide for the resource and infrastructure costs associated with establishing and maintaining Sobering Up Centres, any change to the current management of publicly intoxicated persons would be in name only (Victoria Police 2000, Submission, p. 1).

- Second, that clear guidelines be put in place that delineate a police officer's responsibilities with regard to the apprehension, detention and custody of intoxicated people.

This is thought to be particularly important should Victoria follow other States in implementing a non-arrest detention model.[270] Duty of care protocols need to be clearly defined and appropriate procedures put in place to protect both the police officer and safeguard the wellbeing of the intoxicated person. Such procedures should

269 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

270 Victoria Police claim that the current situation lessens the likelihood of police being vulnerable to allegations and subsequent litigation for wrongful detention:

> This legal liability is minimised in the *Summary Offences Act*, which provides police with a clearly defined role in the detention of persons found intoxicated in a public place (Victoria Police 2000, *Submission*, p. 2).

cover the stages of apprehension, detention, transport, and hand-over of the intoxicated person to other individuals or agencies. Police should be given indemnities for any actions undertaken with regard to intoxicated people done in good faith.[271] Community agencies that take intoxicated persons into their care have also expressed concern that they be indemnified against any liability with regard to their duty of care responsibilities.[272]

- Third, if the offence of public drunkenness was to be decriminalised, adequate provisions must be put in place to allow police to deal with problems associated with keeping public order. It has been suggested that this may entail drafting new legislation providing for specific public disorder offences or statutory breach of the peace laws.[273]

In summary, the views of the operational police with whom the Committee has consulted suggest that the current provisions of the *Summary Offences Act 1966* with regard to public drunkenness are a valuable part of the 'tools' the police need to effectively deal with public order crimes and disturbances. A senior serving police officer put it thus:

> Quite often you will find that the appropriate offence is charge under section 13 of drunk under the Summary Offences Act. In absence of that offence there either is no offence or no ability to curb a particular problem whether it's rowdiness or public disorder. Or the other option, of course, is to go to a more serious offence where two people are fighting, and you might have to look at an affray or something like…And it seems to be an offence which is very well used by operational police out in the street. They can use it when they need to. It doesn't seem to have a great impact or any negative impact to the person who is actually charged with that offence, as opposed to alternatives it seems to be *a very good practical solution to the problem in most cases* (Our emphasis).

In response to a question from the Committee as to what the implications would be if section 13 were to be repealed, the same officer replied:

> Operationally I think that police would find that a tool that is used quite valuably in a range of situations would have disappeared, and I think we would lose ground if that were to occur, in the absence of something else.[274]

Despite Victoria Police's commitment to harm minimisation approaches, the long-term harmful effects of alcohol (mis)use are primarily social and health issues and are

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271 The Law Reform Commission of Victoria developed a series of guidelines to be followed by police and other authorised personnel in dealing with intoxicated persons under the proposed Public Intoxication Act. It may be that these guidelines or variations of the same could repay close attention. The guidelines as originally drawn can be read in Law Reform Commission of Victoria 1990, Public Drunkenness, *Supplementary Report Number 32*. See Appendix 7a and b.

272 Indeed, a number of agencies both interstate and in Victoria to whom the Committee has spoken have expressed concern about their legal responsibilities to people who leave their care whilst still intoxicated. It is the practice of some agencies in New South Wales and the Northern Territory to contact police immediately after a person absconds in order to diminish their liability should the intoxicated person be at risk or in danger.

273 See Chapter 26.

274 Acting Chief Inspector Steven James, in conversation with the Committee, 7 July 2000.

best dealt with by the appropriate health agencies. The Victoria Police Submission stated:

> It is imperative that any amendment of the current laws (including decriminalisation) should ensure that the Force's legal authority and areas of responsibility are clearly defined and that the ability to control or remove intoxicated people remains available. There is a community expectation that even intoxicated people who are not rowdy or offensive will be removed from the public places (for example shop keepers want sleeping drunks removed from doorways, footpaths in their vicinity) and for the safety of the intoxicated person it is important they be removed. Clearly it would be unacceptable to leave intoxicated people on the streets.
>
> The current laws are adequate to deal with public drunkenness for short-term protection of public order, public and individual safety. However, the law does not provide a solution to the increasing social and health implications of alcohol abuse of which antisocial behaviour in public is only one indication (Victoria Police 2000, Submission p. 2).

These concerns are more fully addressed in the following chapters of the Report.

PART F:
Other Models of Regulation

16. Drinking in Public and Local Government Regulation

One of the key issues that has arisen for the Committee in its deliberations is the relationship between council regulation of drinking in public spaces (municipal infringement) and State government prohibition on being drunk in a public place (criminal law). Whilst individual States and Territories have different ways of looking at perceived problems of drinking – public order and use of municipal public space – it is evident that in all jurisdictions municipal authorities can and do have considerable influence over public drinking. As stated in an earlier chapter of this Report, one of the reasons put forward as to why legislation decriminalising public drunkenness failed to be passed was the failure of the relevant parties to sufficiently consult with the local tier of government. Whether this is in fact the case or not, the Committee welcomes hearing from municipal government representatives as to their views on the decriminalisation of public drunkenness.

The Legislative Base

Under the *Local Government Act 1989* (Vic), municipal authorities such as local councils, rural cities and regional shires have extensive powers to make local laws regulating and restricting public drinking and other public order offences. Specific sections are as follows.

Sections 7 and 8 – set out the general legislative authority for councils to make laws with regard to their communities and enumerates their functions and powers. Such laws must not be inconsistent with State or Federal laws or otherwise *ultra vires* (ie. beyond the scope of municipal power).

Section 111 – is a more specific provision giving local government power to enact detailed local laws.

The above sections clearly enable local councils who choose to exercise this power the authority to make laws restricting the drinking of alcohol within public places in their municipalities.

Section 116 – enables a local council to proclaim the law as covering the *entire* municipality or only *part* thereof (for example parks, foreshores, shopping malls etc.). It also enables councils to proclaim the law as applying indefinitely, or for all or only part of a given period of time (for example, New Year's Eve, Grand Prix etc.).

Section 117 – allows infringement notices to be applied in lieu of prosecution for any contravention of the relevant law. Note, however, that provision for penalties subject to prosecution is to be found in section 115.

Section 224 – enables local councils to appoint authorised officers to administer and enforce local laws and regulations. Such officers may require a person suspected of committing an offence against the local law to give their name and address to the said authorised officer.

Section 224A – this is a very important section in the context of this issue. It allows *police officers* to enforce local laws with regard to alcohol offences. In effect, police become authorised officers pursuant to section 224.

It is important to note that the use of infringement notices does not criminalise the behaviour of those who merely drink alcohol without a permit in restricted areas. Nor do the police have the power to arrest such people. It does, however, enable authorised officers to move on such people and issue an infringement notice if they fail to do so. Ultimately, criminal penalties may be incurred if the person defaults on paying the fines attached to the infringement notice.

The Prevalence and Administration of Local Drinking Laws

There has been a noticeable rise in the number of local government authorities enacting local laws against public drinking in their municipalities (even allowing for local government amalgamations).

In 1992, approximately 30 local councils had enacted laws prohibiting drinking alcohol in public spaces (however delineated) within their municipalities or parts thereof. By 1994, this number had doubled. In 2001, 58 Councils have such laws.[275]

Many of the local laws prohibit the drinking from, or even mere possession of, open containers of alcohol without a permit.

In effect, local municipalities can declare parts or all of their public space 'dry zones'. Such laws are mirrored in other jurisdictions.[276] The most clearly articulated philosophy of local government being able to prescribe public drinking behaviour through the use of public space restrictions can be seen in the Northern Territory. This

275 Information provided to the Committee by the Division of Local Government, Department of Infrastructure.

276 See for example:
New South Wales – *Local Government Act 1993* Part 4, sections 642-649
South Australia – *Liquor Licensing Act 1997*
Northern Territory – *Summary Offences Act 1996.*

is done through the use of the 'two kilometre rule'. The administration of local laws in the Territory has clearly not been without its difficulties. Nonetheless, in areas such as Darwin the local city council has been reasonably successful in, if not 'eradicating' the problem of public drinking and associated disorder, at least moving it elsewhere, particularly away from the tourist precincts. Whether this is appropriate is not an issue for the Committee to comment upon at this stage.

James (1994) has made a study of local governments in Victoria that have enacted public drinking local laws. She interviewed municipal officers from 20 of the 30 local councils who at that time had such laws in operation.[277] The following responses make for interesting reading.

- Of the councils that responded, 17 out of 20 identified public drunkenness as a 'considerable problem' in their municipalities.
- Certain locations in which drinking took place within the municipality were identified as being of particular concern to councils. The areas in which councils were most keen to 'stamp out' public drinking included shopping centres and malls, parks and reserves (or foreshores in coastal areas) and outside pubs and nightclubs.
- Certain times of the year were also identified as being of concern to most municipal officers. In particular, councils tended to concentrate on Christmas, Easter and New Year as periods in which extra vigilance was required. In coastal and tourist areas this was especially the case.

With regard to the locations in which councils were concerned about public drinking, James states:

> [I]t appeared to be the activities associated with public drinking rather than the act of drinking itself, that councils raised concern about. In particular, the fear of potential crime was perceived by councils to be closely linked with the activities of drinking groups in these specified locations (1994, p. 43).

Local Government Initiatives in Relation to Public Drunkenness and Alcohol Related Disorder

The Committee is extremely disappointed at the apparent lack of interest shown in this Inquiry by local governments and municipal authorities across Victoria. Only five submissions were received by the Committee from local government authorities or their representatives.[278] This is despite the fact that every municipal council or shire in Victoria was sent a copy of the Committee's Discussion Paper into Public Drunkenness in October 2000 and invited to formally submit to the Inquiry.[279] The Committee has also sought the views of the Municipal Association of Victoria either through formal submission or by meeting with its officers. To date nothing has been forthcoming.

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277 As stated above, the number of such councils has since significantly increased.

278 This does not include the submission of Councillor Ross Douglas of the City of Mildura who wrote to the Committee as an individual.

279 For a list of submissions that were submitted by local governments, see Appendix 1.

This lack of response from local authorities is particularly disheartening given that it has been stated that one of the reasons why the Bill to decriminalise public drunkenness failed in 1991 was the lack of consultation with local government.[280]

Nonetheless, the Committee expresses its appreciation to the local government authorities that did assist the Committee in its deliberations. It has had much contact with the City of Melbourne whose officers have generously given of their time and expertise to aid the Committee and its staff. The Committee has also met with officers of the City of Mildura and the City of Swan Hill to gain an appreciation of the impact of public drunkenness on provincial towns and rural districts in Victoria. The Committee has also met with local government officers in other States and Territories in Australia. An account of interstate and Territory initiatives is given in the relevant case study pertaining to that State.

To illustrate the types of services and programmes that local government may develop to combat problems associated with public drunkenness, the Committee draws predominantly on the experience of the City of Melbourne. This is for two reasons. First, the City of Melbourne one was one of the few local government authorities that actually supplied us with this information. Second, as the capital city and economic, cultural, sporting and entertainment centre of the State of Victoria, clearly mechanisms to deal with the problems associated with the use of alcohol will be of high priority in presenting the City as a safe and pleasant place to live. The City of Melbourne's Manager of Community Services put it this way:

> The point, which is very important to us as a capital City, is that perceptions of safety are as important, sometimes more important, absolutely critical to the viability of the City and the image of the City. And a couple of ugly incidents in relation to either alcohol related behaviour or violence or illegal drugs...can really bring down a whole lot of very well managed street activity or events in the City. Some bad incidents at New Year's Eve can really bring down New Year's Eve as a destination for particularly families and young people in the City. So it is so important for us to manage things well but also to be seen to be managing them well and for us to manage those perceptions. So that's quite an important area of our activity. We have a strong sense of order and of public space and our freedom in public space and Melbournians really don't like anything that threatens that sense of public order.[281]

Many of the programmes, functions and initiatives of the City of Melbourne have been fully discussed in other chapters of this Report. In particular, much focus has been placed on the use of the City of Melbourne Local Law in the context of street disorder and maintaining harmony at big outdoor events.[282] The role of the City of Melbourne in promoting and participating in the City of Melbourne Liquor Accord has also been canvassed. The following discussion, therefore, will restrict itself to a discussion of

280 See Chapter 6.

281 Ms Heather Scovell, Manager Community Services, City of Melbourne in conversation with the Committee, 30 October 2000.

282 See Chapter 14.

some general initiatives aimed at promoting safety, amenity and wellbeing in the City of Melbourne.

The City of Melbourne has supported a broad 'carrot and stick' approach to addressing public drunkenness, violence and associated problems in the CBD. On the one hand the City justifies the use of the Local Law (Banning Consumption of Alcohol in Public Places).[283] It argues that it has greatly reduced the level, number and severity of public drunkenness incidents in the Melbourne Central Business District. In addition to the more traditional 'punitive' approaches of increased police presence, police operations and the use of local laws and fines, more positive and preventive measures that have been developed include:

- project officers employed to work with key stakeholders in dealing with licensing issues;
- stringent new requirements for nightclubs have been mandated. These include internal camera systems, metal detectors and other safety measures;
- public space surveillance cameras located in key city locations;
- management of nightclub environs amenity (noise reduction requirements etc.);
- the establishment of the City Licensees Forum and Accord;[284]
- the installation of Safe City Taxi Ranks;
- the establishment of an Indigenous Advisory Forum (IAF) with broad representation from Indigenous agencies, sobering-up services, legal and health services; and
- the appointment of an Aboriginal Liaison Officer.

The appointment of Aboriginal Liaison Officers reflect the concern of the Council to be seen as even-handed in its treatment of Indigenous people in the City of Melbourne. A representative of the City of Melbourne made the following important point:

> One key piece of advice that the Forum [IAF] gave us was that it was critical to separate criminal or illegal behaviour from other behaviour that may be perceived to be antisocial. For example, it is not an offence for Indigenous people to meet and gather, but some people perceive it as being antisocial and a threat to their safety, or generalise that all Indigenous people are drunks. The point here is that community attitudes can influence policing so that Indigenous people who are gathering together or meeting in a public place may attract unnecessary police attention. We have attempted to address this issue through a process of legitimising Indigenous peoples' right to meet and gather in the city.[285]

The other key aspect of curtailing public disorder, disruption, and violence (including harms associated with alcohol consumption and public drunkenness) is the use of Events Planning and Management by the Council's 'A Team'. The role of the A Team is

283 See Chapter 14.

284 See Chapter 18.

285 Kathy Brackett, Acting Co-ordinator Social Development and Planning, Community Services in conversation with the Committee, 30 October 2000.

to assess all aspects of an event proposed for the City of Melbourne and its impact upon city residents, businesses, amenity and management. Members of the 'A Team' include the following agencies:

- Police, Fire Brigade, Ambulance and other Emergency Services;
- Transport Services;
- City of Melbourne Departments; and
- State Government Departments and Agencies (for example, Parks Victoria).

The establishment of the A Team reflects the view of the City of Melbourne that problems such as public drunkenness and associated harms can only effectively be tackled through cooperative and coordinated approaches. This needs to be done with those key stakeholders who share a common interest in making Melbourne a safe and enjoyable place in which to live.[286]

To a limited extent these cooperative ventures and strategies are replicated in some rural shires and councils in Victoria. Physical, economic, social and demographic differences between these areas and the capital city will clearly have a bearing on the scope and type of activities conducted by local government in country (and indeed municipal) districts.

Arguments Against and For Local Government Regulation

Arguments Against

A concern of community legal centres,[287] youth and Aboriginal organisations and some academics has been that local laws with regard to public drinking (and associated offences) have been targeted selectively against some of the most vulnerable groups in the community, notably Indigenous people (particularly in the Murray River areas), young people and the homeless (see Cunneen 1991; Palmer 1991; James 1992, 1993, 1994; Sheppard 1994).

Such critics claim that local government intervention in this sphere is part of a wider law and order agenda of 'cleaning up the streets'. Such intervention cannot be divorced from other areas of local government regulation such as prohibitions against littering, vandalism and graffiti. James best exemplifies this view:

> [L]ocal councils have enormous powers under the *Local Government Act* 1989, and these especially impact upon the drinking activities of local constituents. Power exercised through the enacting of public drinking local laws reveals a clearly articulated interest by councils in controlling the consumption and possession of alcohol, while simultaneously controlling crime levels in the municipality (James 1993, p. 42).

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286 For further discussion of the 'A Team', see Chapter 14.

287 Note: in a submission to this Inquiry the Victorian Aboriginal Legal Service (VALS) stated:

> It is [also] essential to prevent Local Government Local Laws undermining changes to State law on this issue [and]…Any future legislation and implementation process needs to include consideration of local government powers to make drinking in a public place illegal and the extent to which both levels of law can co-exist.
>
> (Submission to Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, VALS, May 2000, pp. 1-3.)

Ironically, such a rationale is exactly the reason supporters of local government regulation would favour these laws. Certainly, the City of Melbourne believes their Local Law is an effective means to reduce public disorder in the city. The ease with which it can be used is viewed as one of its most positive features. But even a representative from the City of Melbourne agrees that it needs to be administered with caution:

> I think our by-law gives another alternative to the whole thing and I think the police tend to like to use our by-law more than the drunk. So when we say that statistics are going down on arresting people on the drunkenness I would almost bet that they're gone up on the use of the by-law. Because our by-law is more accessible and easy to use and I think that we've got to be very careful that the police use our by-law in a very discerning way because it is something that's easily applied and easy to give a $100 fine to somebody and they don't have to be drunk. They can be applied without being drunk according to the by-law and I think it's very important that the police apply it very carefully so that we don't turn people away from our City and there has been some instances that I'm aware of that it hasn't been applied in that way.[288]

Other arguments against using local government regulation to control public drinking centre on the findings of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). Although local governments have no powers to penalise public drunkenness per se, it is argued that local government regulation of public drinking disproportionately and discriminatorily controls Aboriginal people via the 'back door' in towns such as Mildura, Echuca or Swan Hill (Egger, Cornish & Heilpern 1983; James 1994; Findlay, Odgers & Yeo 1996). RCIADIC, for example, constitutes Aboriginal people, for a variety of economic and social reasons, as the group most vulnerable in these communities to drink in public space. There is a fine line, such critics claim, between being told to move on for drinking in public and being arrested for public drunkenness. In both cases, it is argued, the police and local government officers have considerable power.

That local government authorities have considerable power to influence and control the use and amenity of public space can be seen in the recent decision of the City of Adelaide to declare the central city a dry zone.[289]

Commissioner Wooten in his *Report of the Inquiry into the Death of Clarence Alec Nean* stated that the use of local government regulation had:

> The potential to negate to some extent the decriminalisation of public drunkenness and…to do so in a racially discriminatory way (Wooten 1990).

Cunneen comments further:

> The local government ordinances which prohibit public drinking are almost exclusively used against Aboriginal people in rural areas. The conscious design of such intervention is to remove Aboriginal people from the streets and parks.

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288 Mr Michael Malouf, Chief Executive Officer, City of Melbourne in conversation with the Committee, 30 October 2000.

289 See Chapter 19.

> It is not the drinking per se which is defined as the problem but rather the public location of Aboriginal people (Cunneen 1991, p. 2).

In the context of Aboriginal communities or Victorian towns with relatively high Aboriginal populations, James states:

> It is highly likely that the increased power of police to regulate and control Aboriginal communities under local law will fuel existing tensions and hostilities between police and aboriginal people [and] spark further charges and arrests for indecent language, resisting arrest and assaulting police (James 1993, p. 77).

The Tumbukka and Binjirru Regional ATSIC Councils' joint submission to the Drugs and Crime Prevention Committee has expressed grave concerns about the potential for the de facto criminalisation of public drunkenness through local government ordinance:

> The consumption of alcohol in public places is increasingly being controlled by local government authorities. Local regulations prescribing 'dry areas' are increasing, and are being enforced by the police. This introduces a totally new offence which Aboriginal people can be picked up for and comes despite the fact that the behaviour of Aboriginal people who are drunk in public has not significantly worsened. Rather, the change reflects the increasingly regulatory and insensitive approach of local government. Yet this new strategy does nothing to address the underlying social issues which lead to the public drunkenness. It exacerbates the already negative situation and does nothing positive for those whom it most affects. It is just another opportunity for Aboriginal people to come into contact with the criminal justice system. It is antithesis to the intentions of the RCIADIC report and to responsible diversionary best practices.
>
> Local Governments do not have a good track record of consulting in a meaningful way with Aboriginal communities. These new regulations on the consumption of alcohol in public places are frequently being put in place without any consultation with the local Aboriginal communities. It is essential to ensure that the intent of the RCIADIC is followed, and that any progressive reform of the state's public drunkenness laws are not undermined by an increase in Local Government regulation.[290]

Arguments For

The basic arguments in favour of local government regulation of public drinking and associated offences centre on the need for local communities to feel safe and secure in those communities. Many of the respondents to the James survey stressed the fear and vulnerability of many people in their municipalities with regard to the visible manifestations of public drunkenness and public drinking (especially in conjunction with other forms of antisocial behaviour) in their streets, parks and shopping centres. These fears were particularly acute amongst the elderly and after nightfall.

290 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 6.

From this perspective, it is seen as perfectly legitimate for local government to use municipal law to minimise public disorder and call upon the police to assist them to do so. Indeed, 13 of the 20 respondents in the James survey stated that councils enacted the laws at the instigation of local police. Prior to such laws being enacted police only had power to regulate public behaviour in circumstances where drunkenness was apparent. Local councils were concerned that if public drunkenness was decriminalised they would not be able to effectively restrict public drinking. It was felt imperative that municipal regulation continue, should police lose their powers to arrest for public drunkenness.[291] The Chief Executive of the City of Mildura put the 'pro regulation' case thus:

> The legislation has the total support of the community and in particular, the local Police have indicated that it is highly effective in maintaining law and order in Mildura (cited in James 1994, p. 49).

The use of local government regulation to combat public disorder is seen by its supporters as a measure of protecting the law abiding majority from the antisocial, unpleasant and possibly dangerous behaviour of a minority. Nine of the respondents in James' sample believed that controlling public drinking through local regulation would 'indirectly reduce vandalism and other public space crimes' in the pursuit of a safer community (James 1994, p. 48).

As a corollary to this point, it is further argued that people who consume alcohol responsibly *are* able to do so in local public areas, if those areas are either exempt from such regulation or through the use of a permit system.

Furthermore, supporters of local government regulation point out that such laws do not result in criminal charges being laid or prosecuted. In many jurisdictions, it is argued, a person is given a chance to remove himself or herself or their alcohol from the area before an infringement notice is issued. If a person is prosecuted it is usually for associated criminal charges possibly related to, but independent from, the drinking. Assault and other crimes against the person are obvious examples.

Moreover, some local government authorities argue that they have put in place comprehensive policies and procedures designed to promote and safeguard the interests of Indigenous people in their municipalities. These include the increasing tendency for local councils to employ Indigenous liaison, cultural and arts officers, particularly in areas with high concentrations of Indigenous people. Some councils also have consultative committees with Indigenous membership to advise on the needs and concerns of Indigenous communities within the local area.

The City of Melbourne, for example, has established an Indigenous Advisory Forum to provide the Council with advice on issues of social and community concern for Indigenous Australians, living, working or visiting the City of Melbourne. The forum includes representatives from Aboriginal service providers, service users, planners,

291 Officers of the City of Darwin were at pains to point out during the recent meeting with the Committee, that the administration of the two kilometre rule was predominantly about the protection, safety and wellbeing of their residents and their right to live free of loutish behaviour. It was only marginally concerned with the promotion of Darwin as an aesthetically pleasing tourist destination.

advocates and policy makers. One of the aims of the Forum is to take Indigenous concerns and needs into account in the management of public spaces and local laws.

Kathy Brackett, from the City of Melbourne, believes that the best way in which local governments can benefit Indigenous people in their municipalities and defuse the possible tensions created by administration of the Local Law is to view Indigenous issues as opportunities and positive contributions rather than as social problems:

> [Council needs] to develop trust and a meaningful relationship with the indigenous community. Both the transient and residential population and others. *By not approaching Indigenous issues as social problems I think that's really important, that often people approach Indigenous issues as if it's a social problem as opposed to seeing it as something quite different like being a contribution to culture and diversity and those sorts of things*. Providing opportunities for Indigenous communities to give advice and direction and the Council listening to that. That's been incredibly beneficial.
>
> That we have a legitimate commitment to working together, we're including all stakeholders, including the people who sleep around and use the grounds around St Paul's as key people in all this.
>
> And finally I think respect and the diversity of Indigenous cultures and not approaching it as one culture but acknowledging the diversity and being a Capital City we attract Indigenous people from all across Australia. So we don't just have a Koorie population we have a population in Northern Australia, Central Australia, Tasmania or whatever. And recognising that real change takes time.[292]

The Cleve Gardens Redevelopment is another interesting example of local government attempting to work in partnership with local Indigenous representatives to ameliorate concerns over the way municipal laws and practice were impacting over the local Indigenous community.

Cleve Gardens is a small grassed park in central St. Kilda. It has traditionally been a long-standing meeting place for local Indigenous people and 'visitors' from out of town – 'parkies' to their detractors. The City of Port Phillip had long been concerned about the public drinking and lighting of open fires in the park. In 1995 local by-laws were introduced prohibiting such behaviour. Concerns were expressed by local Indigenous groups about the way these by-laws were policed. Of particular concern was the use of non-local police to enforce these laws, especially during the period during and leading up to the Melbourne Grand Prix.[293] The potential for tension between the Council, police and the Indigenous community to escalate was apparent with Council's decision to demolish the toilet block in Cleve Gardens. To defuse the tension a Cleve Gardens Taskforce was established in December 1995 comprised of representatives from Council and Indigenous groups, including ATSIC. The Council

292 Ms Kathy Brackett, Acting Coordinator Social Planning and Development, City of Melbourne, in conversation with the Committee, 30 October 2000.

293 Glenn Howard of Ngwala Willumbong states this practice has not necessarily changed, see Chapter 22.

agreed to work in collaboration with the Indigenous community in developing Cleve Gardens, whilst respecting and commemorating the traditional links local Aboriginal people had with this park. It also agreed to support and fund a range of welfare initiatives to cater for the needs of any displaced 'parkies'.[294]

The Relationship between State Law (public drunkenness) and Municipal Laws (regulated drinking)

Under the *Summary Offences Act 1966* as a general rule, police need to be able to show that a person is drunk or drunk and disorderly as the case may be. In the debates on the decriminalisation of public drunkenness and the Bill drafted by the previous Labor Government in 1990–1991 it was apparent that local councils feared that decriminalisation under State law may have resulted in the local government regulatory framework becoming redundant. This is not the case. The State law only deals with the criminal offences of being drunk or drunk and disorderly in public. The municipal laws regulate in a variety of ways the *consumption* of alcohol in public areas. The two, at least in theory, exist and operate quite independently of each other. The Northern Territory and other interstate jurisdictions are examples of local government continuing to regulate public drinking without the use of criminal charges. Should Victoria consider decriminalising public drunkenness these jurisdictions may serve as useful models from which possibly to draw.

294 It should be noted that not all Indigenous groups take such a benign view of the City of Port Phillip's consultative processes with regard to the Cleve Gardens redevelopment and other issues impacting on Indigenous people in St. Kilda. Even some members of the Cleve Gardens Taskforce accused the Council of 'tokenism' in its handling of this issue. For a discussion of the Cleve Gardens, see *City of Port Phillip, Cleve Gardens Re-development: A Summary*, City of Port Phillip, June 1996.

17. Licensing Issues

When the Committee visited the Northern Territory the importance of liquor licensing laws and practice was impressed upon it. The role of the Licensing Commission in regulating alcohol consumption and related harms was also stressed. The use of liquor restrictions is of particular importance in addressing some of the problems pertaining to Indigenous health and welfare in the Territory. The use of licensing restrictions to benefit Indigenous communities reflects a major focus of the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody.[295]

Such considerations are not necessarily of equal or comparable importance to Victoria. Nonetheless, they do require some consideration, particularly given the relatively high concentrations of Indigenous people in some areas of Victoria. Moreover, many of the following licensing issues will be equally applicable to non-Indigenous Victorians.

This chapter will discuss the following issues pertaining to licensing, licensed venues and liquor legislation, policy and practice.

- The Political Economy of Alcohol
- The Alcohol Industry
- Liquor Licensing Laws
- Licensing Restrictions
- Licensing and Trade Concerns
- Licensed Venues and Violence

Liquor Accords are dealt with in Chapter 18. That discussion draws from the themes presented in this chapter.

The Political Economy of Alcohol

> The 'drunken Abo' does not require that the economic and political factors which lead to and perpetuate the misuse of alcohol be understood or that any theoretical approach which might include such questions as 'Who benefits from the distribution of alcohol to Aboriginal people? Who profits? be developed (Langton 1993, p. 199).

From a political economy perspective the role of the alcohol industry is not benign. According to this view, the industry benefits from the marketing of its product (either directly in the case of manufacturers or indirectly through retailers and licensed

295 For further discussion of the Royal Commission's views on liquor licensing, alcohol restrictions and availability, see Chapter 32, 'Coping with alcohol and drugs: Strategies for change',vol. 4, *Final Report*, Royal Commission into Aboriginal Deaths in Custody 1991a, pp. 246 ff.

venues) and through the support of the state for its product. One view of the role of the state in a capitalist economy is that it buttresses the alcohol industry through economic and other incentives. Saggers and Gray (1997) argue that state support for the liquor industry is reflected in the objectives of the various States' legislation that deal with liquor control. For example, the Western Australian legislation has as its stated objectives:

(a) to regulate, and to contribute to the proper development of, the liquor, hospitality and related industries in the State;

(b) to cater for the requirements of the tourism industry;

(c) to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;

(d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and

(e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.[296]

Saggers and Gray argue further that:

> Such legislation provides a framework which facilitates efforts by various segments of the alcohol industry to vigorously promote and sell their products. The thrust of this legislation is to regulate the industry per se (rather than the impact of alcohol on the community) and to ensure its economic viability (Saggers & Gray 1997, p. 224).

The Western Australian legislation has been subject to considerable litigation, brought by coalitions of groups, including Indigenous community organisations. Of particular interest has been the Derby Liquor Licensing Trial.

In 1996, the Derby Alcohol Action Group (DAAG), comprised of Indigenous community groups, health and community workers, requested the Director of Liquor Licensing (DLL), to impose liquor restrictions on local retailers. The restrictions sought included limitations on the type of alcohol allowed to be sold and limitations on trading hours. Derby is a town in a remote part of Western Australia with a high concentration of Indigenous people. DAAG's attempts to negotiate a voluntary agreement with local retailers to impose restrictions had proved unsuccessful.[297] DAAG argued before the DLL that an 'unfettered' ability to sell and market liquor in the Derby area was having deleterious effects on the local community, particularly with regard to Indigenous people. After listening to much competing evidence from community and health groups, government agencies, and police on the one side and the liquor industry on the other, the DLL agreed to impose the restrictions sought. There was, he concluded:

> ...Sufficient evidence that the health, safety and welfare of a significant number of persons, who frequently resort to the licensed premises in Derby, is at risk,

296 *Liquor Licensing Act 1988* (W.A) section 5.

297 Although some retailers had expressed willingness to restrict their hours voluntarily, it was conditional on Woolworths, who had the 'lion's share' of the retail trade of Derby, joining the agreement. Woolworth's failure to do so resulted in the collapse of the negotiations. See D'Abbs and Togni 1997.

> and that some limitation of trading hours and some limitation on the kinds of liquor available, would help to minimise that risk.[298]

The retailers appealed this decision before the Western Australian Liquor Licensing Court. Mr Justice Greaves overturned the decision of the DLL to impose licensing restrictions in Derby.[299]

The Department of Health then appealed to the Supreme Court of Western Australia against this ruling. The Supreme Court dismissed the appeal by the Department of Health against Justice Greaves' ruling in the licensing court.

Under the Western Australian legislation, objections to liquor licenses and extensions of trading hours could be made in 'the public interest'. The Department of Health argued it was not in the public interest, on health grounds, to liberalise even further the licensing conditions in Derby. The Supreme Court disagreed. Its reasoning was that public health considerations were not covered by the Liquor Act then in force. In other words, the Supreme Court construed the term 'in the public interest' very narrowly. In effect, for a licensing application not to be in the public interest meant that it must have an immediate and detrimental impact upon the community in terms of overcrowding, lack of amenity, potential violence etc. The deleterious impact on the health of a person or group of persons was not a relevant consideration in determining what was in the public interest.

As a consequence of this case the Western Australian legislature changed the liquor laws to require the Licensing Commission to take into consideration issues such as the impact of the application on the health and welfare of the community. A new section 5(1)(b) was inserted into the Act. Now a primary object of the Act is:

> to minimise harm or ill health or ill health caused to people, or any group of people, due to their use of liquor.

Such a clause, its proponents argue, has the potential to balance the competing interests of health promotion and harm minimisation on the one hand and liquor trade and marketing more evenly, particularly to the benefit of Indigenous people. The new clause was recently interpreted in the first case to test the new legislation.[300]

Despite the new provision, the Western Australian Supreme Court seems to have construed the new law somewhat narrowly. The health implications of the licence are viewed by the court as *an* important factor to take into account but not the *only* or deciding factor. They must be looked at alongside the other objects and considerations of the Act with regard to the granting of liquor licenses.[301]

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298 Decision of the Director of Liquor Licensing (W.A.), No 22960, 6 January 1997, p. 9.

299 Liquor Licensing Court of Western Australia (1997) Review of the Decision of the Director of Liquor Licensing. CRT 14/97. Coram: Judge Rodney Greaves.

300 *Executive Director of Health v Lily Creek International Pty Ltd &Ors* [2000] WASCA 12 September 2000 [Unauthorised Report]

301 Ultimately the decision in this case rested on the weight given to the testimony of expert witnesses. The appeal judges decided that the original judge gave insufficient weight to the views of Professor Gray of the National Drug Research Institute. As such, they returned the case to the Licensing Court to be re-heard in the light of this finding. A final licensing court decision has not yet been handed down

The Derby case and others like it reflect a growing trend for community groups, and in particular Indigenous ones, to use the courts as a mechanism to curb what they perceive as an unfair advantage held by the alcohol industry. For example, in New South Wales the Aboriginal Legal Service sued alcohol companies and the Commonwealth government on the basis that the companies, through irresponsible promotion and marketing, had encouraged Indigenous 'alcoholics' to consume alcohol and the Commonwealth had failed to properly control the manufacture and distribution of alcohol. The case was rejected by the Supreme Court of New South Wales. Whatever the merits, or otherwise, of this case, it and similar cases are:

> ...exploring the fiduciary duty of care the Commonwealth has to Aboriginal people and they reflect a growing consciousness among Aboriginal people that drinking is part of a wider network of political and economic relationships (Saggers & Gray 1997, pp. 220-221).

The Derby case, and similar litigation, also reveals the divisions in the way 'drinking' is perceived and constructed in Australia, particularly in rural and remote towns and communities. Excluding leftist or Marxist arguments on political economy as unduly polemical and doctrinaire, one can see in the arguments presented in licensing application and restriction cases some deep divisions in outlook as to the way in which alcohol related issues are viewed. D'Abbs and Togni (1997) for example characterise the approaches of competing parties in the Derby case as either belonging to the Community Development/Rights and Responsibilities approach or the Problem Drinker Approach.

The Community Development Approach sees alcohol related harm as a community problem:

> ...which requires a broad base of support and service response, rather than defining the drinkers as the problem. This approach acknowledges the necessity for a strong economic and political base for *all* people. Strategies and service approaches will be sensitive to the cultural context of both Aboriginal and non-Aboriginal people, and will be developed in conjunction with the local community (D'Abbs & Togni 1997, p. 15).

In contrast to this position is the 'problem drinker' approach, often, it is argued, supported by the Alcohol industry:

> According to this, almost all of the problems associated with alcohol misuse are a product of the behaviours of a relatively small number of people who habitually drink to excess and inflict harm on themselves and others. Therefore, according to proponents of this view, measures to address alcohol problems should be targeted, not at the community as a whole, many of whose members drink responsibly, but at the identified problem drinkers (1997, p. 15).

D'Abbs and Togni are critical of the label 'problem drinker' claiming that it often conceals as much as it describes:

> [I]mplicitly and sometimes, explicitly, it is usually used to refer to Aboriginal heavy drinkers who, as is well known, are more visible than their non-

> Aboriginal counterparts. A non-Aboriginal man who regularly drinks to excess, then goes home and quietly terrorises his wife and children is less likely in this setting to be labelled as a 'problem drinker (p. 15).

Healy, Turpin and Hamilton have written extensively on the ways in which the Indigenous person is constructed as a 'problem drinker.' In a study of drinking patterns in the Queensland mining town of Mount Isa they claim:

> [t]hat one set of audiences, the White population, constructs significantly different views of its own and Aboriginal drinking behaviour. It views, on the whole, White's drinking in largely functional terms, as a natural product of social activity and problematic for only some individuals [usually pathologised as alcoholics]. By contrast, the same informants view Aboriginal drinking in almost exclusively excessive and dysfunctional terms which explicitly link Aborigines, notions of racial inferiority and patterns of consumption (Healy, Turpin & Hamilton 1985, p. 204).

The Healy et al. study revealed that through both covert and overt terms, Aboriginal drinking was often by necessity as much as cultural patterns done in public spaces such as parks and riverbeds. White drinking occurred in a variety of places, including hotels, private homes, clubs and at sporting events. It certainly was not the case that White drinking was not prevalent, nor as problematic as that of Aboriginal people:

> The social significance of public drinking in Mount Isa is also visible in other forms of evidence. Firstly, it can be seen in the large capital investment in hotels and licensed clubs. Nearly all social activities are directly linked with the purchase and/or consumption of alcohol at one of these venues or through the co-ordinating efforts of community organisations. Secondly, the significance of the social imperative surrounding drinking emerged during interviews and discussions with informant groups and individuals. While many respondents informally acknowledged that they were approaching an 'excessive drinking' level, it was usually rationalised as both 'under control' and a natural product of the social activities of the town; it was simply something that one does when in Mount Isa. 'Our community, as a whole, is alcohol based. You don't go visiting without the usual half-dozen and if you don't drink you're "queer".' Or 'when you drink 20 beers in one session, that's an average pace up here, probably less than average in a "shout".' Or, at the close of one group interview, 'Come back in the summer … that's when you'll see some real drinking. …Weekend wipeouts are the scene.'
>
> All data sources confirmed the pervasive presence of alcohol throughout the range of social activity. During field visits there was observed: the sale of beer at primary school fetes; unsupervised purchase and consumption of alcohol by 14 and 15 year olds at young peoples' discos (all held in pubs and clubs); alcohol 'turned on' at all major civic receptions and meetings; playing of bingo, a regular social event for some, almost always held in pubs and clubs with alcohol available; virtually unfettered access, seven days a week, to sources of alcohol for sale; the second refrigerator, a feature in many homes,

> for cold storage of beer; the annual Rodeo, Mardi-Gras [and other social and sporting events] (Healy, Turpin & Hamilton 1985, p. 202).

Most White drinking functions take place in either private venues or socially 'approved' drinking spots. Aboriginal drinking on the other hand is much more visible to the wider (white) community and tourists. Public drinking results in public drunkenness and therefore is 'more accessible to police prosecution than that of any other ethnic group in town' (p. 198).

Another theme to come from this research was the 'near universal theme' of characterising Aboriginal people in stereotypical form:

> It was extremely rare for respondents to talk of certain individuals as problem drinkers. Rather they viewed the problem as belonging to all Aborigines (especially reserve dwellers) because, it seems, all of them share basic and inferior qualities (p. 203).

Healy, Turpin and Hamilton's research is at least 15 years old. It is also restricted to a distinct location, a mining town in outback Queensland with problematic race relations. Moreover, much has changed in the interim, both culturally and structurally. For example, anti-discrimination laws introduced in Queensland in 1991 specifically prohibit the exclusion of Aboriginal people from public hotels and bars etc. in Queensland. Nonetheless, this type of research is an important reminder that the consumption of alcohol, and its attendant effects such as public drunkenness, is associated with, and explained by, social and environmental factors as much as it is by ones located in the individual.[302]

A final aspect of the political economy of alcohol that should be raised is the issue of pricing and taxation. Those who would support more control of the alcohol industry through supply-side restrictions, monetary and fiscal policies argue that such measures are justified because of the economic, social and health costs attributable to high alcohol consumption. The views of the Alcohol Tax Reform Alliance (ATAR) are typical of this stand.[303] In its draft Federal budget submission (2001-2002) it states:

> Despite the enormous economic cost of alcohol misuse, there is a massive discrepancy between the revenue gained from alcohol taxation and the amount of money spent by the Federal Government to treat the problems associated with the misuse of alcohol…ATAR…believes there is an urgent need to reform Australia's unwieldy, unhealthy and inequitable alcohol taxation system. It recommends…the following actions as a matter of urgency:
>
> - Reform the alcohol taxation system so that all products are taxed according to their alcoholic content;
> - Introduce a harm reduction levy of 5 cents per standard drink for cask wine exceeding 6.5% by volume and full strength beer exceeding 3.8%; and

302 See Hamilton (1986).

303 ATAR is a broad coalition of community groups. It includes, the Representatives from the Anglican Church, the Alcohol and Other Drugs Council, the Australian Medical Association and the National Indigenous Substance Misuse Council.

- Channel the revenue from a levy on cask wine and full strength beer into alcohol misuse prevention and treatment programmes (ATAR 2001, p. 2).

These proposals are part of a more general advocacy of hypothecation measures that seek to have those who profit by alcohol manufacture, marketing and distribution, share part of the cost of the negative 'by-products' of alcohol through, in part, indirectly financing prevention and treatment programmes.

Such a scheme was introduced in the Northern Territory as a core component of its 'Living with Alcohol Program'. A special liquor tax, colloquially known as the 'Wine Cask Levy' was introduced '...raising 10 million dollars annually for alcohol prevention, rehabilitation and treatment programmes' (Boffa, George & Tsey 1994, p. 364). Much of the distribution benefited Aboriginal and other community groups.

The fund has since been disbanded notwithstanding that a recent evaluation of the impact of the levy identified a 22% reduction in per capita alcohol consumption in the Northern Territory, reductions in hazardous drinking patterns and significant reductions in alcohol related morbidity and mortality (Chikritzhs et al. 1999; Network Australia 2000).

Whilst such results are certainly impressive, the Drugs and Crime Prevention Committee makes no comment on the desirability of such measures. These recommendations, being in the Federal Government's jurisdictional purview, fall outside its brief.[304]

The Alcohol Industry[305]

The National Expert Advisory Committee on Alcohol (NEACA) has estimated the economic contribution of alcohol to the Australian economy as substantial:

> Annual retail sales of alcohol products alone is around $13 billion. In 1993/94 it was estimated that Australian households spent on average $908 per year on alcohol. Government revenue from indirect taxes on alcohol beverages is estimated to be in excess of $4.3 billion. Commonwealth, State/Territory and local government revenue from alcohol currently contributes two per cent of the total government revenue (NEACA 2000a, p. 21).

In addition, there are many primary, secondary and service industries that contribute to and are dependent on the 'alcohol industry'. Therefore the views of the industry in any discussion of public drunkenness and methods used to combat alcohol related harms will be important.

Clearly the views of the industry will generally be antithetical to those expressed in the previous section. The industry, particularly the manufacturing sector, rather than welcoming a new tax or additional levies, believes that it is contributing more than its

304 It has recently been announced that money raised from the extra beer excise collected under the Goods and Services Tax will be channelled into funding alcohol and drug rehabilitation through the newly created Alcohol Education and Rehabilitation Foundation. It is anticipated that the major beneficiaries of the fund will be Indigenous organisations.

305 For convenience sake this is a term that will generally be used to describe the collective body of manufacturers, importers, distributors, marketers and retailers of alcohol and alcohol associated products.

fair share to the Treasury. The retail sector has claimed that by participating in, and in some cases funding, liquor accords it plays a part in minimising alcohol related crime and violence. Certainly the submissions from and representatives of the alcohol industry with whom the Committee has met have stressed that they are good 'social citizens' in this respect. The Director of Liquor Licensing Victoria (LLV), for example, draws attention to the good work done by Melbourne and Victorian licensees through Licensees Forums and Accords and the sense of accountability they foster. Certainly, it was the impression of the Committee that those licensees who are members of the accords do take their responsibilities seriously.[306]

Several initiatives at local, State and Federal government level, in conjunction with industry representatives, have sought to develop harm minimisation policies with regard to alcohol and its attendant harms over the last 15 years.[307] The National Drug Strategy is a joint effort of Commonwealth, State and Territory governments in combination with the non-government and commercial sector, that aims 'to minimise the harmful effects of drugs and drug use in Australian society':

> Forging effective inter-sectoral links has been one of the priorities of the National Drug Strategy. The development of shared objectives through partnerships between stakeholders is a crucial first step in obtaining consistent, appropriate and effective drug strategies. Similarly, the concept of balance between *demand reduction, supply reduction* and *harm reduction* strategies is fundamental to the development of national drug strategies (NEACA 2000a, p. 21).

In addition, the Commonwealth has developed the National Alcohol Action Plan *(*NAAP*)*. Drawing from existing State and Territory alcohol action plans, the NAAP also aims to develop cooperative and coordinated approaches to minimising alcohol related harms nationwide, whilst respecting the particular circumstances of individual States and Territories. A key aspect of the NAAP is enlisting the co-operation and assistance of the alcohol and hospitality industries.[308]

NEACA and other policy bodies promoting harm minimisation strategies with regard to alcohol misuse have stressed the importance of tightening the controls of the availability of alcohol and the way in which it is used. NEACA has stressed the importance of the following strategies in minimising the harm related to alcohol misuse including public drunkenness:

- Liquor licensing laws
- Server responsibility
- Alcohol Training Programmes
- Consumer Information
- Responsible Marketing

306 For example, members of the Melbourne City Licensees Forum contribute on average $40,000 per year to the Safe Taxi Ranks Programme.

307 In Victoria many harm minimisation policies relating to alcohol and alcohol misuse have legislative backing through the provisions of the *Liquor Control Reform Act 1998*.

308 For discussion of these and other government policy initiatives in the drug and alcohol field, see NEACA 2000.

- Indigenous Community Initiatives
- Drug Education (NEACA 2000a, pp. 36ff).

Liquor Licensing Laws

It has been stated that liquor licensing and associated laws have the ability to both facilitate and impede efforts to minimise harms related to alcohol use amongst Australians, particularly those from Indigenous communities.

The National Drug Research Institute (NDRI) states that as an instrument of social policy, liquor licensing legislation has the potential to aid community efforts to prevent or at least ameliorate the harms associated with alcohol consumption:

> Over the past decade, governments have liberalised controls over the availability of alcohol, and in some jurisdictions it is now possible to obtain alcohol in many types of public venues. At the same time harm minimisation provisions have been introduced into liquor licensing legislation in order to reduce the social and economic costs of excessive consumption. Given this new harm minimisation focus, liquor licensing legislation should be viewed primarily as pieces of social legislation, the role of which extends beyond regulating the liquor industry, collecting government revenue, and enforcing laws (Bourbon et al. 1999, p. 1).

Craze and Norberry (1995) have argued that prior to the mid-1990s, most liquor laws around Australia did not focus on *preventing* drunkenness and its attendant harms because that responsibility was seen as belonging to the *health and welfare sector* (Our emphasis):

> Instead, liquor laws existed to protect the economic interests of licensees and ensure that the liquor industry was regulated in a way that promoted tourism, competition and profits. Research into the massive social and economic costs of alcohol in Australia – including the cost of absenteeism, medical expenses, unemployment of alcohol dependent persons, and premature death – has, however, shown the need for liquor licensing legislation to regulate alcohol in an manner that minimises the harms arising from its use (Bourbon et al., 1999, p. 10).[309]

Areas where the NEACA has suggested legislation can provide more stringent control with regard to alcohol related issues include:

- physical access;
- economic availability;
- packaging (for example the use of plastic drinking containers and cans rather than bottles);
- providing adequate levels of security and other staff for licensed premises;
- restricting access of minors to licensed premises and more stringent policing of under age drinking;

309 Many of the informants to the field research of the NDRI made comments to the effect that the liberalisation of alcohol policy was in contradiction to, and sat very uneasily with, the aims of harm minimisation (Bourbon et al. p. 12).

- limits on crowding and parking; and
- banning sales of alcohol on credit.

NEACA claims, however, that tighter legislative controls will be ineffective if enforcement of those laws is not vigilantly policed. Drawing from the work of Rydon and Stockwell (1997) they state:

> Resource constraints, legislative complexities (eg in defining intoxication),[310] competing policing priorities and the hospitality industry's preference for self regulation except in extreme circumstances…all act to limit the effective enforcement of liquor licensing legislation (NEACA 2000a, p. 37).

NEACA has also canvassed the possibility of introducing more stringent penalties against licensees who serve noticeably intoxicated patrons. They claim, however, that problems of proving intoxication at the point of sale and difficulties associated with enforcement result in licensees rarely being held legally liable for any negative consequences of a patron's intoxication:

> Research suggests that there is little support for licensed premises to be held responsible for patrons becoming intoxicated or staff being held liable for the subsequent actions of intoxicated patrons (2000a, p. 38, citing research by Lang et al. 1992).

This finding is consistent with the extensive field research done by Bourbon, Saggers and Gray for the National Drug Research Institute (NDRI) which stated that:

> [u]nless there is a high probability of prosecution, and that penalties will be applied, compliance with laws will be weak. Informants in all jurisdictions felt that, in most cases, the enforcement of liquor licensing laws was insufficient, and that as licensees did not perceive a real threat of prosecution and resultant pecuniary loss – irresponsible service and breaches of licence conditions occurred regularly...Furthermore, given that police concentrate their enforcement efforts on the activities of patrons, not on licensees, there is only a remote chance that licensees will be charged with irresponsible service (Bourbon, Saggers & Gray, 1999, pp. 19, 51).

Moreover, the NDRI research shows that the enforcement of liquor licensing legislation is felt to be particularly poor in remote and rural areas of Australia 'despite alcohol contributing to up to 90% of protective police custodies and two-thirds of all court appearances' (Bourbon, Saggers & Gray 1999, p. 52).[311] Because of the lack of

310 Defining what is intoxication would seem to be a key issue with regard to detaining a person for (Bourbon, Saggers & Gray p. 12) public drunkenness (as either a criminal offence or non-criminal detention). At present most jurisdictions rely on the subjective views of police officers rather than any objective set of criteria.

311 It should be noted that Victoria has one of the better enforcement records in the country. This is in part due to the fact that there are specially trained licensing inspectors within Victoria Police to enforce the Liquor Control Reform Act and that a system of either on the spot fines of venues for licensing infringements or licence suspensions for more serious offences can be utilised. Nonetheless, it is still felt that there are not sufficient trained licensing inspectors to adequately cover Victoria's licensed premises.

scrutiny of pubs and hotels in such remote areas it is more likely that people will be more commonly subject to irresponsible serving practices.

During the Committee's visit to the Northern Territory, a comprehensive research report entitled *Dollars made from Broken Spirits: The Alcohol In Alice Report*[312] was released (Hauritz et al. 2000). This report was commissioned by the Alice Springs Alcohol Representative Committee in association with Indigenous and non-Indigenous community groups in Alice Springs.[313]

The Report is a reflection of the unique licensing laws of the Northern Territory, whereby in considering any grants of, changes to or variation of liquor licences and licensing in the Territory, the Licensing Commission must take into account 'the needs and wishes' of the community.[314] The needs and wishes in turn are often gauged through the commission of research reports such as the Hauritz et al. (2000) *Alcohol in Alice Report*.[315]

The Report's main finding, and indeed recommendation, is that the 'alcohol problem' in Alice Springs is everyone's problem and not restricted to the Aboriginal population. As such, the whole community must be involved in implementing any suggested reforms or solutions.[316]

All groups and individuals (Aboriginal and non-Aboriginal) surveyed by the researchers, agreed that the following were the most crucial alcohol related problems facing the Alice Springs community:

- under age drinking;

312 Hereinafter cited as (Hauritz et al. 2000).

313 The report study is based on a survey methodology. A household survey of 407 residents about the issue of alcohol availability and related harms was conducted. Some 23 focus groups consisting of various representatives from Aboriginal and non-Aboriginal community agencies were asked similar questions. Some commentators have criticised the methodology, claiming that 407 is not a true representative sample given the size of the Alice population (28,000). Yet one needs to be cautious about such claims given that they are largely based on letters to the popular press from representatives of the alcohol industry. A judgement on the Alice Springs Report's methodological validity must await a closer examination of the research base in the full Report.

314 *Liquor Act 1978*, section 32(d).

315 Mr Peter Allen, Licensing Commissioner for the Northern Territory, in conversation with the Committee, Darwin 3 August 2000.

316 The Report's findings need to be viewed in the context of the problem as defined by the Report's authors and the empirical data presented. The report states that 'Alice Springs is experiencing alcohol related harms well above the acceptable levels of world health and well being standards'. In particular, it states that for the year 1998-1999:

> $24 million was spent on the consumption of 6847 million litres of alcohol in Alice Springs during 1998-1999;
>
> 2999 people were arrested for alcohol related offences;
>
> 4,400 people were placed in protective custody;
>
> Alice Springs Hospital dealt with 1341 alcohol related emergencies/admissions, 442 of which related to assault;
>
> DASA (Drug and Alcohol Services Association) dealt with 6918 admissions to its sobering up shelter.

Further, it pointed out that Alice Springs consumes 2.5 times the national average of litres of alcohol per capita and 1.5 times the Northern Territory average. Most of this expenditure is on full strength beer, with cask wine being also popular. Almost 50% of alcohol expenditure came from store sales such as supermarkets, milk bars, and bottle shops.

- child abuse and neglect and lack of access to education (because of parents or carers' alcohol related problems);
- women's emotional and physical safety;
- the need for dry areas where requested;
- the lack of accountability of licensees;
- insufficient penalties for licensees who breach provisions of or restrictions made under the *Liquor Control Act*.

The last two points are the most relevant for the purposes of this section.

Licensing and Trade Concerns

The majority of the Alice Springs community surveyed wanted comprehensive measures introduced aimed at reducing high levels of alcohol consumption. Such measures included:

- reduction of takeaway trading hours;
- bans on the type of containers sold (for example, only selling cask wine in 2 litre containers);
- reductions in the numbers of liquor licenses held in Alice Springs and no new licenses;
- an alcohol-free day in Alice Springs similar to that in Tennant Creek, with that day being preferably Thursday (Pension Day);[317]
- licensees to undertake training with regard to responsible drinking practices (such training being mandatory for licensees on the premises);
- introduction of taking into account 'public health issues' when considering applications for liquor licenses under the *Liquor Control Act*; and
- tougher penalties for licensees who infringed licensing provisions or conditions.[318]

Other key recommendations include:

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317 The Committee is aware from the testimony of various community groups that the changes to Centrelink social security protocols has meant that pensions and other benefits may now be paid on a specified day of the week as nominated by the recipient rather than a set day of the fortnight as specified by Centrelink. For some groups attempting to deal with alcohol misuse, this is problematic as it makes alcohol-free days less workable as they can be no longer tied to 'pension day'. Under the former system this meant no alcohol could be purchased from liquor outlets on the day in which social security recipients were most likely to have disposable income.

318 One of the major concerns of all people surveyed was the perceived leniency of the Licensing Commission with regard to infringements of the licence provisions or restrictions.

In the relevant survey period, five complaints had been brought before the Licensing Commission in Alice Springs. Of the four proven cases, one was not given a penalty, one received a penalty of two days suspension of trading which was then excused and trading allowed, one received a three day trading suspension where two days were excused, and the fourth received a four day suspension where trading was allowed for two of those days. This is apparently not an uncommon way of dealing with licence infringements. In short, the Report states: 'The data shows that there is no effective demonstrable regulation of the Liquor Act'.

The Report calls for a series of graduated sanctions which are part of the *criminal justice system* to be imposed against licensees and traders who are found in serious breach of their license provisions or any restrictions imposed upon them. It is not clear exactly how this would be done. Questions arise as to whether such a strategy is workable, feasible or desirable.

An overall strategy that change is required at three levels:

1. Territory or State government level,
2. Licensing Commission level,
3. Community level.

- A key strategy at Territory level is that alcohol consumption patterns for Alice Springs and the Territory be brought back to average national levels.
- Aboriginal representatives must sit on the Licensing Commission so as their views on alcohol consumption are taken into account.
- Major changes to alcohol purchasing strategies including:
  - low strength beer being priced lower than high strength beer in all circumstances;
  - only low strength beers be sold at major public sporting and other events;
  - free water being provided in bars and pubs,
  - free non-alcoholic drinks provided to designated drivers,
  - that wine in casks of more than two litres be banned,
  - that trading hours of takeaway outlets be significantly reduced, and
  - that 'happy hours' are for no longer than two hours a day;
- To have arrested any persons found to be illegally involved in the sale and delivery of alcohol, especially when it is in relation to minors;
- To negotiate with major breweries to increase their sales of low cost beers and to develop responsible alcohol sales policies;
- That government offices and government funded services be alcohol free and that this be intermittently checked by licensing inspectors without notice;
- That taxis not be allowed to buy alcohol from drive-through bottle shops or transport alcohol other than in case of bona fide purchases;
- That licensees of takeaway outlets and pubs or bars be required to breathalyse any person suspected of being intoxicated and seeking to purchase alcohol. (This proposal seems to be very contentious and could possibly have, rightly or wrongly, civil liberties implications);
- That police and police resources be gradually withdrawn from transfer of drunken people between various agencies and that this transfer be undertaken exclusively by Night Patrol. This would allow police resources to be directed to regulating licensed venues, sly grogging and violence incidents;
- That the Guardianship provisions of the Liquor Act be repealed so that adults, including parents, not be able to pass on liquor to young people;
- That licensees provide a safe transport home for all intoxicated and obviously vulnerable patrons;
- That advertising alcohol for sports events and fund raising be banned;
- That safe and relevant day and night entertainment and activities be provided for young people that are alcohol free to prevent boredom and violence amongst the youth of Alice Springs; and

- That Territory Alcohol and Drug Programmes, including sobering-up centres, be allocated ongoing funding at sustainable levels.

Clearly many of the Report's findings and some of its recommendations are applicable only to the particular context, history and demography of the Northern Territory. Even within the Territory there is no clear consensus as to how problems associated with alcohol should be tackled. Nonetheless, the Report does raise significant issues that may be relevant in the Victorian context, particularly in areas where there are high concentrations of Indigenous people. Indeed these very type of restrictions have been argued for by Victorian Indigenous community groups (Bourbon et al. 1999, p. 47).

There has been very little evaluation done of such supply-side measures. The studies that have been undertaken judge them as a 'qualified success' For example, an evaluation of the restrictions put in place in Tennant Creek by the Northern Territory Liquor Commission (limitations on hours of trading, amount of takeaways allowed and type of alcohol purchased) was conducted in 1995:

> The evaluation included comparison of law and order, health and welfare and economic indicators during the trial period with those for the corresponding period in the previous year. These showed that the trial had resulted in reduced police incidents and disturbances to public order, and fewer alcohol related hospital presentations and admissions to the women's refuge...there was reported to be a 2.7% reduction in total consumption[319] (Gray et al. 2000, pp. 15-16).[320]

Bourbon et al. have argued that despite the demonstrably positive effect these types of restrictions have had on the health and welfare of communities in which they operate, licensing restrictions are among the most divisive and difficult of strategies to implement and maintain:

> This is not because the concept or practice of restrictions per se is difficult, but rather, that they represent a conflict between the perceived rights of individuals for access to alcohol, and the actual rights of community members to enjoy economic, social, cultural and physical well-being (Bourbon et al. 1999, p. 66).

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319 A discussion of the evaluations of supply side and harm reduction programmes and restrictions is beyond the scope of this Report. For a comprehensive discussion of the various evaluations across Australia, see Gray et al. 2000.

320 In South Australia efforts by members of the Pitjantjatjara community successfully petitioned the Liquor Commissioner to restrict alcohol sales to community members to purchase of low alcohol beer only. Evaluation of the scheme showed that preventing takeaway sales of full strength beer resulted in the following public health benefits:

> 55% reduction in alcohol related injuries;
>
> 43% reduction in assault injuries;
>
> decreased levels of violence and night disturbances; and
>
> increased community and individual well being (Brady 1998).

In the small Western Australian town of Halls Creek, a similar strategy to reduce alcohol related harms was employed. In this case the restrictions related to the reduced number of trading hours when takeaway alcohol was available. Evaluation of the data revealed a decrease in overall alcohol consumption and a decline in the crime rate. In short:

The consistency of trends across a variety of health and social data show a positive effect after the implementation of restricted trading hours (Douglas 1998, p. 714).

It is doubtful whether such restrictions could either work, or indeed would be appropriate, in a city such as Melbourne. It may be that in areas where the local community (particularly Indigenous community) *requests* restrictions on the supply, availability or distribution of alcohol that they could be a useful harm minimisation tool.[321] D'Abbs views a model of licensing restrictions controlled by Indigenous communities as having great potential. He stresses the need for concerns about public drunkenness to be separated from those with regard to prevention of alcohol abuse (although the two are clearly linked). Saggers and Gray, commenting on this research of D'Abbs, stated:

> Policies to deter public drunkenness should not impede individuals or groups from acting against alcohol related harm...restricted areas will be successful only if they promote the capacity of Aboriginal individuals and groups to control the use of alcohol, and that they require support to enforce restrictions, given the vested interests in the sale and promotion of alcohol and the widespread desire for drinking (Saggers & Gray 1997, p. 229).

Alcohol, Violence and Licensed Premises

A discussion of the general links between alcohol consumption, crime and violence has been given in a previous chapter. This section concentrates predominantly on the issue of violence in and around licensed premises.

The Committee has received conflicting evidence as to whether more stringent liquor licensing laws can contribute to a reduction in alcohol related offences and harms in the community. Certainly many researchers in the area of public health are of the view that stronger liquor licensing laws that are more effectively policed have the potential to prevent and reduce alcohol related crime as:

> [l]icensed establishments are the venues where the heaviest consumption of alcohol occurs. In Australia it has been estimated that one third of all alcohol is consumed on licensed premises and this consumption is associated with approximately two thirds of the problems of intoxication (Stockwell, Lang & Rydon 1993, cited in NEACA 2000a, p. 37).

Solomon and Payne (1996) have argued that pub-related violence is closely 'associated with venues where bar staff continue to serve alcohol to patrons known to be intoxicated' (cited in De Crespigny 2001, p. 40). Additional risk factors according to Plant (1997) are the serving of cheap drinks, and engaging and tolerating aggressive security staff. Homel et al., in an extensive study conducted in 1997, found that the major factors linked to alcohol related violence and drunkenness include:

- drink promotions;
- groups of young males;
- crowding and lack of comfort in venues;
- aggressive bar staff; and

321 For such applications to be approved or for restrictions to be put on licence agreements that deny a class of certain persons free access to liquor or on different terms, an application for exemption (Special measures Certificate) from anti-discrimination legislation would need to be made to the Human Rights and Equal Opportunities Commission.

- inept methods for dealing with patrons (Homel et al. 1997, p. 265).

Drawing from Homel's study, Lincoln and Homel make the important observation that:

> It is not the use of alcohol per se, but the way it is managed, and it is not one single factor that causes violence around licensed venues, but an interaction of various factors (2001, p. 51).

Conversely, Graham and Homel (1997) believe the following conditions in combination have the potential to reduce the rate of alcohol related violence and public drunkenness:

- better venue design;
- venue presentation and management that sets high standards of behaviour;
- employment of 'peace loving' staff; and
- the provision of responsible serving training to improve bar staff practices.[322]

In the case of licensed entertainment venues a charge for admission also has the potential to prevent (young) people constantly changing venues (pub crawling):

> Where a venue charges an admission fee when providing entertainment (for example, a live band), patrons tend to stay at the venue for the duration (Vaughan 2001, citing Felson 1997).

Further research may need to be conducted to be able to demonstrate with any confidence a clear nexus between alcohol licensing, marketing laws and strategies and violence, crime and public health. Nevertheless, some studies, such as that of Stevenson (1996) have demonstrated a significant relationship between total alcohol sales and offensive behaviour, property damage and assault. Stevenson estimated that:

> [r]educing alcohol sales in the postcodes with the highest levels of sales to the Statewide mean (New South Wales) would result in a 22% reduction in offensive behaviour, 9% reduction in malicious damage to property and a 6% reduction in assault (Stevenson 1996, cited in NEACA 2000a, p. 17).[323]

Many licensees have argued that many venues are introducing the initiatives that have been discussed in this section to reduce the risk of violence in and around their premises and that their membership of Liquor Forums and Accords encourages this. This is commendable. Certainly, as will be discussed in the next chapter, Liquor Accords can be one of the more effective ways of promoting harm minimisation approaches and minimising alcohol related social disorder.

Nonetheless, many researchers of alcohol related violence, whilst generally approving of Accords and the measures listed earlier in this section, see these as necessary but not sufficient strategies in combating alcohol related harm, violence and public drunkenness. For example, De Crespigny states that:

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322 In the case of Indigenous Australians, particularly in remote communities, restricted liquor licensing is seen as the most effective tool in minimising violence and disorder, including domestic abuse, within those communities (Gray et al. 2000).

323 For a detailed discussion and exhaustive survey of the literature as to whether the availability of alcohol and increased alcohol outlet density contributes to alcohol related harms, including violence, see Western Australia Drug Abuse Strategy Office 1999.

> It is essential, therefore, that all licensees are expected to implement ongoing safety audits so as to identify and respond effectively to risks to patrons...and staff. Voluntary safety improvements made by members of the licensed venue industry have so far been inadequate and unreliable. Too much focus has been given to safer serving practices of bar staff rather than broadening approaches to safety management by developing and implementing multiple strategies. It may well be necessary for legislation to be adopted that requires evidence of safety audits, specific management practices and staff training in order for subsequent liquor license approval.

The NDRI made similar recommendations in its recent Report on Australian liquor licensing legislation. In particular, it recommended that:

- Where it does not, harm minimisation should become the primary object of liquor acts;
- Where it does not, the definition of harm minimisation should include 'the minimisation of harm or ill health caused to any group of people as a consequence of their alcohol use';
- The responsible service of alcohol should be included as a provision in all Acts;
- Where it does not occur, licenses should not be granted unless licensing authorities are satisfied that responsible service practices will be implemented and maintained;
- Where it is not, responsible service training should be mandatory for all managers and licensees;[324]
- That police and licensing authorities should apply equal effort to policing suppliers of alcohol as they do to consumers (Bourbon, Saggers & Gray 1999, pp. ix-x, xiii).

The Committee generally endorses these recommendations as means of minimising alcohol related harm, violence and public drunkenness. Many of them however, fall within the jurisdictional responsibility of the Federal Government.

324 With regard to this recommendation the Committee identifies that the nature of the Liquor and Hospitality Industry means that many employees will be engaged from interstate and overseas. The Committee acknowledges that it may be difficult and impractical to require such staff, given the itinerant nature of their employment, to undertake compulsory responsible serving of alcohol training.

18. Accords and Partnerships

Community Accords

The Drugs and Crime Prevention Committee has met with representatives of Licensing Accords in Melbourne, Adelaide, Perth and Sydney. Most central business districts of the capital cities have Accords and many suburban and regional municipalities have either established Accords or are in the process of doing so. Although relatively few licensing accords have been professionally evaluated, all representatives with whom the Committee has met testify to the usefulness of accords in reducing alcohol related harms in their jurisdictions.

Vaughan gives a useful description of the rationale for Licensing Accords:

> Liquor industry Accords are primarily concerned with the safety of the community. They are intended to provide a viable environment for licensees to operate profitably whilst protecting the community against harm which might result from excessive consumption of alcohol in licensed premises (Vaughan 2001, p. 208).

The National Expert Advisory Committee on Alcohol (NEACA) has outlined the benefits of local accords in which communities can work in partnership to regulate the sale, promotion and supply of alcohol in specified areas.[325] Such voluntary agreements may be developed by any or all of the following interested parties:

- local government representatives;
- police;
- alcohol retailers;
- hospitality industry representatives; and
- local community members.

Such accords may focus on all or part of alcohol related problems in public areas such as availability, advertising, serving practices or enforcement. The evaluative research indicates that in addition to these specific licensing issues, community regulation and containment of alcohol related disorder must also utilise other 'situational prevention' strategies to maximise benefit. Such additional factors include:

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325 A difference can be noted, however, between accords established in the cities and those in rural towns or districts. The National Drug Research Institute (NDRI) notes that:

> [a]ccords in urban areas are usually aimed at promoting responsible service and security (bouncer) practices, while in rural areas with a significant aggregation of indigenous people, they are often aimed at reducing alcohol related harm among that specific population (Bourbon, Saggers & Gray 1999, p. 37).

- safety audits of the immediate area surrounding licensed premises; and
- improvements of the physical environment following such an audit (better lighting, security systems, police booths in nightclub areas etc.).

Homel has argued that such strategies are of particular importance in Australia:

> [p]artly because civil suits are very seldom used against licensees, thus removing one of the major incentives for licensees to introduce server training programmmes and partly because liquor licensing laws are not very effectively enforced on a routine basis (Homel et al. 1998, p. 265).

Despite the clear benefits of cooperative accord strategies, NEACA warns that they should not be viewed as a panacea that will solve all such problems:

> Accords have been effective in addressing some of the harms associated with alcohol consumption in public environments (particularly violence and antisocial behaviour) and ensuring that alcohol beverage and hospitality industry voluntary codes of conduct are adhered to. However issues have arisen about the sustainability of accords and the degree to which voluntary agreements can withstand the pressure of potential short term economic gains (NEACA 2000a, p. 40).

An evaluation of a Police/Licensee accord in the Western Australian town of Fremantle made the following salutary warning:

> It is concluded that Accords are, by definition, co-operative agreements, the force of which is only as strong as the commitment of those who are signatories. The retail liquor industry is a particularly competitive industry in which such agreements are constantly under threat, not only from within, by those who are committed to the Accord, but more particularly, from those who are without…While Accords will probably be seen as an important interim step along the way to ensuring a responsible service within the retail alcohol trade it is concluded that except that such voluntary agreements are complimented by the mandatory training of bar staff and enforcement of a Liquor Act, which makes the minimisation of the harm associated with the sale and consumption of alcohol its principle objective, such agreements will always be subject to the competitiveness inherent in the liquor industry (Hawks et al. 1999).

However, when all parties to these types of accord have substantial agreement on the desired outcomes of the project and a sustained willingness to work together to meet these ends, results can be positive. Two examples that may pay close scrutiny are the 'Safety Action Project' based in Surfers Paradise, Queensland, and the 'Geelong Local Industry Accord' based in Victoria. An initial evaluation of the Queensland data showed substantial decreases in violence, abusive behaviour and associated behaviours after the establishment of a community sponsored 'Code of Practice'. This code initiated improvements in publicity of licensing details, responsible serving of alcohol policies and better security practices. Unfortunately, data collected in 1996, three years after the initiative was implemented, revealed that violence and

drunkenness had returned to pre-accord levels and that adherence to the Code had almost ceased:

> These data indicate the need for implementation of a robust process and effective regulatory model to ensure continuation and maintenance of the programme (NEACA 2000a, p. 40).

The researchers evaluating the Surfers Paradise accord have stated that a key factor in establishing and sustaining a successful community accord is receiving the support of licensees and other members of the alcohol industry:

> [l]icensees need to be empowered and motivated as primary decision makers in the process of change. Historically in Australia they have not been accountable to the community and have not, in fact, been seen generally as responsible business people who typically would be members of the local Chamber of Commerce. Yet when the Gold Coast licensees were persuaded that responsible hospitality practices could be economically viable, and they were provided with a framework for change, they quickly demonstrated that they had known all along what the problems were and how they could be fixed (Homel et al. 1998, p. 278).

The City of Sydney has recently concluded an 'Accord with Licensed Premises', the key object of which is to promote Sydney as a vibrant and safe city for residents and visitors alike. The accord is a partnership between the City of Sydney, police, licensed premises, the Australian Hotels Association and government departments such as Health and Gaming and Racing. An important aspect of the way the 'Accord' is promoted is the way in which benefits are targeted at premises which are party to, and comply with, its provisions. For example, member premises can take advantage of promotion and marketing strategies and opportunities and will be given assistance with security management training and personnel practices. It is too early to form a view as to how successful this accord will be. Nonetheless, common sense and the experience of other accords suggest that a strategy which combines a 'carrot and stick' model may have a better chance of success than a model that gives little benefit or encouragement for the alcohol industry to improve their practices (see City of Sydney 2000). This is certainly the case with the Geelong Local Industry Accord.

The Geelong Local Industry Accord came into being as a result of meetings between Geelong police and local licensees in 1993. Until then the local media in Geelong had been regularly reporting incidents of alcohol related violence and under age drinking in the streets, bars and nightclubs of Geelong's central business and late night entertainment precinct. The perception and the reality was that alcohol related violence was 'out of control'.

The Accord entered into by police, local government, licensees and other Geelong community representatives lists the following aims:

- to maintain proper and ethical conduct within all licensed premises and promote the responsible service of alcohol philosophy within the Geelong Region;
- to minimise or stop practices that lead to rapid and excessive consumption;

- to maintain a free and competitive market while eliminating as far as possible promotions and practices that encourage irresponsible service or consumption. (Geelong Local Industry Accord 1993).

The licensee members of the Accord believed that there was a problem with regard to violence and excessive public drunkenness in the Geelong area due to the irresponsible behaviour of a few 'maverick' operators:

> These practices included offering free or cheap alcohol as an inducement to attract patrons, not imposing a cover charge and allowing under age patrons on the premises. It became apparent that there was support within the industry for an agreement to ban these practices as long as the agreement to do so was voluntary and involved all operators (Evaluation of the Geelong Industry Accord 1998, p. viii hereinafter cited as Rumbold et al. 1998).

The Geelong Accord was professionally evaluated in 1998.[326] With some reservations, it has generally been hailed as one of the more successful examples of its kind.

The Evaluation Report indicated that a major reason for the success of the Accord was that it was developed and resourced *within* the local community:

> In other types of Accords in Australia, such as the…[Surfers Paradise Action Project] outside resources and funding have been used. The research revealed a high level of support and a strong feeling of ownership of the Accord among the participants in Geelong…[The Geelong Accord] stands as the most successful Accord in Australia in terms of its longevity. It has been operating since 1993 whereas most other examples of this type of initiative have lasted for a short period before their demise, either through the lack of interest or commitment of participants, or through the failure of participants to follow agreed practices. The continued operation of the Accord in Geelong may be attributed to the effective processes that have been established for the management, monitoring, and enforcement of the Accord (Rumbold et al. 1998, p. viii).

Other factors that contributed to the success of the Accord are:

- strong leadership and commitment by senior police;
- widespread support for the Accord amongst licensees;
- the adoption of restrictions by licensees as being in the industry's best interests; and
- the inclusion of peripheral but important other 'players' in the planning and maintenance of the Accord, such as taxi drivers and taxi companies, local politicians, sporting and social clubs, and local government officers.

Some of the restrictions adopted through the Accord and supported by the licensees have included:

- restrictions on the number and duration of 'Happy Hours';
- no pass outs from venues with entry charges;

326 The evaluation was conducted by researchers from the Turning Point Alcohol and Drug Centre in Melbourne.

- imposition of cover charges to venues with live entertainment; and
- no cut-price or discounted drinks or other promotions which could lead to or promote intoxication.

Forty four per cent of local licensees reported to the evaluation researchers that the Accord had a positive impact on business and community wellbeing. No licensees reported a negative impact (Rumbold et al. 1998, pp. ix, 67ff).

The ongoing monitoring of the Accord is seen as one of its strengths. This is done through the Best Practices Advisory Committee consisting of local police, nightclub operators, hotel licensees, local government officers and the Liquor Licensing Commission:

> This committee meets every six weeks, or more frequently if requested, and is chaired by a senior police officer. Every second meeting is attended by a police officer in charge of crime analysis who reports on the quarterly crime profile for assaults and damage. This is an important performance indicator for the on going success of the Accord. The committee serves as a forum to both advise and remind licensees of the standards required by them in maintaining the Accord (Rumbold et al. 1998, p. ix).

Of particular interest to this Committee is the demonstrated effect the Accord has had on the incidence of alcohol related crimes and specifically on rates of public drunkenness offences. Although absolute causality is difficult to determine, the Evaluation Report indicates that the Accord has resulted in positive outcomes. Through the examination of police records and interviews with key informants a reduction of alcohol related criminal incidents is clearly discernible:

> Police have…observed a substantial reduction in intoxicated persons moving between venues as is evidenced by the lower number of individuals who are lodged in police cells for drunkenness. Since 1995, police data have shown that an average of 21.2 persons were lodged in police cells for drunkenness for each Thursday to Sunday period. This is considerably lower than figures prior to the introduction of the Accord when it was common for this figure to be exceeded in a single night (Rumbold et al. 1998, pp. ix-x, 98-99).[327]

Whilst the positive experiences of the Geelong Accord are certainly to be welcomed, a cautionary note needs to be sounded. One of the reasons the Geelong Accord seems to have worked well is the stability, homogeneity and, to a certain extent, the insular and contained nature of the Geelong community. Some informants to the Evaluation Report have expressed doubt as to whether a similar Accord could be successful in a city such as Melbourne, which is obviously larger, more diverse and spread out over a wider area and where there is a much higher turnover of operators within the industry and less chance to establish the co-operative community partnerships that have characterised the Geelong experience (Rumbold et al. 1998, p. 103).

327 For a breakdown of these figures see Rumbold et al. 1998, pp. 97ff. As well as quantitative data being relied upon, a number of police stressed to the researchers the positive effect the Accord had on reducing the number of arrests for public drunkenness. This was particularly noticeable at periods in which problems associated with public drunkenness were traditionally high, such as Christmas, New Year and the Geelong Cup.

This is not necessarily the view of the Committee since having met with representatives of the Melbourne City Licensees Forum and examined the operation of the Melbourne City Licensees Accord.

Indeed, the Committee has endeavoured to ensure it has a good knowledge of the way in which accords operate in the City Of Melbourne. It has:

- met with representatives of the City of Melbourne, including the officer responsible for City Safety Projects;[328]
- undertaken a 'Night Tour' of licensed premises in the Melbourne Central Business and Entertainment District. This was hosted jointly by Victoria Police and the City of Melbourne with the participation of leading licensees;[329] and
- members of the Committee's staff have attended a Melbourne City Licensees Forum meeting to both learn how the Accord operates and to publicise the business of this Inquiry.

Mr Allan Knights, Licensee of the Imperial Hotel in Central Melbourne and a member of the Licensees' Forum, was particularly keen to point out that the Melbourne City does have a successful Accord that continues to attract support and involvement from relevant stakeholders in the central Melbourne area:

> Melbourne CBD has an accord/code of practice for all late licensed venues and there is data to prove that alcohol related crime has dropped in the CBD since the implementation of the accord. Further, the strength of signatories has increased markedly since its inception. This is demonstrated by continuing increases in attendance to all accord/licensees forums held every two months.
>
> In essence, the answer to the question of "can a local industry accord be usefully and successfully extrapolated in Melbourne", is yes and that it has been for five years.[330]

The Melbourne City Licensees Accord and Forum

The Melbourne City Licensees Accord (the Accord) was introduced in December 1996 in part as a result of concerns pertaining to perceived escalation of violence in and around licensed premises in the central areas of Melbourne, particularly in the environs of the nightclub and entertainment districts.[331] For example, it was claimed that prior to the establishment of the Accord the average arrest rate for drunk or drunk and disorderly behaviour was 120 per weekend.[332]

Ms Anne Malloch, City Safety Officer with the City Of Melbourne, described the environment prior to the establishment of the Accord and other city safety measures:

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328 Ms Anne Malloch. Further discussion of City of Melbourne initiatives can be found in Chapter 16.

329 Licensees included those from the Metro Nightclub, The Imperial Hotel, and Crown Casino. For further discussion of the 'Night Tour' see Chapter 14.

330 Mr Allan Knights, in correspondence with the Drugs and Crime Prevention Committee, 13 February 2001.

331 Of particular concern were the clubs and hotels in King Street, Melbourne. Such concerns had been well documented five years earlier in the Report of the Victorian Community Council Against Violence – *Violence In and Around Licensed Premises* 1990.

332 Ms Anne Malloch, Project Officer City Safety, City of Melbourne. Notes provided to the Drugs and Crime Prevention Committee, 30 October 2000.

> The substantial, well earned reputation of the area [King St/Westend] particualrly for alcohol related violence, was seriously affecting business and public perception and it was feeding off itself. Change to the area was a priority, not only in the context of city safety but also to secure public and commercial confidence in this end of the city, a gateway to the new Docklands. A broad integrated plan with very significant financial support and with the full commitment of the police and other government departments and night entertainment businesses has slowly changed the area and the public perception of it.
>
> A first and immediately effective action was a significantly increased police presence, including frequent foot patrols and a mobile van. Up to 42 police were rostered on duty each night of the weekend, under Operation Cabool.[333]

In October 1995 the City Licensing Forum was established to discuss issues pertaining to city safety, licensing issues and the amenity of the Melbourne City pubs, clubs and entertainment districts. The forum meets bi-monthly with representatives from the alcohol and hotel industry, city government, police and other State government agencies. The forum was instrumental in launching the Melbourne City Licensees Accord in December 1996. Development of the Accord involved Forum members representing diverse bodies such as:

– The Nightclub Owners Association;

– Venue Management;

– Victoria Police;

– Liquor Licensing Victoria;

– Australian Hotels Association; and

– The City of Melbourne.

Key aspects of the Accord are as follows.

- It is one of the few Accords that provides: '[n]ot only a statement of management standards but also the criteria or guidelines as to how to achieve and manage those standards. Each one has to be met by the business, in order to become an Accord member'.[334]
- Membership of the Accord initially stood at 12 licensed venues and has now grown to approximately 32. 'The current membership represents 70% of all those eligible, within the current guidelines, to join the Accord. New venues to join the Accord continue to represent the diversity of late night entertainment available in the City of Melbourne'.[335]
- Membership of the Accord is voluntary and is open to licensed venues that are licensed to 1.00 a.m. or later in the Central Business District, Southbank and the Crown Entertainment Complex.

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333 Ms Anne Malloch, in conversation with the Committee, 30 October 2000.

334 Ms Anne Malloch, in conversation with the Committee, 30 October 2000.

335 *Melbourne City Licensees Accord: A City Partnership Initiative 1996-2000*, City of Melbourne, October 2000.

- Members of the Victoria Police Licensing Divison monitor and promote the Accord and assess and evaluate venues applying for membership.
- The Accord cannot be viewed in isolation from other components of the City of Melbourne's Safe City Strategy. Such components include a Safe City Taxi Ranks Policy, a Public Places Local Drinking Law and the Safe City Cameras Programme. These developments and other aspects of the Safe City Strategy are discussed in greater detail in Chapter 14 of this Report.

The aims of the Licensees Accord are:

- Responsible provision and serving of alcohol;
- Training staff in harm minimisation procedures;
- Focus on quality of entertainment provided for patrons;
- Encouraging responsible behaviour by patrons, and discouraging antisocial behaviour; and
- Providing a safe and secure premises for patrons.[336]

The supporters of the Melbourne City Licensees Accord view it as a 'state of the art' agreement between nightclub and hotel owners and the authorities in which good management has become the industry standard. Its particular strengths lie in the fact that it has firm partnership agreements and the strong commitment of Victoria Police to the programme.[337]

Vaughan, in a recent analysis of the role and effectiveness of Liquor Accords, states that in turn police gain great benefits from a well run Accord:

> The reality is that if inappropriate consumption of alcohol in licensed premises can be controlled, there will be a substantial impact on the police workload. This realisation has led to a change in the policing environment as police management has recognised the impacts that inappropriate use of alcohol has on their resource requirements. This is leading to proactive planning to deal with the causes of alcohol misuse on licensed premises (Vaughan 2001, p. 206).

The outcomes of the Melbourne Accord are noted by the City Council. They include:

- Continuing partnership and commitment are demonstrated through the provision and participation of an ongoing educational programme for city licensees through the City Licensing Forum.
- Information sessions focus on issues such as:
  - security management,
  - drug issues,
  - emergency planning,

336 *Melbourne City Licensees Accord: A City Partnership Initiative 1996-2000*, City of Melbourne, October 2000.

337 The Co-Chair of the Licensees Forum is Superintendent Tony Warren, responsible for police operations in the central district of Melbourne. The views of Superintendent Warren with regard to accords are further discussed in Chapter 14, 'Policing the Streets, Policing "Big Events" and Public Order'.

  - legal liability of licensees, and
  - first aid for nightclubs.
- Venues are regularly monitored and appraised by police.
- Seventy per-cent of Melbourne's nightclubs have lodged emergency management plans with Victoria Police's Displan office.
- Audits are conducted regularly to ascertain compliance with Accord criteria.
- Open liaison between Victoria Police and Accord licensees ensures timely identification and resolution of issues as they arise.[338]

Heather Scovell, Manager of Community Services at the City of Melbourne, believes that licensees have a vested interest to make Accords work:

> ...when we talk about partnerships now we don't talk about feel good partnerships we talk about self interested partnerships...it's everybody's business and basically that links back to the issue if you run a business, if you make money from it, you've got to make it safe...So the days of saying "well no that's outside my shop front, or outside my block, or the bus that comes in and drops people off who are drunk and drives off and doesn't pick them up until the next morning" that's not okay by us. That we're saying "if you run a business it must be safe and it must be in the context of its neighborhood and of the City". Good people who run good business want to make it safe and it is understood by business when we start to really talk through that and the implications of that.[339]

In the context of public drunkenness there seems to be little concrete data that links the establishment of the Accord and a decrease in alcohol related harms. Anecdotal evidence given to the Committee suggests that there is a strong correlation between the establishment of the Accord and associated City Safety programmes and a decrease in the number and severity of alcohol related violent incidents. Certainly some of the practices that have been encouraged and promoted as part of Accord membership would seem to make such a claim viable. Such measures have included:

- Emergency Procedures Management Plans, including Fire Brigade Audit (mandatory criterion for Accord membership);
- Video Surveillance Equipment inside and outside licensed venues;
- Systematic Counting of Patron numbers;
- Encouragement of A No Pass-out policy after midnight;
- Responsible Serving of Alcohol Policies enforced;
- Properly trained bar staff;
- Well lit and signed venues;
- Properly trained crowd controllers;
- Containers used for serving alcohol to be selected on the basis of minimising potential harm to patrons and staff;

338 Information taken from *Melbourne City Licensees Accord: A City Partnership Initiative 1996-2000*, City of Melbourne, October 2000.

339 Heather Scovell, City of Melbourne, in conversation with the Committee, 30 October 2000.

- Patrons assisted to access taxis or public transport;
- A wide range of alcohol free and low alcohol drinks and snacks and meals provided;
- A Code of Conduct for patrons has been developed and is displayed in a prominent place; and the
- Advertising and conduct of the venue is in the spirit of the Liquor Control Reform Act.

One possible weakness in current licensing arrangements according to Superintendent Warren of Victoria Police, however, is the lack of stringent standards for the obtaining of a venue licence. In his view this is a situation which encourages too many 'fly-by-nighters'. He stated:

> I mean you can be anyone, you can be a shoe shop owner and buy into a licensed venue and if you're got no prior convictions or anything like that, you can suddenly become a licensee of a nightclub. And there's no training for it and that's one of our major difficulties.[340]

A different type of criticism of accords has been voiced by some Indigenous organisations. The Tumbukka and Binjirru (Victoria) Regional ATSIC Councils, whilst supportive of the accord concept in principle, believes that in practice most liquor accords tend to exclude Indigenous people and do not take sufficient notice of their concerns:

> These type of accords need to include not only liquor industry players, local police and local government, but also the local Aboriginal (and other relevant) communities, sobering up centres, providers of health services (eg. hospital detox units) and providers of welfare services. The agreements need to cover not only issues such as drinking hours and the practices of licensees (eg. happy hours, promotional give aways and discounting, etc), but also the range of alternatives to arrest (eg. local government funded hostel beds), the role of police in assessing people's needs, protocols for taking drunken Aboriginal people to places where they can be assisted, referral linkages between social and health service providers, and so on. Successful Agreements are likely to include pro-active and preventative measures. This has been the case in Alice Springs recently, where proposed changes to liquor laws[341] resulted in an offer from local licensees to establish better liaison with Aboriginal communities and to fund education and employment initiatives. ATSIC Regional Councils are hopeful that the establishment of Regional Aboriginal Justice Advisory Committees may foster the establishment of such Local Public Drinking Agreements.[342]

340 Superintendent A. J. Warren, Region One Headquarters, Victoria Police, in conversation with the Committee, 8 December 2000.

341 ATSIC states that these changes would have a significant effect on the commercial viability of licensees given that they include a cut in takeaway hours and a ban of wine casks over two litres.

342 Submission of the Tumbukka and Binjirru (Victoria) Regional ATSIC Councils to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 10.

The Melbourne City Licensees Accord has served as a model for city accords established along similar lines in Perth and Adelaide and those accords established in suburban Melbourne and country districts.[343] Moreover, police officers, local council staff and licensees with whom the Committee has consulted generally seem to be in favour of these types of Accord and the increasingly pro-active roles of liquor licensing inspectors.[344] A staff member from the Victoria Police Drugs and Alcohol Policy Unit stated:

> There is no doubt that the establishment of the liquor licensing accords, the more pro-active strategies has had a big impact on…reducing rowdiness, noise all those sort of things. And to that extent we have just recently reviewed right across the State the liquor licensing training for police inspectors…the importance of responsible alcohol serving, the importance of accords, how to get involved with local liquor licensing – local restaurants and nightclubs to do all that…instead of where in perhaps past times police just had the traditional enforcement role of walking through a pub…and then taking note of violations…now the liquor licensing inspector sees their role as being pro-active as well as reactive. And in 90% of cases you will get responsible reactions from licensees.[345]

A final issue that needs to be considered is whether these types of partnership accords should be established with legislative backing. The participants in the Geelong Accord were almost evenly divided on this issue. The evaluation report elicited the following views:

> Many of those who favoured the legislative option expressed the view that practices that encourage rapid drinking and intoxication through irresponsible serving and promotional practices damaged the industry and should be prohibited, or felt that compliance with the Accord would be strengthened by legislative backing. Those who opposed any legislative options indicated that they wished to see less regulation of their industry rather than more, or that they believed that voluntary agreements among local participants were likely to be more successful than regulations imposed upon licensees (Rumbold et al. 1998, p. 109).

This has certainly been the view of many of the Melbourne Licensees and members of the Melbourne City Licensees Accord. The following statement is representative of this school of thought:

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343 This has been the view of local government representatives, particularly Community Safety Officers, with whom the Committee has met with in the Cities of Perth, Adelaide and Holdfast Bay (Glenelg/Brighton in South Australia).

344 Victoria Police have recently produced a new Liquor Licensing Manual to accompany a newly developed Liquor Licensing Training Programme. The programme is centred around promoting harm minimisation strategies, a more pro-active and partnership approach to licensing inspection and improving the skills and knowledge of staff with regard to licensing issues and alcohol related harms (Victoria Police 1999). Increasing numbers of Licensing Accords are being initiated in various Melbourne municipalities.

345 Ms Vincent, Drugs and Alcohol Unit, Victoria Police in conversation with the Committee, 7 July 2000.

> It is recommended that before legislating any other parts of Accords or Codes of Practice, there must be consultation with all parties concerned allowing all opposing views to be heard.
>
> The Melbourne City Licensees Accord embraces proper and ethical conduct in the operation of late licensed premises and their surrounding amenity. This certainly encompasses the minimisation of public drunkenness. The Accord promotes harm minimisation, stopping practices of excessive and rapid consumption of alcohol and of training all staff in the responsible serving of alcohol as well as an adoption of best management practices by all licensees involved.
>
> A committee that has a strong commitment, oversees the Accord and has a leadership from senior police, local government, licensees, community leaders and the public. This committee serves to advise and remind licensees of their responsibilities.
>
> It should be noted that voluntary agreements are likely to be more successful than further regulations being placed on licensees. It has from past experiences proved that self-regulation adds a sense of achievement and is easier to deal with when monitored by peers.[346]

Heather Scovell of the City of Melbourne agreed with this approach:

> A big debate we had when we set up the Licensees Accord was whether it should be a sort of mandatory requirement, or whether there were sufficient controls there...I felt quite strongly the industry had to work it out. That they had to change and they also do feel very regulated and it was my view that there was sufficient regulation in place that a better way to go was to try and get the industry to think of themselves with a different standard. I think that's been affirmed to a fair degree. We've seen how late night entertainment has evolved in the City and we now have lots of little small bars...not as strong as some of the well established operators, there are now younger people coming into the market. They are seeking to come in at the Accord standard. So Anne gets the approach from someone who wants to set up a bar. What do we have to do to make this work? So...the market's in a different mode, you know not the big nightclub but more the little late night wine bars. So the Accord has been able to evolve to meet this new form of late night entertainment.[347]

Indigenous groups are more likely to want liquor accords to have legislative backing. The Victorian Regional Council of ATSIC is of this view. A recommendation in its official submission to the Drugs and Crime Prevention Committee states:

> ATSIC Regional Councils accept that local protocols [accords] and agreements can be of immense value, but aver that they need to be inclusive and reflective of a social/welfare approach to the issue of public drunkenness. Given the problems of ensuring stakeholders honour their commitments, such

346 Allan Knights, Licensee of the Imperial Hotel, Spring Street, Melbourne, written submission to the Committee.

347 Heather Scovell, City of Melbourne, in conversation with the Committee, 30 October 2000.

> agreements need to be given some legislative basis, to enable enforcement.[348]

The National Drug Research Institute (NDRI), whilst generally supportive of Accords, states that there can be a tendency for police and local residents to see them as a panacea for alcohol related law and order issues.

> The main concerns about accords is that they are voluntary agreements and therefore not enforceable by law. Thus, if licensees decide to breach the terms of an accord, they cannot be prosecuted. Furthermore, if new licensees take over premises, they are under no obligation to adhere to the terms of an accord. Without legislative controls, there is nothing more than community spirit binding the licensees to accords. The South Australian Commissioner (Licensing) has stated [in this context] 'I don't really believe in accords. If they're (licensees) serious about doing the things laid out in the accord, then let me make them a condition of their licence (Bourbon, Saggers & Gray 1999, p. 38).

If liquor accords are not to be given legislative force, the NDRI at the very least argues that local accord agreements be made conditions of licences so that breaches of the accord can be enforced (Bourbon, Saggers & Gray 1999, p. xi).

348 Submission of the Tumbukka and Binjirru (Victoria) Regional ATSIC Councils to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 10.

PART G:
The Experience of Decriminalisation:
Four Case Studies

19. A Critique of Law, Policies and Procedures in the Northern Territory, New South Wales, Western Australia and South Australia

This section will concentrate on the Northern Territory, New South Wales, Western Australia and South Australia, as policy case studies in an effort to ascertain both the positive and negative consequences of decriminalisation in these jurisdictions. It will also refer to other jurisdictions where appropriate. For convenience sake, a reiteration of the relevant law for each State and Territory is given at the start of each section.

Northern Territory

The Law – Summary Offences Act 1996 and Police Administration Act 1996[349]

The Northern Territory decriminalised the offence of being intoxicated in public in 1974 and was the first Australian jurisdiction to do so.

In the first years of decriminalisation in the Territory there were no sobering-up centres or equivalent facilities to which intoxicated persons could be transported. Therefore the level of people detained in police cells and the attendant problems associated with this (including Aboriginal deaths in custody) remained high.[350] The establishment of

349 For a more detailed discussion of the law as it pertains to public drunkenness in the Northern Territory, see the Position Paper produced by the Drugs and Crime Prevention Committee, unpublished.

350 See Royal Commission into Aboriginal Deaths in Custody 1988, *Interim Report;* and Royal Commission into Aboriginal Deaths in Custody 1991a, *Final Report*, vol. 3.

sobering-up centres in the early 1980s has resulted in a decrease in the number of Aboriginals detained in police cells for public drunkenness.

Laws and regulations against public drinking in the Territory fall into two main types. The first group deals with the drinking of alcoholic beverages within a specified distance of licensed premises, whether the person is intoxicated or not. The relevant law for this purpose is to be found in Part 6A of the *Summary Offences Act 1996*.

Public Drinking Prohibitions – Summary Offences Act

To a certain degree these provisions mirror the municipal laws administered by some local councils in Victoria. The crucial difference in the Territory's case is that the police are responsible for overseeing these laws rather than it being done by a municipal or by-laws officer. These laws are *not* concerned with public drunkenness per se.[351] Nonetheless, these laws are inextricably linked with the administration of the public drunkenness detention provisions and indeed, in the minds of some Territorians, are often thought to be part and parcel of the same law. They therefore warrant some brief scrutiny.

The basic position can be paraphrased as follows. A person who either:

- *drinks* liquor within two kilometres of premises licensed for the sale of liquor; or
- has on their person *opened* or *unopened* containers of alcoholic beverage with the intention of consuming same within that same specified distance is guilty of an offence (section 45D).

Police Powers with respect to public drinking (Section 45H)

A police officer may issue a prescribed notice to a person suspected of committing an offence against section 45D, describing the circumstances which led the police officer to believe an offence had been committed.

Whether or not such a notice is issued, a police officer has the power to seize an *open* or *unopened* container of alcohol if he or she believes it to be a source of liquor from which a person has drunk, or may drink in the future, in contravention of section 45D.

Such a provision relies to a large extent on the police officer's subjective and individual judgement in the circumstances. The liquor may also be seized from third parties in the vicinity of the suspected offender if the police officer is of the belief that the liquor container has been drunk from or may be drunk from in the future by the suspected offender. There are provisions giving people the right of appeal against their liquor being confiscated (section 45HA).

Apprehension for Public Intoxication – Police Administration Act 1996

As in some other jurisdictions, such as New South Wales, the Northern Territory legislation applies to people who are thought to be intoxicated by alcohol or *any other drug*. The level of intoxication required is that of being 'seriously affected'. Little other guidance is given as to what this means. To a large extent it is up to the subjective judgement of the individual police officer.

351 However, some groups argue that the two-kilometre law is simply criminalisation by another name. Conversations with representatives of the Northern Australian Aboriginal Legal Service (NAALS) 3 August 2000.

A police officer may take a person into custody, *without arresting* that person, in circumstances where the police officer believes on reasonable grounds that the person is intoxicated in a public place or intoxicated whilst trespassing on private property (section 128).

In order to fulfil his or her duties under this provision the officer may:

- without warrant enter upon private property;
- search the suspected offender;
- remove any property of the suspected offender into safekeeping until such time as she or he is released from custody.

Period of Apprehension and Custody (Section 129)

The rule of thumb is that the apprehended person shall be kept in custody only for such period as the police officer considers the person to be in a state of intoxication. When the officer believes the offender to be no longer intoxicated, he or she shall be released from custody without entering into any bail arrangements. A person who is in custody after midnight may be kept in custody until 7.30 a.m. of that day, notwithstanding that the person is no longer intoxicated.

At any time a police officer may also release the offender into the care of a person whom the officer believes is capable of taking care of the offender, unless the offender objects to being released into the care of such person. Such a person may include a representative from one of the Territory's sobering-up centres. But the sobering-up centre has no legal power to detain or restrain the person once in their custody.

Legal Consequences of Detention

The Act quite specifically states that a person detained without power of arrest under these provisions cannot be:

- charged with an offence;
- questioned with regard to any suspected offence;
- photographed; or
- fingerprinted.

For such procedures to take place, the person must be arrested, detained and charged according to the ordinary due process of criminal law.

A person detained under section 128 has the right at any time after apprehension to request a review of his or her detention by a justice.[352]

352 Lawyers from the Northern Australian Aboriginal Legal Service (NAALS) claim, however, that at least with regard to Aboriginal detainees, such a right of review is somewhat illusory. According to NAALS, 68% of the Territory's Aboriginal population do not speak English and very few indeed would read English:

> There is a wide variety of Aboriginal languages and the interpreter service…cannot be accessed by individuals; it can only be accessed by departments. Our clients do not know it even exists. If you happen to be a non-English speaking Aborigine in custody, firstly you would not have access to the Police Administration Act; secondly, you could not understand it even if you could read it; and thirdly, you could not adequately communicate your difficulties to a justice (Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee, 3 August 2000).

Policy Issues

It is important to note from the outset that despite the fact that the Police Administration Act and the Summary Offences Act apply to the whole of the Northern Territory, practices and policies with regard to public intoxication in the Territory are very much localised. It is the experience of the Committee that the methods and procedures used in Tennant Creek, for example, are not necessarily those utilised in Darwin.

There are three main areas in which the policy and practice of preventing or policing public drunkenness apply equally in the Northern Territory. These are:

- civilian detention of persons found publicly drunk;
- enforcement of public drinking laws in local government municipalities; and
- use of restrictions imposed by the Northern Territory Licensing Commission

These issues will be discussed in the context of the three locations the Committee recently visited.

Alice Springs

Alice Springs has one of the most serious problems associated with problem drinking and public drunkenness in the Northern Territory. For example, Alice Springs consumes approximately 2.5 times the national average of litres of alcohol per capita and 1.5 times the Northern Territory average litres per capita. It also has disproportionately high rates with regard to all other indicia of alcohol related harms. These include factors such as hospital admissions, arrest rates for alcohol related crimes, and detentions for public drunkenness.[353] Moreover, a key issue for agencies in Alice Springs such as the Police, Local Council, and Chamber of Commerce is that the manifestations of problem drinking *are* so public. Many itinerant people suffering the effects and after-effects of alcohol consumption camp and sleep on the dry bed of the Todd River. The great majority of such people are Indigenous Australians, many of whom have come into 'The Alice' from outlying and remote communities, for a variety of medical, social or administrative purposes.

A variety of methods are used to deal with public drunkenness and alcohol related harms in Alice Springs. The following are two of the options the Committee became aware of during its recent trip to the Northern Territory.

1. Transportation to a Sobering-Up Centre

The key sobering-up centre in Alice Springs was established by the Drug and Alcohol Services Association (DASA). DASA is a community organisation established to address alcohol and other drug issues in the Alice Springs region.

The need for a non-government community organisation in Alice Springs to address alcohol and other drug problem was recognised by Northern Territory and local government, the Northern Territory Department of Health (Territory Health Services) and concerned private citizens.

353 See the *Alcohol in Alice Report* 2000, cited as Hauritz et al. 2000. This report is discussed in detail later in this Part.

Little service development existed in the Alice Springs region at that time. Progressive implementation of a range of services was therefore planned. The new Drug and Alcohol Services Association of Alice Springs, established in 1984, argued that there was an urgent need for the establishment of a sobering-up centre as an alternative to police protective custody for the large number of apprehensions for public drunkenness. In consultation with government and the Territory Health Services, DASA committed itself to the priority of establishing the centre as the first stage in the ongoing development of a further range of services to address recognised needs.

The DASA Sobering-Up Centre will receive 'clients' from both the police and the Night Patrols.[354] Unlike other big shelters, such as Whitmore Square in Adelaide or Matthew Talbot in Sydney, the DASA Sobering-Up Centre does not accept self referrals. It does not have the resources to be an 'accommodation service'. The majority of its clients are domiciled in remote communities. They may have come into Alice Springs for social, medical or other reasons and are usually taken back to their communities by the Tangentyere Wardens' Programme.[355]

Over the period of the financial year 1999–2000, the DASA Centre had 6312 admissions. This is compared to 6900 admissions for the previous financial year. Of these 6312 admissions, 120 individuals had been in the shelter more than 20 times during that year. Women count for approximately 30% of admissions. Only 1% of admissions were classified as 'non-Aboriginal'.[356] Due to funding constraints, the DASA shelter closes approximately one and one half days per week. During these times there is no alternative other than to place persons apprehended for public drunkenness into police cells.

The Director of the DASA Sobering Up Centre, Mr Nick Gill, stated that generally the Northern Territory's sobering-up centres have been a success. Although overall numbers of deaths in custody in the Territory may not have decreased dramatically, he claims that the numbers of deaths in custody relating to drunkenness have. In particular, he stated that there have been no deaths in sobering-up shelters since the programme was set up.[357] The reasons he gives to account for this include:

- implementation of Harm Minimisation policies';
- clients are offered a wide range of detoxification, treatment and follow up services when they are discharged from the Sobering-Up Centre.[358] On the basis of the

354 For a discussion of Night Patrols, see below.

355 For a discussion of which, see below.

356 These statistics are based on figures given to the Committee in discussion with Mr Nick Gill, Director, DASA, 31 July 2000.

357 Mr Nick Gill, in conversation with the Committee, 31 July 2000.

358 DASA states, however, that whilst the overwhelming majority of Sobering Up Centre clients are Aboriginal, the majority of detoxification and treatment clients are European. According to DASA, this reflects not only the difficulty in getting Aboriginal people to 'realise they have a problem' but also indicates that Europeans are more likely to be chronic alcoholics in a traditional (medical) sense. Aboriginal people, on the other hand, are more accurately characterised as 'binge drinkers'. An Alice Springs detoxification and treatment programme that is run by and for Aboriginal people in culturally appropriate ways is the Central Australian Aboriginal Alcohol Programmes Unit (CAAAPU). This residential counselling programme is run along Alcoholics Anonymous lines modified to reflect culturally appropriate local needs. One of the key aspects of the CAAAPU programme is its links with correctional services. People in gaol for alcohol related crimes in appropriate circumstances may have the option of completing the last part of their gaol terms in the CAAAPU programme as a form of home detention.

research literature it has reviewed, DASA suggests that minimal intervention which encourages people to think about their [unhealthy] alcohol consumption may result in long-term and positive changes;

- a 'caring' environment with non-threatening and non-judgemental staff; and
- cooperative relations with local police and Night Patrols.

According to DASA, one of the most pressing problems in Alice Springs is the growing problem of children and adolescents affected by drunkenness and alcohol related harms. This may be either because the adolescents themselves are drunk or affected by alcohol, or because one or both parents have been taken into police custody or a service facility such as a sobering-up centre.[359] No sobering-up centres in the Territory will admit children and there are few other resources available.[360]

There are also grave problems associated with alcohol, drunkenness and domestic violence. Night patrols and police are reluctant to take an intoxicated person back to a town camp or residence in circumstances where they feel a spouse or other person may be at risk of violence. Anecdotal evidence given to the Committee suggests that some women, particularly Aboriginal women, have mixed feelings about the decriminalisation of public drunkenness. The argument put forward is that whilst there are clearly problems associated with locking intoxicated Aboriginal men in police cells, there are also serious problems for Aboriginal women if a person is returned to a community before having a chance to 'dry out' or sober up.

According to a spokesperson from the Central Australian Aboriginal Alcohol Programmes Unit (CAAAPU), an alcohol recovery and treatment programme, a key reason for these type of alcohol related harms is the lack of education surrounding unhealthy drinking and drinking practices. Decriminalisation of itself has not changed this sorry state of affairs:

> The overall social problem of drunkenness is getting worse and more people are being brought to the attention of the authorities, brought to the hospital per night, whether the Night Patrols, police or DASA…Not enough resources are put into preventative stuff…Alice Springs has the highest homicide rate in the country…15 per year, 4 stabbings – all alcohol related. Decriminalising drinking hasn't changed behaviour. When we got rights, we didn't get education…so social problems increase.[361]

2. Night Patrols and Wardens' Programme

These programmes are run by the Tangentyere Council. The Tangentyere Council is an Aboriginal Corporation and voluntary organisation which was formed to address the needs of Aboriginal people living in town camps on the fringes of Alice Springs.

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359 This problem is exacerbated by provisions in the Northern Territory legislation which in effect allow parents or guardians to buy and give children alcoholic drinks in licensed premises. See *Summary Offences Act 1999* (section 45K).

36 In fact the only real option, as related to the Committee, is for the local Aboriginal Child Care Agency to drive intoxicated youth around in an agency van until such time as they are sober.

361 Lorraine Liddell, Director, CAAAPU, in conversation with the Committee, 1 August 2000.

Tangentyere Council provides social support services in housing, infrastructure, employment, training, education and other social services. It encourages and relies on community involvement in activities designed to create a safer and more stable living environment for town camp residents. Town camps are settlements on the outskirts of town, which reflect relatively homogeneous cultural and linguistic groups.

Tangentyere Council has taken major steps to deal with drunkenness and alcohol related problems. One of its most innovative responses is the establishment of a Night Patrol, a form of community policing which is designed to deal with instances of alcohol related trouble involving town campers before they require police intervention.

The Night Patrol works closely with police who often refer appropriate jobs to them. The Night Patrollers are registered 'cell visitors' who regularly check on the Alice Springs police cells, sign people out of protective custody when appropriate, and take them home. The current Coordinator of the Tangentyere remote areas Night Patrol describes its activities as follows:

> The [Night Patrol] was formed to provide a buffer between the criminal justice system and the Aborigines…On a typical Night Patrol they may attend a domestic violence incident, find somebody drunk, take the drunk to the sobering up shelter…refer people to the women's refuge, the hospital and Congress…the Aboriginal medical service in town…
>
> Night Patrols have no legal powers. Where police are available, they will work with the police. Generally Night Patrols are the first line of defence. If an incident is occurring, the Night Patrol will be the first people called and if it is something they cannot handle or requires the use of some legal action, they will call the police. The police and the town Night Patrol have a healthy respect for each other. The patrols save the police a lot of work in acting as drunk taxis or the police can be there when the Night Patrols get themselves into situations out of their depth; they then call on the police.
>
> The Night Patrols work very much on a culture basis. They work on family relationships and on knowledge, especially in remote communities – for example, Tjungurrayi may have gone mad because he has drunk too much and is running around the community with a stick and threatening to beat somebody up. If the Night Patrol is around it will get his grandfather to calm him down. But if his grandfather cannot calm him down and he takes a swipe at somebody, the Night Patrol will call the police…There have been instances when the police have been having a busy night and cannot get to an incident for some time. The Night Patrols keep a lid on the situation until the police can get there. The Night Patrols are the favoured response to such issues of public drunkenness, domestic violence and so on.[362]

362 Ms Jennifer Walker, Coordinator Tangentyere Council Remote Night Patrol, in conversation with the Committee, 31 July 2000.

The Tangentyere Council also runs a Wardens' Programme whose duties include assisting in transporting and returning individuals from Alice Springs to their town camps and the outlying settlements, and addressing possible drinking and antisocial behaviours that may result from being stranded in town. Many Indigenous people visiting Alice Springs sleep and 'camp' in the dry bed of the Todd River. As with drinking in public, camping without a permit is a contravention against local by-laws that can ultimately result in the offender being gaoled for one day. Wardens assist such 'campers' to move on from the river bed area by or before daybreak, thus avoiding the necessity for police or local government action. The Wardens state that they have a cooperative and largely beneficial relationship with the local police. The Wardens believe that problems associated with alcohol and public drinking in the Territory are best addressed by the communities most affected by these problems.[363] This is also something that at least the current leadership of Alice Springs police subscribes to.

The other main way in which sections of the Alice Springs community is attempting to address some of the social and health problems related to alcohol misuse is through the use of licensing restrictions and the regulation of alcohol trade and consumption. This is discussed in a later section of this chapter.

Tennant Creek

The Committee was fortunate in its recent trip to the Northern Territory to meet with members of the Julalikari Aboriginal Council, an extremely important 'stakeholder' in the battle against problem drinking, public drunkenness, and alcohol related harms in this township.

Julalikari Council has an excellent reputation in the district for working with the local Aboriginal residents on a wide variety of social, employment, health and training programmes. It is a vital conduit between Aboriginal groups, governments and the wider Tennant Creek community.

Importantly, in the context of this Report, the Julalikari Council has sought to combat the problems associated with the 'grog' through its innovative use of the Night Patrol and the work of the 'Beat the Grog' Committee.

The Julalikari Council Night Patrol was the first of its kind in the Territory, and is seen as a model of a successful self-determination programme. It is used primarily to combat the violence, family breakdown and disruption associated with excessive alcohol consumption by some members of the local Aboriginal community. Workers are predominantly taken from the town camps that surround the township, many of which reflect a different social, linguistic or cultural grouping. Women volunteers also run a separate patrol that concentrates on transporting, caring for, and attending the needs of women in the district. These women are either themselves drunk or are in some way affected by the actions of some other person who is intoxicated. The Women's Night Patrol may, for example, take a woman at risk from a violent and

363 The Chairperson and the Research Officer of the Drugs and Crime Prevention Committee were privileged to go out at dawn with the Wardens of the Tangentyere Council. Whilst they were disturbed by the sights of abject poverty and degradation they witnessed, they were also humbled and enriched by observing the work of such a truly dedicated and impressive team.

drunken partner to the local women's refuge. The Committee and staff were extremely impressed with the work of the Julalikari Council.[364]

The Night Patrols are fortunate to have an excellent relationship with the local police. The Committee, by its own observations and through listening to the testimony of various agencies and individuals, is aware that the most successful programmes that seek to combat public drunkenness and associated problems, particularly amongst Indigenous Australians, are those where cooperative and mutually respectful partnerships have been forged between police and local community agencies. In Tennant Creek this partnership has been formally cemented through the signing of an innovative Protocol outlining the mutual rights and responsibilities of Tennant Creek police and the Julalikari Council Night Patrol.[365]

Some key features of the Protocol read as follows.

- It is accepted that, where diversionary procedures or facilities are available, a person should not be detained in police custody for being intoxicated or held for minor offences unless that person is violent or an offence is likely to occur or continue. In cases of detention for offences, bail procedures are to be instituted as soon as possible unless the person is too intoxicated to be released.
- Persons apprehended for Protective Custody under the provisions of section 128 of the *Police Administration Act* and kept in Police cells are to be released as soon as possible or as soon as that person can be placed into the care of a relative or friend capable, in the opinion of the police, of looking after that person.
- When any disturbances involving Aborigines arises within the camp or town areas, the Patrollers when possible will attempt to resolve the dispute in the first instance. If the patrollers are unable to resolve the dispute Police will be called and the Patrollers will assist Police in resolving the dispute. On arriving at the scene of a dispute Police should, wherever possible, consult with the Patrollers as to the circumstances and the nature of the problem. Where it is agreeable to all parties Police may leave the situation in the care of the Night Patrol.
- Wherever possible, an Aboriginal person who is arrested will be placed in a multi-prisoner cell, preferably with another Aboriginal person or persons, unless there is an identified danger or disruption to others by placing them together.

A unique aspect of the Protocol is the provision by which Julalikari Council provides informal Night Patrol orientation and cultural awareness training for new police recruits and new police officers transferred to Tennant Creek. In turn, Night Patrollers receive training from police, Julalikari Council, St John's Ambulance and specialist

364 The Committee's Executive Officer was fortunate to spend an evening with the Women's Night Patrol. The work of these women inspires nothing but profound admiration.

365 Agreement on Practices and Procedures between the Northern Territory Police and the Julalikari Council concerning the Julalikari Council Night Patrol. A copy of the Protocol is found in Appendix 8.

drug and alcohol treatment centres. Police and Julalikari Council also participate in combined community awareness training and education programmes.

One of the reasons the Protocol seems to work so well is that it is grounded in *local* knowledge and it is a truly cooperative venture.

Other provisions of the Protocol direct police or Night Patrols to transport intoxicated persons to the various sobering-up shelters in the township. The biggest of these is the sobering-up centre run by the Barkly Regional Alcohol and Drug Abuse Advisory Group (BRADAAG).

BRADAAG subscribes to a holistic model of harm minimisation. BRADAAG also runs a detoxification unit and a residential treatment centre as well as the sobering-up centre.

According to its Director, problems associated with public drunkenness can only be addressed by a comprehensive model that includes education, prevention and treatment. Sobering-up centres by themselves can never be any more than band-aid solutions.

A key aim of BRADAAG's holistic approach is to: 'Reduce the number of people placed in police custody due to alcohol related offences'.

Once admitted into the program, the clients undergo residential detoxification. On completing detoxification, clients commence counselling, alcohol education and life-skills training. A range of counselling is offered to residential and non-residential clients, including individual, family and group counselling. During counselling sessions the clients' experiences, concerns, and knowledge regarding alcohol and other health issues are discussed.

Education sessions are conducted in a classroom setting and cover a range of issues such as alcohol use and health and social consequences of excessive drinking and strategies to stop excessive use of alcohol. The life-skills training is conducted in a similar setting and focuses on educating clients about budgeting, cooking, communication skills and independent living.

As part of the treatment program, clients are required to attend work experience with the Community Development Employment Programme (CDEP), the local council, or private enterprises. Recreation activities and social events are organised and these include weekend bush camps, firewood gathering, sports, hunting, visits to various shops and other social and recreational activities at the centre.

Referrals are accepted from the Justice System and special alternatives to custodial sentences are provided. These alternatives include residential home detention and community service orders that are supervised by the staff at BRADAAG. BRADAAG works co-operatively with other care and treatment agencies in Tennant Creek such as Alcohol After Care Services auspiced by Anyinginyi Congress, the Aboriginal medical service. This agency runs a residential centre with a more specifically Indigenous and culturally appropriate approach to alcohol treatment.

Problems associated with public drunkenness have also been confronted in Tennant Creek through the efforts of the 'Beat the Grog' Committee. This Committee is

comprised of members of Tennant Creek Council, Julalikari Council, police, BRADAAG, Anyinginyi Congress, and some of the township's licensed outlets. It was originally established to try and put in place initiatives which would reduce the harms associated with alcohol, alcohol abuse and public drunkenness in the Barkly Region, of which Tennant Creek is the central township. As a result of the Committee's efforts, a number of restrictions were sought and later granted by the Licensing Commission of the Northern Territory. A key part of the 'Grog War' was the establishment of a grog-free day each week that coincided with the day the former Department of Social Security paid entitlements. This became known as 'Thirsty Thursday'. According to the Beat the Grog Committee it is unfortunate that changes to the Centrelink welfare system are beginning to undermine the positive results that 'Thirsty Thursday' has produced. Being able to access cheques on days other than Thursday negates and weakens this strategy.

A recent evaluation of the Tennant Creek licensing restrictions was commissioned by the Beat the Grog Committee. It notes that the positive outcomes that have come about through the use of the restrictions are at risk of being reduced if the restrictions are not retained, vigilantly policed, and in some cases increased. In particular, the evaluation report has recommended:

- discouraging the sale of alcohol in glass containers;
- limiting the sale of beverages with an alcohol content greater than 15% to one one-litre bottle per person per day;
- extending 'Thirsty Thursday' restrictions to licensed outlets within a 50 kilometre radius of Tennant Creek;
- extending takeaway restrictions to social and sporting clubs; and
- basing a Licensing Commissioner in Tennant Creek.

All parties to the Beat the Grog Committee agree that it is only through the use of supply side, marketing, and licensing restrictions *in addition to* treatment facilities and diversion programmes that problems associated with public drunkenness and problem drinking can be comprehensively addressed.[366]

As one member of the Julalikari Council commented:

> Very few people here in Tennant Creek who were here before restrictions were in place would now want to go back to a situation of not having them.[367]

Such a view is supported by academic and field studies conducted by the National Drug and Research Institute based in Perth. A research associate at the Institute with whom the Drugs and Crime Prevention Committee met, commented on this research:

> Our [NDRI] review of the liquor licensing restrictions actually showed a positive impact on the consumption of alcohol, however you have got to consider the impact of the night patrol and the other services within Tennant Creek at that time, I think that if they didn't have the sobering up shelter to patrol or the

366 Further discussion of 'supply side' and licensing issues can be found in Part F, Chapter 17. For an account of the Tennant Creek licensing restrictions and their evaluation, see Saggers et al. 1998.

367 Representative of Julalikari Council, in conversation with the Committee, 1 August 2000.

> residential treatment that the impact of the liquor restrictions would have been very minimal, but because of the combination of targeting all areas, the success was far greater in that community.[368]

Darwin

In many ways Darwin is different from the rest of the Territory. As a capital city, a major trading centre, and a thriving tourist hub, the concerns with regard to alcohol and alcohol related harm are at the same time similar to, but different from, the other parts of the Territory that the Committee has visited.

Surprisingly, the Territory's largest city has only one official sobering-up centre. This is managed by Territory Health Services that recently took over management from a community-based group, the Aboriginal and Islander Medical Support Services (AIMSS).

Territory Health Services also administers the Darwin Night Patrol and another sobering-up centre in Katherine.

The Night Patrol predominantly, but not exclusively, staffed by Aboriginal people, is responsible for 'scouting' Aboriginal camps, talking to people and, with the consent of the person concerned, bringing that person back to the Sobering-Up Centre. It appears to run on more 'formal' lines than equivalent services in Central Australia. Unlike the equivalent patrols in Tennant Creek and Alice Springs, the Darwin Night Patrol relies exclusively on paid professional staff. According to Craig Spencer, the Manager of the Sobering-Up Centre, this reflects the fact that Darwin is a big tourist city with many commercial precincts.[369] Due to funding restrictions, the Night Patrol is only able to operate from Wednesday to Saturday. Outside these hours intoxicated persons detained under the Police Administration Act will be usually placed in police cells if an appropriate person cannot be found to take care of them.

The approach is one of harm minimisation and relies on the tacit consent of the individual. It is therefore a voluntary programme. Night Patrol officers, unlike police, have no power to coerce people affected by alcohol to go to the Sobering-Up Centre. Police may, however, release a person detained under the Police Administration Act into the custody of the Sobering-Up Centre. The Night Patrol and Centre have good relations generally with the Darwin police. Indeed, Mr Spencer claims that the police would not want to take back any powers to arrest for public drunkenness as they believe the Night Patrol '[d]oes a great job'. Mr Spencer believes, however, that the Night Patrol should be granted more extensive powers to hold and search an intoxicated person. At the moment they must rely upon the tacit consent of the person and a mixture of coercion and cajolery. Such powers, he argues, could be granted under liquor legislation rather than police legislation.

When the person affected by alcohol consumption is brought back to the Centre, he or she usually sleeps for six or more hours and then is given a shower and a light meal.

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368 Ms Brooke Sputore, Research Associate, National Drug Research Institute, in conversation with the Committee, 5 March 2001.

369 Mr Craig Spencer, Manager, Darwin Sobering-Up Centre, in conversation with the Committee, 3 August 2000.

Whilst most Centre staff are trained in first aid, if a person requires serious medical attention they will be transported to a hospital or an ambulance will be called.

The Darwin Centre has facilities for 20 males and 10 females with two 'protective beds' (for detainees at high risk to themselves or others).

Currently, the management of the Centre is exploring ways in which the Centre can provide more than just a 'band aid' approach to harm prevention. Colloquially, sobering-up centres in the Territory have become known as 'spin drys' because 'You go in wet, you come out dry and you lie on the bed and the room goes around'.[370] The term is also an appropriate one in the sense that many Territorians feel that without appropriate follow up services there is no chance of intoxicated persons breaking the cycle of being picked up for public drunkenness, taken to a sobering-up centre, being released and being picked up again. The Darwin Sobering-up Centre is now located in the same building as the 'detox' unit. The future strategy for the Centre is to act as a primary intervention filter for other agencies that may then provide broader and more comprehensive treatment options. It therefore generally reflects the trend around Australia that sobering-up centres should not stand in isolation from more comprehensive treatment 'packages'.[371]

Lawyers from the Northern Australian Aboriginal Legal Service (NAALS), based in Darwin and Katherine, endorse this approach. According to NAALS, sobering-up centres of and by themselves are ineffective. What are needed, they argue, are comprehensive and holistic treatment programmes, supply side licensing restrictions, and social policies that address structural problems associated with unemployment, health and education:

> A positive aspect in Katherine was that once [the] liquor restrictions were introduced…which involved [a] six hour takeaway rule,[372] we received police statistics that indicated there had been a significant decrease in arrests for public drunkenness and for being drunk and disorderly. It was regarded as a positive measure…The issue is not about some paternalistic notion of controlling people's access to alcohol…[it] is more complex than that; it is about trying to deal with the underlying economic and social imperatives that

370 As related by Ms Kirsty Gowans, Solicitor, Northern Australian Aboriginal Legal Service (NAALS), in conversation with the Committee, 3 August 2000.

371 There are other treatment centres for Aboriginal and non-Aboriginal people based in Darwin. These are not, however, attached to a sobering-up centre. A key agency that the Committee visited is the Council for Aboriginal Alcohol Program Services (CAAPS). CAAPS was founded in 1985 and incorporated as an Aboriginal Association in 1991. It aims to provide substance misuse prevention, intervention, treatment and after-care services to Aboriginal people, families and communities in Darwin and the 'Top End'. It runs a residential treatment programme based on a six-week Program Cycle' that provides awareness education on the physical, mental, emotional, spiritual, cultural and social effects of alcohol and other drug dependence behaviour within Aboriginal families. It also runs programmes that include assessment, counselling, referral and after-care support for the Residential Programme as part of the CAAPS Client Care Team. The Community Based Programme Team is also actively involved in networking with various service agencies in Darwin & Top End Remote Communities including the Darwin Prison, Darwin Juvenile Centre, the Courts, ATSIC, Legal Aid and the Royal Darwin Hospital.

372 In Katherine, approximately 320 kilometres south of Darwin, restrictions have been put in place since 1 January 2000 that prohibit the purchase of alcohol from takeaway outlets between 2 p.m. in the afternoon and 6 p.m. at night.

> [result in] …people, especially Aboriginals, spending a lot of time drinking alcohol. That is the real issue. Sobering up shelters are a band aid measure.
>
> I think you have to decide what your purpose is in order to decide whether it is successful. If your purpose is to get people off the street and out of people's way because a lot of people find it very confronting and difficult to have people drunk on the street – they might be going about their shopping or whatever, and people do find that confronting and a bit frightening – and if your purpose is get those people somewhere else while they sober up, then sobering up shelters and diversionary measures are very successful. They pose much less risk of self harm or deaths in custody than perhaps the alternative measures that used to exist before, of being picked up and thrown in a cell – it is much better. But in terms of dealing with the long-term problems of public drunkenness, you mop the floor endlessly but never turn off the tap.[373]

The lawyers from NAALS *do* believe, however, that one of the real positive aspects of decriminalising public drunkenness has been that it prevents an accumulation of warrants for outstanding fines for being drunk in a public place. Fines that many people, particularly Aboriginal people, would find difficult to pay.

Authorities in Darwin, perhaps more so than in most other areas of the Territory, have to maintain a difficult balancing act between various competing groups. They need to administer the laws pertaining to public drunkenness, safeguard the health and welfare of those intoxicated persons detained for being drunk, and promote the interests and assuage the concerns of the city's residents and tourists. As the Committee has observed from its conversations with police, local government representatives and Aboriginal and other community agencies, this is no easy task.

A problem as perceived by Territory authorities, is the confusion that surrounds the public drinking offences under the Summary Offences Act, including the policing of the two kilometre rule, and the detention provisions for public drunkenness under the Police Administration Act. The Darwin City Council, a key player in maintaining public order in Greater Darwin, comments that the problem is not so much with drinking and drunkenness per se, as with the antisocial behaviour associated with drinking in a public place:

> The complaints tend to be more on the abuse or the practices that people engage in once they have had a little too much to drink and then the fact that they make it unpleasant for anyone else to be either living in the vicinity of or using a public place.[374]

Drunkenness and associated antisocial behaviour is partly a product of the balmy climate and outdoor lifestyle in the 'Top End'. As well as prohibitions on drinking in public spaces other measures have been used to curtail alcohol related problems. One method has been to grant specific permits for legitimate activities associated with alcohol consumption, such as exempt picnic and barbecue facilities, beach markets, or

373 Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee, 3 August 2000.

374 Mrs Diana Leeder, Director of Community Services, Darwin City Council, in conversation with the Committee, 3 August 2000.

gatherings to play cards. Council regulation of public space through the use of various by-laws prohibiting unauthorised camping or squatting is also viewed as a useful tool in combating problems associated with alcohol consumption:

> Within our by-laws the council dealt with the fact that people who like to sit and drink all day will gather under a barbecue shelter or around other public facilities and just be there all day. We have made it an offence to obstruct anyone else – either by behaviour or intimidation – from using those facilities. What happens now is that the public shelters are not taken over as camping places because we have the power to request people to move, not from the area but from public shelters…Council [also] has strong by-laws about camping in a public place which it actively enforces.[375]

These by-laws and the fact that they are relatively stringently enforced is proffered as a reason why, at least in the central areas of the city, the problem of public drunkenness is not as visible in Darwin as compared to other areas of the Territory:[376]

> [the visible presence of 'drunks']…it's nothing like you would find in Alice Springs, Katherine or Tennant Creek where people sit in the main street all day, every day. Council staff and police have largely made those places semi no-go areas. You will not survive long as a group sitting around drunk without being moved on or picked up.[377]

City councillors have expressed different and, on occasion, conflicting views on the issue of public drunkenness and how best to deal with it. However, those aldermen who spoke to the Committee were in agreement on a number of points:

First, the number of services and facilities such as sobering-up centres and Night Patrols needs to be greatly increased and funded at more substantial levels. Currently, services cannot keep up with demand, resulting in too many intoxicated persons being detained in police cells.

Second, appropriate training must be provided for Night Patrol officers, so they can:

> make relevant decisions about who should be encouraged to go to a shelter and who is not actually committing an offence – they might just happen to be a bit loud and in a public place. So there are some issues for how night patrols are actually operated.[378]

Finally, most of the Councillors the Committee spoke with stated that public drunkenness must be viewed not in isolation but as a symptom of wider social problems in society. In doing so, they echoed the views of many people the Committee has met with in other parts of the Territory, Sydney, regional New South Wales and Victoria. The views of Alderman John Bailey probably best express this approach:

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375 Ms Diana Leeder, in conversation with the Committee, 3 August 2000.

376 For a more detailed discussion of public drinking and local government regulation, see Part F, Chapter 16.

377 Alderman John Bailey, Darwin City Council, in conversation with the Committee, 3 August 2000.

378 Mrs Diana Leeder, Darwin City Council, in conversation with the Committee, 3 August 2000.

> Numerous community groups, including government and opposition members, councils and others, have met to look at ways of dealing with the problem – that is, how to handle a mixture of people who are alcoholics, most being itinerant and with no fixed abode. We talk about antisocial behaviour, but the problem is not about people who have a home to go to, those who go down to the beach and drink. The people who lie around in the parks are a mixture of the homeless, the mentally ill, itinerants from around the Territory…
>
> Most people would be familiar with harm minimisation in relation to drug strategies. You cannot look at drunkenness without dealing with it as a harm minimisation consideration. You will not get rid of people who get drunk and have all those difficulties. You need to look at an integrated program. If you are getting rid of public drunkenness you will need to examine how you will deal with the problems that consequently arise, in the same way as happens after you close mental institutions and put people on the streets. We have not dealt with the problems created from that.
>
> Victoria has a great opportunity to look at a series of issues dealing with itinerants, alcoholics, the mentally ill and so on, in saying to the public on the one hand, it probably is appropriate to decriminalise public drunkenness while, on the other hand, it must be acknowledged that a problem is caused by people who have problems that can be addressed. You cannot deal with any of them in isolation.[379]

New South Wales

The Law – New South Wales (Intoxicated Persons Act 2000)[380]

The above Act has consolidated and amended provisions of the original decriminalisation legislation for New South Wales, the *Intoxicated Persons Act 1979*. The new Act was assented to in June 2000 and commenced by proclamation on 16 March 2001

The 1979 laws can be summarised as follows:

- Government and non-government facilities could be gazetted as *proclaimed places* to which persons found intoxicated in a public place could be taken by police officers or authorised persons (including people engaged in the conduct of care facilities if so designated under the Act).
- People in charge or control of such proclaimed places were authorised to detain the intoxicated person at that place.
- Police officers or authorised persons were authorised to take an intoxicated person to another proclaimed place or as a last resort to a police station, if there was inadequate accommodation in the first proclaimed place, the person was

379 Alderman John Bailey, Darwin City Council, in conversation with the Committee, 3 August 2000.

380 For a more detailed discussion of the law as it pertains to public drunkenness in New South Wales, see the Position Paper produced by the Drugs and Crime Prevention Committee, unpublished.

violent, it was impractical to take the person home or it was thought generally to be in the best interests of the person for him or her to be removed from the first proclaimed place.

Major changes as a result of the amending legislation

The amendments to the original Act reflect a change in emphasis, whereby primacy is given to placing the intoxicated person in the hands of the *responsible person*; making provisions for the health and welfare of the intoxicated person whilst in custody; and generally simplifying some of the definitional sections of the Act.

Moreover, a person found intoxicated in a public place will *only* be able to be detained by a police officer. Such officer will be *required* to release the person into the care of a responsible person, such as a friend or family member or the staff of a facility for the care of intoxicated persons. Only if such a course is impracticable will the person be able to be detained in a police station or juvenile detention centre.

Staff of government or non-government care facilities will no longer have the power to detain intoxicated persons. They will only be able to receive such persons into their custody when such persons are released into their care by a police officer.

Another important change is that by the definition of *intoxicated person* the Act makes it quite clear that intoxication includes drugs other than alcohol or a combination of alcohol and another drug or drugs. In effect this means that the provisions of transport and detention may be used with regard to a person appearing to be under the influence of cannabis or other illicit drugs. The definition under the 1979 Act was restricted to alcoholic liquor.

Detention and Transport (section 5)

Section 5 of the 2000 Act allows a police officer to detain a person who *appears* to be *seriously* affected by alcohol or another drug or combination of both in a public place, if he or she believes that person:

- is behaving in a disorderly manner;
- is likely to cause injury to self or another;
- is likely to cause property damage; or
- is in need of physical protection because of intoxication.

Thus prima facie it would seem that the legislation delimits the circumstances in which a drunken person can even be taken into custody without arrest.

The crucial change to section 5 is that after a police officer has formed the opinion that the person fits into one of the above categories, he or she in the first instance must attempt to:

- take the intoxicated person and release him or her into the care of a responsible person willing to immediately undertake the care of the intoxicated person.

As in the Northern Territory, a responsible person does *not* have the power to detain an intoxicated person delivered into their care against the intoxicated person's will.

Police Stations as Places of Detention

The only circumstances in which this can be done is if:

- it is for the temporary purpose of locating a responsible person or facility willing to receive the intoxicated person;
- a responsible person cannot be found or is not willing to receive the intoxicated person into their custody;
- it is impracticable to take the intoxicated person home; or
- due to the violence or threatened violence of the intoxicated person a responsible person would not be capable of taking the person into their care and control.

Duty of Care

The new Act builds in a protocol with regard to intoxicated persons taken into the custody of the police station due to their intoxication. Some features include:

- The intoxicated person must be given a reasonable opportunity to contact a responsible person.
- As far as reasonably practicable the intoxicated person must be kept separately from a person detained at the police station in connection with the commission or suspected commission of an offence.
- An intoxicated person apparently under the age of 18 must as far as reasonably practicable be kept separately from an adult.
- The intoxicated person must be furnished with food, drink and bedding appropriate in the circumstances. (The use of the qualifier 'appropriate' would, one assumes, provide for the situation where it would be dangerous to give the person food due to their intoxicated state, for example the possibility of choking on their vomit).

There are also fairly circumscribed powers of restraint and search as are reasonable in the circumstances to protect the intoxicated person and or others from injury and protect property from damage (see sections 5 and 6).

Section 8 of the Act gives a police officer an indemnity with respect to any act done or omitted to be done by that officer in the reasonable execution of his or her duties under this Act.

It is unclear from a prima facie reading of the Act as to what procedures are to be followed in circumstances where the intoxicated person leaves the care or custody of the responsible person prior to having 'sobered up'. In cases where the responsible person is a staff member of a sobering-up facility, they might, as in the Northern Territory, either contact the police or simply let the matter rest.

Policy Issues

The amendments to the legislation in New South Wales outlined earlier have been accompanied by far-reaching changes to the way in which alcohol harm minimisation policies can be implemented by police in the area of public drunkenness.

The Committee in its meetings with New South Wales Police, government departments, policy bodies and community agencies, soon became aware that since its decriminalisation in New South Wales in 1979 public drunkenness has become viewed as an issue pertaining almost exclusively to the homeless and itinerant 'drunk'. This applies equally to the use of proclaimed places.[381]

One of the concerns of police in fact, has been the use of proclaimed places as hostels for the itinerant. The original scheme was that proclaimed places were to be used as sobering-up centres for people taken into civil detention by police for having 'one too many'. This expectation has simply not been realised. Police, it would seem, rarely intervene with regard to the simply 'rowdy' drunk for a number of reasons.

- First, the legislation itself only allows police to civilly detain an intoxicated person in certain defined circumstances, namely, if they are also disorderly or potentially a danger to themselves or others.
- Second, police utilise networks of friends and family to transport the intoxicated person home, in circumstances where this is thought appropriate. The provisions of the *Intoxicated Persons Act 2000* with regard to the 'responsible person' will simply give a legislative basis to what has become established practice.
- Third, beds are simply not readily available for people other than chronic 'drunks'. Indeed, the experience of the big city shelters which incorporate proclaimed places, is that many chronically and homeless intoxicated persons will attempt to use the provisions of the Act in order to get a bed for the night.[382] An officer from the Proclaimed Places Senior Officer's Group (PPSOG) put it thus:[383]

> I mean, the theory of proclaimed places is it could be a safe place for a person to sober up and it would be an alternative to them being incarcerated in a police cell, that's right, yes. What seems to have happened over the interim period though is more and more of these services were being used by homeless people with alcohol and, more recently, drug addictions, and we don't have any I suppose reliable data, but anecdotal information and limited data we have collected suggests that…certainly more than 95% of these places were being used by homeless people with addictions. Probably closer, probably even …it's pretty well close to, you know, 100%. It's difficult to know, measure. There would only be the odd exception where a person who wasn't

381 As stated earlier, under the 1979 legislation proclaimed places were places such as sobering-up centres and shelters where intoxicated persons could be civilly detained until they ceased to be intoxicated. The 2000 Act no longer uses the term. Civil agencies no longer have the power to detain a person in an intoxicated state in their care against their will.

382 This is the experience of two of the biggest proclaimed places, such as the Albion Street Shelter and the Matthew Talbot Hostel.

383 This group is comprised of senior analysts, planners and officers from the Ministries of Police, Community Services, Health, Cabinet Office and NSW Police.

> homeless would use these services (PPSOG officer in conversation with the Committee, 19 June 2000).

With regard to intoxicated persons who are demonstrating violent or aggressive behaviour, New South Wales Police take either one of two approaches.

- If the behaviour is actually violent, for example an assault has taken place, police will utilise appropriate charges under the general criminal law. The intoxicated person will then be taken into police custody and processed and charged with the relevant crime.
- If the person in the judgement of the police has the potential to be violent or dangerous for the time that they remain intoxicated, the police may take them into the police cells under the civil apprehension and detention of the Intoxicated Persons Act. This option will still be available under the new legislation, although the 2000 Act specifically stipulates this as a last resort. Most community and welfare agencies refuse to take clients who are violent or potentially so.

The Albion Street Shelter is the only facility that had security rooms in which to place dangerous or aggressive persons.[384] As such, they received the bulk of police and other agency referrals with regard to intoxicated and violent persons. The new legislation has removed the power of civilian agencies in charge of proclaimed places to detain a person delivered into their care against their will. Most of the Committee's respondents stated that this merely clarifies what *was* in fact the practice of these organisations. In other words, despite having the power to do so, few, if any, shelters or proclaimed places would seek to detain a person who had indicated they were leaving prior to sobering up. Agencies would differ as to the appropriate procedure to follow if a person did in fact leave. Some agencies would inform the police of the absconder's departure, other agencies would not. Often agencies informed the police, because they were concerned about the agency's duty of care liabilities should the absconder have an accident or in some other way be at risk whilst still intoxicated.

A problem in the way the system was working, according to the PPSOG, was that many of the proclaimed services were being used by the same habitually drunk people who were also homeless. The sobering-up centre detention model simply did not meet the real needs of the people that it attracted:

> [b]ecause they were eight hour casual sobering up services in which the person is legally detained, there was no requirement to do case management. So we weren't looking beyond the next eight hours for these people. So what was happening is that people were coming in drunk, they received an eight hour sobering up service and left the next day. Now a lot of these people were chronic drug affected or alcohol affected people, anyhow, but the reality is they had to actually get drunk again to get back in …it was almost perpetuating their addictions (PPSOG officer in conversation with the Committee, 19 June 2000).

384 This was not a situation that the staff at Albion Street were necessarily pleased about and in fact according to some respondents this agency actively lobbied not to receive violent and dangerous persons.

Many of the agencies in New South Wales manage what have become known as 'blended services'. In other words, the one building may contain a proclaimed place with a certain amount of beds for persons civilly detained under the Act. The other beds will be usually part of a hostel for homeless people with or without substance abuse problems. Problems have arisen as to whether a certain quota of beds should be set aside as 'police beds'. On occasion it may be that police or Night Patrols do not bring anyone into the proclaimed place.[385] If a quota of beds were allocated for civil detention cases only, this could possibly result in potential hostel residents being turned away. This paradox has been especially felt in the Sydney Women's Shelter run by Mission Australia. This is also a blended service that has only six proclaimed beds. Many women seeking to stay at the hostel, however, do not necessarily meet the criteria of civil detention. Therefore new policies in New South Wales seek to break down the rigid distinction between sobering-up centres, proclaimed places, treatment facilities and facilities for the homeless:

> [b]ut we would hope over time we could shift the emphasis on to actually looking at sort of case managing these people; that it won't be a matter of kind of, you know, getting turfed out on the street in the morning and then coming in drunk that afternoon, and they will be actually trying to link them to health services (PPSOG officer in conversation with the Committee, 19 June 2000).[386]

The cornerstone of New South Wales intoxicated persons policy is known simply as 'The Protocol'.[387] The Protocol has been developed as a holistic case management approach to administering and providing services to homeless persons with addictions to alcohol and/or other drugs. The rationale for The Protocol has been explained thus:

> The reality was that…proclaimed places were not getting a huge number of police references and similarly they were not exercising their power to detain, although they had it, they weren't using it, they never had, effectively. We then

385 Night Patrols are an essential aspect of managing public drunkenness in New South Wales. In Sydney many of the charitable organisations have a Night Patrol. Mission Beat, through the auspices of Sydney City Mission, has a patrol that drives through the streets of Sydney collecting intoxicated persons from city streets, parks and other locations and transporting them to shelters for the homeless and/or medical treatment. Often police will contact the Night Patrol in order for them to collect intoxicated persons from police stations and transport them to the shelters.

386 An example of a new service model that utilises this holistic approach is the Newcastle Adult Accommodation Support Service (NAASS). Whilst it is too early to evaluate this programme, early results have been said to be promising (see Gibson 2000).

An impressive Victorian example of a service which does try and break down this rigid distinction is the Wintringham Centre for the Elderly and Homeless. This centre aims to provide comfortable and dignified accommodation and social services to Melbourne's homeless elderly in cheerful and friendly surroundings. Rather than prohibit alcohol on these premises, Wintringham allows it to be consumed even by people who may be classified as 'habitual drunks'. At the same time, Wintringham will try to provide or arrange treatment and other ongoing social services for those clients who wish to take advantage of them. The Wintringham Homes are seen as a far more pleasant, safe and appropriate refuge for people found publicly drunk than a sobering-up centre or a night in the cells. For further information about Wintringham, see Lippmann 1999.

387 Formally known as Protocol between Department of Community Services, New South Wales Police Service and NSW Health for Provision of Services to Homeless People who are Affected or Addicted to Alcohol and/or Other Drugs.

> had to work out a better way of co-ordinating the services that were being provided to these people, between the police, department of community services and health, and the agencies…[we] got together and designed a draft sort of protocol which was then to go between the agencies as to how they would service and operate, which was then to go to each of the local area commands placed on police regions (PPSOG officer in conversation with the Committee, 19 June 2000).

The new Act is structured in such a way as to match The Protocol. It is envisaged that sections of the Act will gradually be proclaimed over the next six to 12 months as features of The Protocol are developed and implemented in metropolitan and regional divisions.

The Protocol assumes that people who are taken into civil detention under the Intoxicated Persons Act are homeless or at risk of homelessness. The Protocol envisages a division of responsibility between NSW Police, Health and Community Services Departments with formal liaison and referral procedures put in place between these agencies. The responsibilities are as follows:

> The Department of Community Services is responsible for managing the Supported Accommodation Assistance Programme (SAAP) which provides a crisis and transitional response to assist homeless people move to independent living and for investigating and assessing the needs and risks of children and young persons.
>
> The NSW Police Service is responsible, where appropriate, for the immediate safety of alcohol and drug affected individuals in public places, who may reasonably be argued to be a risk to themselves or others, including seeking a safe place for their immediate care.
>
> NSW Health is responsible for assisting individuals to manage their addictions through a range of services which include detox and counselling (The Protocol, p. 1).

The Protocol, therefore, aims to:

- reduce the immediate risk of people found drunk in a public place;
- manage their addictions (if any); and
- assist them to move into a long term accommodation arrangement.

The major roles of the NSW Police with regard to The Protocol are to:

- approach a person in a public place whom they believe to be at risk to themselves or others and under the influence of alcohol or other drugs;
- assist in obtaining appropriate medical assessment and treatment, if police believe that the person(s) is injured or has immediate health needs;
- attempt to encourage the person into appropriate transport to convey them to their place of residence;
- attempt to identify a *responsible person*, including a friend or family member, to assume responsibility for the person(s);
- attempt to identify an appropriate responsible person to transport the person to a place of safety;

- arrange appropriate police accommodation if police believe the person(s) is violent or at imminent risk of violence;
- consult, if appropriate, with the relevant Mental Health Team if police believe that the person(s) is indicating they may have an uncontrolled mental health disorder; and
- request the nearest SAAP service arrange appropriate emergency accommodation once points one to three have been addressed (The Protocol – Police Responsibilities).[388]

As discussed, The Protocol is predicated on the types of persons who are apprehended being homeless and itinerant. Wherever possible, persons who do not fall into these categories and who are not exhibiting violent or aggressive behaviour will be released into the care of a responsible person. Potentially violent intoxicated persons will still be detained in police cells or charged with criminal offences.[389]

For the most part, the representatives from the NSW Police and other government departments and the various community agencies with whom the Committee and its staff met are optimistic about the future success of The Protocol.[390] In particular, representatives from the Proclaimed Places Officers Group have called it a 'great win for police' because of the huge increase in services that will be available through federally funded SAAP programmes.[391]

As with most jurisdictions in Australia, most of the resources and facilities available to deal with the problems associated with public drunkenness and drug misuse are concentrated in the metropolitan areas. There are too few sobering-up and treatment facilities in rural and regional New South Wales, although it is hoped that through the use of SAAP funding and the new Protocol more facilities will be available in rural centres. Currently, most intoxicated persons in rural New South Wales outside of major regional cities, who are felt to be in need of civil detention for their own protection or the protection of others, are placed in police cells. Wherever possible,

388 For an outline of the reciprocal responsibilities of the Departments of Health and Community Services, see 'The Protocol', Appendix 9.

389 The number of police cells in metropolitan Sydney has recently been rationalised. Very few suburban police stations now have their own 'lockups'. Most intoxicated persons who need to be detained in police custody will now be held at the Central Sydney Detention Centre which has the capacity to hold over 100 detainees. In rural and remote areas, however, most detainees will still be held in country police stations.

Furthermore, the management of police cells and, to a certain extent, transport in Sydney has been transferred to the New South Wales Corrective Services. The rationale for this change is that it will enable police to spend much more time on operational policing and less time on purely custodial and administrative matters.

390 It should be noted, however, that some community agencies have been unimpressed with a perceived lack of consultation with regard to the drafting of The Protocol. Agencies such as the Matthew Talbot Hostel, whilst generally supportive of the new arrangements, have been disappointed that those working at the 'coalface' were excluded from participating in the planning of The Protocol. See also, New South Wales, Legislative Assembly, 7 June 2000, *Debates*, p. 6819, per Mr Rozzoli.

391 From the 23 currently available proclaimed places in New South Wales, it is envisaged that when all regional protocols are implemented there will be upwards of 300 facilities to which police can refer appropriate intoxicated persons in New South Wales (interview with Alan Tongs, Senior Policy Analyst, Police Department of NSW and Mark McPherson, Drug Programs Co-ordination Unit, NSW Police, 29 August 2000).

police will try and liaise with an Aboriginal Community Liaison Officer (ACLO) and arrange for that officer to take care of an Aboriginal person who has been apprehended as intoxicated.[392]

From the legislation, policy initiatives and literature, therefore, one can discern some common features applying in the area of public drunkenness, particularly with regard to those jurisdictions that have gone down the path of decriminalisation.

Western Australia

The Law

Public Drunkenness was decriminalised in Western Australia in December 1989 by the *Acts Amendment* (*Detention of Public Drunkenness) Act 1989*. This amending Act introduced changes into the *Police Act 1892* (WA) allowing the civil detention of persons found intoxicated in public places. This legislative change was predominantly a response to the 1988 *Interim Report* of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). Some heated debate ensued as to whether the legislation should be proclaimed prior to the establishment of alternative sobering-up centres. Given the relatively high numbers of Aboriginal deaths in custody in Western Australia, it was eventually decided that the decriminalisation legislation should take effect even if there were no centres yet available to receive intoxicated persons (Midford 1993). The legislation was proclaimed in April 1990.

In late 2000, Part 5A of the Police Act dealing with the apprehension of intoxicated offenders was repealed by section 30 of the *Protective Custody Act* 2000. This Act is discussed in detail in this chapter. Given, however, that the following discussion of public drunkenness covers the period since decriminalisation first took effect, in conjunction with the very recent proclamation of the new legislation, the Committee believes it necessary to discuss both legislative regimes.

Police Act 1892 – December 1989 until December 2000

In many respects the Western Australian legislation resembles the major features of the Northern Territory legislation.[393] Some of the key features of the Western Australian legislation are as follows.

Apprehension (Section 53A)

A police officer may apprehend and detain a person if he or she has reasonable grounds for believing that person is intoxicated and:

- the person is in a public place;
- the person is trespassing on private property.

392 Aboriginal Community Liaison Officers are usually full-time paid workers who, whilst not sworn police officers, work in close contact with police in areas where there are relatively high concentrations of Aboriginal people, such as Bourke, Brewarrina, and Wilcannia. There are also ACLOs stationed in police stations in Sydney such as Redfern and Kings Cross.

393 From a practical point of view, this could be thought desirable. In the north and north-west border regions between the Northern Territory and Western Australia, many services, particularly those serving Aboriginal communities, have a cross-border jurisdiction. For consistency and uniformity in the application of the laws and practice it is seen as beneficial to have as many of the provisions as similar as possible (Members of the Northern Australian Aboriginal Legal Service in conversation with the Committee, 3 August 2000).

Search and Use of Force (Sections 53B)

Similar to most other jurisdictions, a police officer may use reasonable force in apprehending and detaining an intoxicated person. He or she may also search that person and remove any item likely to cause harm to that person whilst detained.

Period of Detention (Section 53D)

In the Western Australian legislation no time limits as such apply for detaining a person. However, if a police officer still believes a person to be intoxicated eight hours after apprehension he or she must apply to a justice as soon as practicable for an extension of detention. Otherwise, a person shall be detained by a police officer as long as it reasonably appears to that officer that the person remains intoxicated.

Release of Person into care of a third party (Section 53G)

Provided that the consent of the intoxicated person is given, a police officer may release that person into the care of a person he or she believes is capable of taking adequate care of the intoxicated person. This provision allows for the police officer to release the intoxicated person into the charge of a sobering-up centre.

Reviews (Section 53I)

Similar to the Northern Territory legislation, but unlike most other jurisdictions that have decriminalised public drunkenness, the Western Australian legislation provides for a review mechanism for the detention of an intoxicated person. A person may request a police officer to have their detention reviewed by a justice at any time. As stated above, a police officer must seek a review of the detention if the intoxicated person has been detained more than eight hours after apprehension. On review, a justice has the power to release the person unequivocally, release him or her into the care of a third person or extend the period of detention with or without specific directions.

A person being detained under these provisions cannot be investigated, fingerprinted, questioned or photographed in connection with suspected other offences.

As with most Australian legislation of this type, police officers or other persons responsible for detained persons shall not be civilly liable for any acts or omissions performed in good faith whilst exercising any power under these laws.

The Western Australian legislation also contains a unique provision relating to escape from detention. In short, a person who absconds whilst in detention under this law shall not be considered as having escaped from legal custody (section 53M). In other words, the normal consequences of the criminal law with regard to escaped prisoners (severe sanctions in their own right) shall not be applicable.

Protective Custody Act 2000[394]

This Act has repealed the features of the Police Act pertaining to the apprehension and detention of intoxicated adults. It substitutes a new regime for the apprehension and detention of intoxicated offenders. However, many features of this new legislation are the same as those found in the previous legislation. Its most important and original

394 This Act was proclaimed and commenced on 1 January 2001.

features are provisions that permit the police to detain juveniles intoxicated by alcohol or any other intoxicating substances. Although juveniles could be detained previously by police under child welfare legislation if it was thought they were at risk, the new legislation is much more specifically tailored to providing care for those juveniles found intoxicated by alcohol or other drugs. Its main features are as follows.

Apprehension

- The Act enables *authorised officers* who may be police officers or *community officers* appointed under the Act to apprehend intoxicated persons (adults or children under 18 years of age) and place them in protective custody in *approved facilities* (Our emphasis).
- *Authorised officers* must not detain or keep detained an apprehended person who is not or is no longer intoxicated. Nonetheless, special duty of care and release procedures apply in the case of juveniles. A child who is no longer intoxicated may still be detained by an *approved place* until arrangements for the child's welfare have been put in place. The key purpose of detaining an intoxicated person is to:
  - Protect the health and safety of the person or any other person; and
  - Prevent the person causing serious damage to property (Our emphasis).

Intoxication

- The new act defines intoxicants as being alcohol, a drug, a volatile or other substance capable of intoxicating a person.
- Police have been given powers to seize such intoxicants. This could include such otherwise legal substances such as petrol, glue or paint.

Placement and Release

Children

- The Act requires an authorised officer to release the child to:
  - the care of a parent or legal guardian; or
  - the care of a person the authorised person believes is a responsible person capable of taking care of the child and consents to so doing; or
  - if neither of these options is possible the authorised person must place the person into the care of an approved facility.
- The paramount consideration with regard to the apprehension, placement and release of children is the *safety and welfare of the child*: 'This is generally recognised as giving first priority to parents and legal guardians'.[395]
- In cases where it is not practicable to release a child into the care of parents, a responsible person or a placement facility, the child may be retained in a police station or lockup in *exceptional circumstances only*.

395 Protective Custody Act 2000; *Protocols for Participating Agencies*, p. 2.

Adults

- Authorised officers may release an intoxicated person to another person who applies for the adult's release if:
  - the intoxicated person does not object to being released into the care of the applicant; and
  - the authorised officer reasonably believes the applicant is capable of taking care of the adult; and
  - if an authorised officer decides not to place a person into the care of an applicant that decision may be reviewed on application to a justice of the peace.
- Authorised officers may also release adults to an approved facility.
- If none of the above options are available or practicable the adult may be retained in police stations or lockups in exceptional circumstances.

Approved Facilities[396]

Approved facilities under the Act include the sobering-up centres already established in Western Australia and any subsequent centres, including juvenile centres, so approved. Whilst persons admitted to an approved facility cannot be kept there against their will, facility staff are advised to arrange for police to attend the facility should a person become violent subsequent to admission. Agency staff are also instructed to seek medical attention in cases where an intoxicated person's condition deteriorates subsequent to admission.

Where a child is admitted to an approved facility, the authorised officer must keep the relevant agency and the child aware of steps taken to release the child to parents or a responsible person. Children admitted to an approved facility must be kept separate from adults and be continuously supervised by agency staff. Prior to discharge from the approved facility, the agency must ensure that a child is released to an appropriate person as stipulated in the Act. An approved facility will manage the release of the child even after the period of the child's intoxication. If the child leaves an approved facility prior to an approved discharge, the agency will immediately advise the appropriate authorised officer to secure further placement in the interests of that child's health and safety.

Miscellaneous

The new legislation has similar provisions to the old with regard to search and seizure, the use of force, judicial review, escape of an apprehended person and protection for authorised officers from personal liability.

The development of approved facilities will be subject to local protocols between Western Australia Police, Health and Welfare Departments, the Western Australia Drug Abuse Strategy Office (WADASO) and potential agencies. Local protocols will identify:

- Key agencies;
- Agency Roles;

396 As of the time of writing, no approved facilities for juveniles had been gazetted under the Act.

- Hierarchy of options for placing children and adults based on the resources available in each community; and
- Review processes for each region.[397]

The policy implications of the new legislation will be discussed further in the following section.

Policy Issues and Responses

Two points need to be stressed in any discussion of the decriminalisation of public drunkenness in Western Australia and the consequences flowing from that.

First, the percentage of the Western Australian population that is officially counted as Indigenous has been estimated as 3.2% of the State's total. This needs to be compared to Victoria where the Indigenous population makes up only 0.5% of the State's recorded population.[398] Moreover, as we shall discuss, the great majority of persons attending sobering-up centres in the State of Western Australia are Indigenous. This is particularly true in rural and regional areas.[399] Therefore the problems, challenges and issues confronting policymakers and service providers in relation to public drunkenness and responses to it will be different, in part, from Victoria. This is not to minimise, however, the way in which public drunkenness effects and impacts upon Indigenous people in Victoria.[400]

Second, one of the major problems facing Western Australian authorities is the 'tyranny of distance'. Western Australia is over two and one-half million square kilometres in area, which is 32.89% of the total area of Australia.[401] In terms of area, it is the largest State in Australia with enormous distances between populated towns and settlements. This poses myriad problems with regard to establishing services and agencies that can cover and meet the needs of the State's (Indigenous) population, particularly in the outlying areas. A senior Western Australian police officer put it this way:

> It is extremely difficult to enlist the help of other government agencies in remote country areas...Forgive me, I know Victoria is small and pretty compact. I doubt that the police there have to roam the miles or yards that we do. Distance is our biggest problem. For example, people talk about sobering-up centres and other government agencies, but we do not have the luxury of having them in every large country centre, which is what we would like, because substantial financial support and local and State government commitment are needed.[402]

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397 Protective Custody Act 2000; *Protocols for Participating Agencies,* p. 4.

398 Figures are based on Australian Bureau of Statistics and 1996 Census data.

399 See discussion below and WADASO 2001.

400 For a discussion of Indigenous people and public drunkenness in Victoria, see Chapters 10, 22 & 23.

401 Compare this to Victoria which, at 227,000 square kilometres in area, constitutes only 2.96% of Australia's area (Australian Bureau of Statistics, *Australia Now: Geography and Climate*, Australian Bureau of Statistics, Canberra, 2001).

402 Commander Darryl Balchin, Southern Region, Western Australia Police Service, in conversation with the Committee, 6 March 2001.

The following account of the experiences of Western Australia with regard to decriminalisation takes into account the above two factors as paramount.

The Experience of Sobering-Up Centres in Western Australia

The impetus for the decriminalisation of public drunkenness and the establishment of sobering up-centres was almost exclusively a result of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). Richard Midford, a leading expert in the area of alcohol and drug studies and one of the key players in the establishment of sobering-up centres in Western Australia, painted a stark picture of the problems at that time:

> [c]ertainly the research evidence at that time indicated that a lot of people, mainly Aboriginal people, in the north of the State were going into police lockups overnight for no other offence than being drunk in public and that some of them were dying in police lockups. One of the problems in the country, in Western Australia, was that Police lockups tended to be manned until about 1 o'clock in the morning and then the police went home and people were really left by themselves so when they were sobering up in the early hours of the morning if anything was wrong there was nobody there who could render assistance, basically.[403]

A sobering-up centre was initially established in Perth in 1990 soon after decriminalisation legislation had been enacted. Criticism has been levelled at the fact that public drunkenness was decriminalised prior to sufficient services being put in place, particularly in rural Western Australia.[404] Sobering-up centres were then progressively opened in identified high priority locations throughout regional Western Australia subject to demands from local communities.[405]

Research into the establishment and management of sobering-up centres suggests that community development models are most appropriate for the success of these establishments:

> The benefits of involving the community were also seen as indirectly enhancing the broader harm minimisation aims of the project through greater community understanding of the pervasiveness of alcohol harm. The concept of the development process was that the local community should be given control of its sobering-up centre and that the responsible government body...should limit its role to support, quality control, evaluation and research. By maximising local control, the service should be more responsive to local

403 Richard Midford, Senior Research Fellow, National Drug Research Institute, Curtin University in conversation with the Committee, 5 March 2001.

404 See Midford 1993, 1994. Similar criticism was also voiced with regard to the South Australian experience of decriminalisation. See that State's section, this chapter.

405 The complete list of Western Australian sobering-up centres with the date of establishment in parentheses are as follows: Perth (1990); Port Hedland (1991); Halls Creek (1992); Roebourne (1993); Fitzroy Crossing (1994); Kalgoorlie (1994); Wiluna (1996); Kununurra (1996); Derby (1998); and Broome (1999). Additional sobering-up centres are planned for Wyndham, Geraldton and Midland in east metropolitan Perth. Aboriginal drug, alcohol and community groups are also advocating for funding to establish an Indigenous managed, culturally appropriate sobering-up centre in Perth, in addition to that already managed by the Salvation Army.

> needs and there could be greater community ownership of alcohol related problems (Midford 1994, p. 6).

Recently in a meeting with the Committee, Richard Midford stressed the importance of ensuring local communities were aware of what sobering-up centres are and what the sobering up process is and is not about. It is worth quoting the following passage in full. He claims that the establishment of sobering-up centres take:

> [a] lot of community education because the perception with basically public drunkenness was that you should cure people, you should get somebody who has got a problem with drinking and you should establish a rehabilitation facility preferably about 10km out of town and they should be there for several weeks and they should come back cured. Basically we really had to talk with communities about saying that is not a realistic option; it's not something that is going to cure them. They had rehabilitation facilities, they had been tried and basically they had failed. We were acknowledging in looking to establish sobering-up centres that it was going to be a revolving door, it wasn't going to cure people but it was going to be a benefit to the community and what we were arguing about benefit for the community was that individuals themselves would be safer if they were in a sobering-up centre rather than a) in the streets or b) in police lockups or c) I guess at home – and the community would be safer because these people were off the streets. Certainly the experience in Alice Springs was that when people were drunk late at night, early in the morning, that they were causing problems within the community, nuisance type problems within the community. The other benefits which we came to appreciate, I think more as we went along rather than right at the beginning, was that these communities had been, had experienced, the consequences of public drunkenness for a long time, particularly the ones in the north and had got a sense of hopelessness that nothing would ever work, no matter what they did it wouldn't work. Certainly as we went along it was quite an empowering intervention because it did actually make a difference; the objective evidence in terms of hospital records, police records, and community perception was that it made a difference. Certainly what we found after the sobering up-centres got to be established was that towns in adjacent locations were seeing the benefits and were saying, we would like sobering-up centres as well... We were really selling [the sobering-up centre model] as something which was a harm prevention measure but wouldn't necessarily cure people, but would be something that would provide immediate benefit. It would also act as a referral source so that if people eventually decided that they wanted to do something, the people in sobering-up centres could then refer them on to appropriate organisations.[406]

The importance of relying on local communities, particularly Indigenous communities, was that those communities: '...were very capable of providing

406 Richard Midford, Senior Research Fellow, National Drug Research Institute, Curtin University, in conversation with the Committee, 5 March 2001.

comprehensive descriptions of the sort of local problems that resulted from public drunkenness...' (Midford 1995, p. 7).

Currently the management, development and funding of sobering-up centres is the responsibility of the WADASO. The common functioning of Western Australian sobering up-centres is explained by WADASO as follows:

> Sobering-up centres (SUCs) emphasise providing a practical focus on assisting alcohol intoxicated adults found in public places by providing them with overnight care. As SUCs are only resourced to manage clients over a short period of time, they will be discharged the next morning, with the exception of the Perth SUC, which is co-located with a detoxification unit.
>
> The service involves the provision of a substantial meal, clean bedding and sleepwear and laundering of clothes. The short stay aims to break the negative cycle of alcohol induced harm by providing care to intoxicated persons most at risk to themselves, their families and their community.
>
> Experience has shown the opening of a SUC usually also encourages the community over a period of time to develop additional services to address alcohol related problems. These have included outreach programs, community patrols, a safe house for women and children, alcohol and other drug education programs and community support for initiatives to restrict alcohol availability (WADASO 2001, p. 1).

One of the more recent developments in Western Australia is that sobering-up centres are becoming increasingly more flexible and creative in the way they are providing service delivery. As with the Northern Territory and New South Wales, different centres in different locations may take different approaches depending on individual community need. Some centres, for example, may run a 'Rolls Royce' model whereby clients receive an overnight bed, breakfast, laundered clothes and even a cut lunch or a haircut. The health benefits to the intoxicated person, particularly the indigent, are obvious. The cost, however, is that centres are not able to service a high turnover of clients. For example, in a 12-bed sobering-up centre once you have your 12 people for the night that might preclude any more admissions. A centre run on more basic lines may simply supply a bed for a few hours and a shower. Nonetheless, despite these differences many people, including researchers, bureaucrats and service providers, see the benefits of a flexible approach. Researcher Brooke Sputore from the National Drug Research Institute (NDRI) made the following comment:

> I think it is good in a way that organisations have the flexibility to trial things and see which ones work best for their community, I think that is the reality. Not all communities are the same, you start off with a principle and then let them model it and give things a go. I think it is good in a way that organisations have the flexibility to trial things and see which ones work best for their community, I think that is the reality. [WADASO] seem to allow sobering-up shelters to try out new things as long as it stays within their budget.[407]

407 Ms Brooke Sputore, Researcher, National Drug Research Institute (NDRI) Curtin University, in conversation with the Committee, 5 March 2001.

Discussing the Roebourne sobering-up centre in the north of the State, Ms Sputore explains:

> They have done some really creative things which are quite cost effective and that's things like looking at the long term benefits of what they can bring to the community in the sense of health... There are things like treating first aid and what not, but what they have actually done is they give each client a vitamin B and multi vitamin supplement when they come to the sobering-up shelter, they also provide basic grooming. They will cut hair in the sense of if it is really knotty and if it is lice infested; they also treat minor injuries or abrasions, they do parasitic disease treatment; and they also do additional things like once the client leaves they give them a bottle of frozen water and an orange to send them on their way. They also provide breakfast, but in their budget they have also expanded their services to do an outreach program where they try and get people aware of their services. They go out and talk to people in the local drinking sites but also encourage people to come in the afternoon for a bit of an afternoon tea. The principle behind this is they have got something in their stomach, hopefully and they are away from the drinking scene for a couple of hours, so chances are they won't get as drunk as quickly and the effects of the alcohol won't be as severe. So they are some of the innovative things which aren't that expensive which seems to be quite successful in Roebourne, and strategies that they are doing in addition to their sobering-up shelter.[408]

One of the key initiatives that is worth considering in the Victorian context is the use of what otherwise might be wasted space during daytime periods when the shelter or centre may be poorly utilised.[409] Many centres:

> [w]ere only opening between the evening hours where most people had been drinking for some time and were ready to be picked up and put into safe care. But again there are organisations now who see the sobering-up shelters as being a waste of resource during the day and even though they may not be using it to run structured programs people are now trialing it to be used as a safe place. Basically with Aboriginal communities it is so hard to get away from the pressures of drinking whether you are a mother or a grandmother. Looking after kids to get them out of that environment is very difficult because there is nowhere to go, also there are people who want to break from the grog yet there is no safe place where they or other people know they can't approach them to drink. What the sobering-up shelters are doing now are saying: 'come to our facility you can just use it as a hang out place to do your art or bring your kids' and basically it is a haven away from the pressures to drink and that has been trialed by a number of sobering-up centres and it's only recently so I don't know how successful that is but I think to communities that's a kind of important venture, that there is nowhere really you can go and we need a

408 Ms Brooke Sputore, in conversation with the Committee, 5 March 2001.

409 In most jurisdictions that the Committee has visited it would seem sobering-up centres are rarely utilised or at least to no great degree before 5 p.m. in the evening.

> place just to get away from the pressures of it all. I suppose you are probably aware, but drinking is such an intricate kind of relationship building structure within the Aboriginal community and to say no to your friend or your brother because you don't want to drink today is like if you say no to me you are saying no to me being your brother, so to be able to get away from that helps them in some way. So that is one good thing that is coming out of places like Roebourne, I think it is a good idea.[410]

That different centres take different approaches and have different needs was demonstrated vividly to the Committee during its recent trip to Perth. The Committee took part in a fascinating telephone link-up with representatives of all ten Western Australian sobering-up centres. Most centres operate as a detached sobering-up centre only. Others such as Perth and Broome were combined with rehabilitation and detoxification centres.[411] Some centres such as Broome had most of their referrals from Night Patrols, while others such as Derby had all referrals brought in by police. Others again, centres such as Halls Creek and Kalgoorlie, had a majority of clients as self-referrals. Some centres such as Roebourne have been critical of the seeming unwillingness of local police to transport clients to their shelter.[412] Some centres claim to have excellent relations with local police, others state that their relations with the police were less than cooperative. Whilst all representatives believed it had been necessary to decriminalise public drunkenness, some were less than convinced that decriminalisation had been a complete success. The following responses from the telephone link conversations are typical of this view.

MR LUPTON:[413] Do you think [decriminalisation] it's worked at all [in Broome]?

MR MATSUMOTO: Well I'm sort of half-and-half with this at the moment in regards to what sort of education has been brought to discuss this.

MR LUPTON: Right. Do you think it's been effective, the decriminalisation of public drunkenness [in Fitzroy Crossing]?

MS CARTER: Well I'm in two minds about that. I think I'd have to say 50/50.

MR LUPTON: Yes. What are your reasons for that?

MS CARTER: I think it was a good thing that they decriminalised but that there was nothing else put in place like yes they put in sobering-up centres, but there wasn't a lot of education stuff that went into it.

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410 Ms Brooke Sputore in conversation with the Committee, 5 March 2001.

411 As referred to in this chapter.

412 The representative from Roebourne claimed that in 2000 police brought only 19 intoxicated persons from a total of 2,067 to their shelter. Phone conversation with the Committee, 6 March 2001.

413 Acting Chair of the Drugs and Crime Prevention Committee during this telephone link-up.

MR LUPTON: How effective do you think decriminalisation of public drunkenness has been in Kalgoorlie?

MR CHAMPION: Well it has worked 50/50 actually over here in Kalgoorlie because some police will just pick the actual clients up and just put them straight into jail, other police will just pour the drinks out and have a talk with them and just encourage them to probably drink off the streets and things like that.

MR NEVILLE: The decriminalisation of drunkenness [in Port Hedland] is probably likened [approved] as far as nobody wants to lock anybody up for being drunk in a public place. What that has created is more damage, more antisocial behavior around the town and more injuries to people themselves as well. And we have a report through Pilbara Public Health coming out shortly showing the amount of injuries and showing where they bought their last drinks and where they actually drank their last drinks. But the events of public drinking, street drinking around the town is very, very high as is the events of damage, as is the events of injuries and rapes, so on and so on within the town.

MR LUPTON: What's the history in days gone by? If you were to go back 10 years. Was it better then or worse?

MR NEVILLE: I've lived in South Hedland for 25 years and the situation has not really changed. The only thing better at the moment is that we do have a sobering-up centre... The plus is that we're not jailing people for public drunkenness, and that is the big plus, and the sobering-up centre, that's been welcomed there and it's the place where people can go to for safety and that certainly is the plus side of it. I've said that at the very beginning and we don't, and I don't think anyone wants to put anyone in jail for being drunk.

MR WHITTINGTON: As far as the decriminalisation of drunkenness I think that has worked excellent in Wiluna. I'm a JP here so I sit in Court normally two or three times a week. I've only been here for about eight and a half years. Now prior to the introduction of that when you look at the figures, the arrests rates and all the charges were, I think, the highest of any town in Australia, in Wiluna. We introduced change. It's all a lengthy consultation process but once it's been introduced it actually does work. It's like I've, even with our sobering-up shelter, I've written off to WADASO requesting that they review the use of our shelter because it's now under utilised. We have a patrol that would probably transfer 90% of the potential clients for our sobering-up shelter away from their place of drinking, and they're conveyed either to home or to

> a safer place where they're not going to be arguing with other people. Yes, but domestic violence is reduced by about 75% because we run this from the medical centre so we can compare our stats previously with what happens at the shelter as well and what happens with the police. And over, just within, about 4 years it was reduced by about 75% for all charges.

Nonetheless, despite any differing views on the 'mixed blessing' of decriminalisation, some common features are apparent.

First, all representatives were agreed that decriminalisation was successful in as much as it has decreased the number of people being held (and dying in) police lockups. The following view is representative:

MR POULTNEY: Yes, as far as Roebourne is concerned the decriminalisation of public drunkenness has worked extremely well when you consider the fact that the reason why it was brought in was to provide alternative facilities to police lockups and I have some figures here in front of me now. In 1992, 1,130 people were taken into police custody through public drunkenness and in October 1998, because the sobering-up shelter opened in 1993, so in 1998 there were 20 people that were taken into police custody through public drunkenness and 1,226 brought to the sobering-up shelter. So as far as, I mean a lot of people ask that question and they look at it as getting people off the drink, but sobering-up shelters are not for that, they are simply to keep them out of police lockups. So on that basis in Roebourne, especially anyway, the decriminalisation of public drunkenness and the provision of alternative facilities to police lockups has definitely worked (telephone link-up conversation).

Second, all representatives believed that the personality, goodwill and understanding of the local police sergeant was instrumental in ensuring the smooth running of the sobering-up centre and the handling of intoxicated persons.[414]

Third, the most successful sobering-up centres are those which have (Indigenous) Night Patrols associated with or attached to their shelters.[415]

Fourth, sobering-up centres should be ideally associated with or at least close to medical and/or health facilities. There were mixed views as to whether they should be part of hospital or medical clinics, even if this was practicable in remote sections of Australia. Many centres were critical of the fact that comprehensive drug and alcohol services, including detoxification centres, were so far away. For example:

414 This concurs with evidence often presented to the Committee.

415 See discussion of Night Patrols above and below.

> [w]e don't have any other resources here in Fitzroy Crossing. If somebody wants to get off the alcohol or the drugs the nearest place is Broome. That's taking them right out of their environment and it doesn't always work.[416]

Fifth, many representatives agreed that their communities should be subject to some type of licensing restrictions. This complex and controversial issue has already been discussed in Chapter 17.

Finally, all representatives, as with most organisations and agencies that the Committee has met with, argued the need for generous and comprehensive funding of these programmes and facilities. Such funding should be able to provide centres with sufficient numbers of well trained and adequately paid staff.

The Benefits of Sobering-Up Centres

In the last section a fair amount of valuable, albeit experiential, evidence was outlined about the benefits of sobering-up centres. This section draws on objective data to determine as far as possible how beneficial sobering-up centres and programmes have been in the context of the decriminalisation of public drunkenness in Western Australia.

The Western Australian Drug Abuse Strategy Office is unequivocally of the view that:

> Sobering-up centres provide[d] significant gains for the communities in which they operate[d] and result[ed] in a reduction in:
>
> - Police time and resources previously involved in the detention and monitoring of intoxicated persons in lockups;
> - Court time and resources;
> - Levels of domestic violence and other social problems and other problems associated with alcohol abuse; and
> - The burden imposed on the health system as a consequence of people being hospitalised for alcohol related illnesses and accidents.[417] Although systematic data and analysis on factors such as court time and health/hospital figures is difficult to ascertain, WADASO has provided comprehensive data on the utilisation of sobering-up centres and their impact on (police) detentions.

In a recent report WADASO analyses admissions to sobering-up centres and the cost effectiveness of sobering-up centres. It also compares admissions to sobering-up centres with detentions in police lockups.[418] It is beyond the scope of this Report to present a thorough analysis of the findings for all 11 Western Australian sobering-up centres, nonetheless a comment with regard to the overall picture is important.

The Committee was fortunate enough to meet with senior representatives of WADASO during its field trip to Perth. One of the representatives, Mr Greg Swenson, was the author of the statistical report mentioned above. He believes there is 'an inverse relationship between admissions, utilisation of sobering-up centres and detention for

416 Representative from Fitzroy Crossing, phone conversation with Committee 6 March 2001.

417 Department of Family and Children's Services (Western Australia) *Annual Report 1998-1999*, 1999, p. 3.

418 See WADASO 2001.

drunkenness'.[419] Analysing the data over the 10-year period since sobering-up centres were established in Western Australia (1990-2000), it is clear that in that State admissions to lockups have steadily declined whilst the number of admissions to sobering-up centres has increased, as can be seen from Figure 12 below.

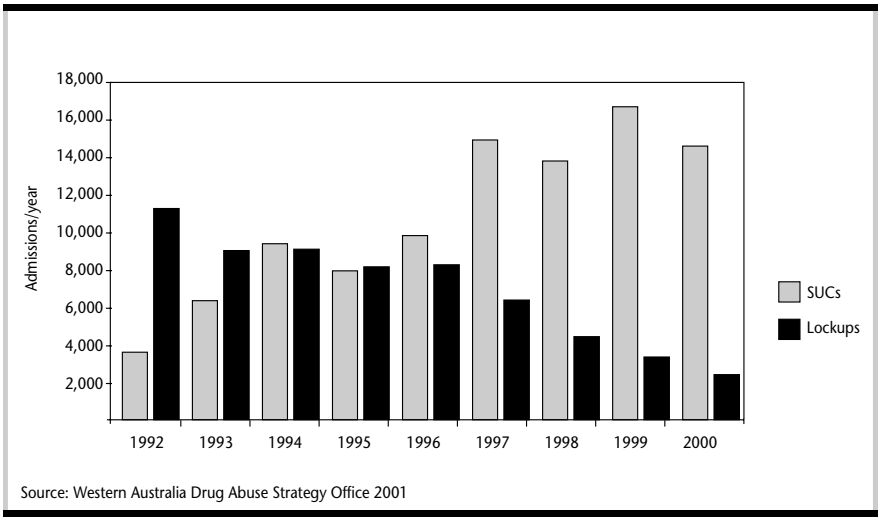
Swenson summarised the data as follows:

> Over the period from 1990 to 2000 there was a total of 63,429 detentions of intoxicated persons in police lockups in the various catchment areas served by operating sobering-up centres (SUCs) of which 47,665 (75%) were males and 15,556 (25%) were females.
>
> The data shows a clear decline in the number of people detained in police lockups up to the year 2000. Over the period 1992 (first year of complete police data) to 2000 the number of detentions of intoxicated persons in police lockups in SUC catchment areas declined by 77%, from 11,316 in 1992 to 2,541 in 2000.
>
> The impact of the expansion of SUCs has provided police with an option to manage intoxicated persons, and as services have progressively expanded, the number of apprehensions has decreased. The relationship between the increased availability of SUCs and decreasing apprehensions for drunkenness is illustrated in Figure 12.
>
> The positive impact of SUCs on the management of intoxicated persons in the safety of a SUC rather than being detained in a police lockup can be seen in the profiles of trends in admissions and apprehensions following the opening of a SUC. An example of this effect is clearly illustrated in the Kimberley region.[420]

419 Mr Greg Swenson, Researcher, Western Australia Drug Abuse Strategy Office, in conversation with the Committee, 6 March 2001.

420 The Kimberley region includes 5 sobering-up centres within its boundaries (Halls Creek, Kununurra, Derby, Broome and Fitzroy Crossing). Taking the aggregate figures for this region, in 1992 there were 9,052 police detentions and 774 admissions to the newly established sobering-up centre of Halls Creek. By the year 2000 when all 5 centres were operational, the figures were 770 police detentions and 8, 665 admissions to sobering-up centres (WADASO 2001, p. 11).

Figure 12 Annual admissions to sobering-up centres and annual detentions for drunkenness in police lockups in Western Australia 1992-2000



Source: Western Australia Drug Abuse Strategy Office 2001

The position of the Perth sobering-up centre is unique in a number of respects:

- It has almost equal amounts of admissions from Indigenous and non-Indigenous persons, compared to the overwhelming majority of Indigenous clients in regional Western Australia;[421]
- It is run by the Salvation Army rather than an Indigenous community organisation; and
- It is linked to a longer-term detoxification and treatment/rehabilitation facility (The Bridge Programme).[422]

Despite such differences, the relationship of admissions to sobering-up centres to police detentions over the period 1990-2000 remains similar to that in the regional areas. In 2000 only 14% of public drunkenness detentions were not taken to the Perth sobering-up centre. WADASO claimed:

> It is believed that the Perth sobering-up centre has had a major impact on the improved management of the public order, other social problems and health consequences associated with the abuse of alcohol, as very few persons detained by the police for drunkenness are taken to the East Perth lockup.

421 The last major study of sobering-up centres that explored Aboriginality as a variable was in 1997. On average it was found in the period 1990-1997 Indigenous people made up between 85% and 90% of overall admissions. Of interest is the fact that in the early years of sobering-up centre operations (up to the end of 1991) Indigenous people made up less than half of all admissions. As of the end of 1997 Indigenous people made up 52% of admissions to the Perth sobering-up centre (WADASO 1999).

422 In discussion with a Salvation Army Representative it was stated, however, that whilst Indigenous clients made up just over 50% of admissions to the sobering-up centre, they made up fewer than 10% of long-term rehabilitation clients. Captain Mike Coleman, Director, Salvation Army Bridge Programme in conversation with the Committee, 5 March 2001. In other words, it was much more difficult to encourage Indigenous people to move into rehabilitation or therapy programmes after the initial 'drying out' stay. One of the main reasons Indigenous community groups have advocated their own culturally appropriate sobering-up centres is the expectation that such a centre may make it easier to filter Indigenous clients into long-term programmes.

> There has been a marked impact of the Perth sobering-up centre on policing in the Perth metropolitan region in relation to intoxicated persons from 1992 up to the present[423] (WADASO 2001, p. 5).

Furthermore, WADASO claims that there have been no deaths of any intoxicated person detained in sobering-up centres or police lockups in any of the regions in which sobering-up centres have been established in the period 1990-2000 (WADASO 2001, p. 4).

This fact alone has helped meet one of the main aims of the Royal Commission into Aboriginal Deaths in Custody – preventing (Indigenous) people from being incarcerated for relatively minor offences and even more importantly dying whilst in custody.

Recently the National Drug Research Institute did a review of alcohol misuse interventions that had been evaluated across Australia, particularly with regard to Indigenous Australians (Gray, Saggers, Sputore & Bourbon 2000). Sobering-up centres have been evaluated by a number of researchers.[424] The surveys and evaluations were not comprehensive; more up to date and sophisticated evaluation research should be done. Nonetheless, the early findings indicate that, overall, sobering-up centres were generally well received by clients, police and local communities.[425] Early reports also indicate sobering-up centres were meeting their prime objective of diverting intoxicated persons away from police lockups (McDonald 1985).

Some of the benefits of having sobering-up centres, it is claimed, are not so tangible or measurable. As stated, whilst hard data on the costs to the health system through the use of sobering-up centres is not available, the 'feeling' amongst experts in the field is that there are significant savings of the health dollar in utilising these facilities:

> I suspect that if we were to examine the non-metropolitan Pilbara-Hedland areas for admissions to hospitals for alcohol related illnesses, given the length of time some of these sobering-up centres have operated, we would find a significant drop in admissions to hospital of Aboriginal people who have had alcoholic psychoses and other alcohol related problems, including violence. The savings to the State would be substantial because the cost of a hospital bed is hundreds of dollars a day. That research has not been conducted. I am informally aware of some health data, but that is probably another chapter to be written. [Nonetheless] the amount of money spent on the sobering-up centres provides a high cost-benefit ratio.
>
> The projected cost of funding for the 10 sobering-up centres currently established in the State is $2.5m; that averages about $250,000 per centre – some are bigger than others. In total, given the number of admissions, it is about $143 per admission to a sobering-up centre. That means we are probably seeing people at the early stages of alcohol problems...[thus]... the

423 Further discussion about policing drunkenness in Western Australia is given below.

424 See for example, McDonald 1985; Daly and Gvozdenovic 1994; Midford et al. 1994; Gray, Saggers, Sputore & Bourbon 2000.

425 Daly and Gvozdenovic (1994) note that police reported the diversion of apprehended people to shelters reduced their administrative workload.

> impact is not only the removal of people from the criminal justice system, but also the other spin-offs for the community and individuals.[426]

There has been little evaluation done on the costing of sobering-up centres and virtually no cost benefit analyses. Most commentators make the point that sobering-up centres are not cheap. They claim, however, that their unit costs have to be balanced against less tangible benefits such as more comfortable and dignified treatment for the intoxicated person. One should also take into account the fact that a sobering-up centre may act as a 'catalyst to further local actions to address alcohol misuse and associated harm' (Daly & Maisey 1993; Midford et al. 1994). A study by Alexander (1988, cited in Gray, Saggers, Sputore & Bourbon 2000) refers to the need to examine sobering-up centre costs in comparative terms. For example, Alexander argued that in its first six months of operation a sobering-up centre bed at the Alice Springs shelter cost $74.00 per day. The comparative cost for a prison or hospital bed was approximately $90.00 and $320.00 respectively. Although Alexander acknowledges that the shelter bed was more expensive than the police cell bed cost of $50.00 per day these 'costs were not directly comparable because the latter did not include cell staffing costs'.[427] Staff costs are the main component of an average sobering-up centre. Richard Midford explained the typical set-up of a sobering-up centre in Western Australia:

> I mean basically you have 2 people on per shift and there are generally two shifts. You would have a shift and each sobering-up centre does vary depending on the circumstances but the typical model is open up at 4 o'clock, one shift goes until midnight another shift goes from midnight until dawn. They get breakfast in the morning and then they are on their way. So it is basically 4 people a night, some operate not every single day of the week because some days are lighter than others. Say for instance they operate six days a week, you have got a commitment of 4 people a night, six days a week and then you have got to build in holidays and that is where basically the cost of running a sobering-up centre is your staff costs.[428]

Such costs are predicated on a fairly basic service model. They would not, for example, include the costs of employing professional medical staff such as nurses or other health professionals. Night Patrols are also expensive. Whilst they may not be used in every community in which a sobering-up centre is located, they do need to be factored into the overall cost component to government. In Western Australia for example:

> Aboriginal Affairs Departments fund all patrols and all patrols get between $30-50,000 to operate. Most patrols run at least five days a week between the hours of say 6-12 and if it wasn't for volunteers or CDEP payments and the support of organisations to cover their administration costs, like getting an accountant to do their books, they probably wouldn't be able to run. We have

426 Mr Greg Swenson, Researcher, Western Australia Drug Abuse Strategy Office, in conversation with the Committee, 6 March 2001.

427 Alexander 1988, cited in Gray, Saggers, Sputore & Bourbon 2000, p. 14.

428 Richard Midford, in conversation with the Committee, March 2001.

> estimated in the past that an average patrol, take into consideration volunteers and other donations by local council and like I said support from organisations, would cost $100,000 a year to run effectively.[429]

Other possible benefits of diverting people into sobering-up centres has been a reduction in domestic violence, particularly amongst Indigenous people. Again there is very little quantifiable evidence of this decrease, but many workers in the field, both Indigenous and non-Indigenous, feel by transporting the intoxicated person to a shelter you definitely reduce the potential violence that might otherwise be suffered by that person's partner or family.[430] Apart from domestic violence there is also the issue of 'humbug'. Brooke Sputore explained why taking home intoxicated persons is problematic:

> [i]t is still a major problem and concern to those communities because basically you are transferring the problem from the public streets to the home and domestic violence seems to be a major factor. If not domestic violence disturbance, there is a lot of what they call humbug where people come home about 12 o'clock being dropped off by the patrol and they decide they want to cook themselves something to eat. That house has ten people in it and a lot of them are probably sleeping in the lounge room. So that person wakes the kids up, the kids don't get a good sleep, they don't go to school, so there are all these other factors.[431]

Conversely, when there are sobering-up centres available the more indirect effects are nonetheless beneficial:

> Then the sobering up shelters – even though in some places they can be quite expensive – they seem to have a very positive outcome, not only on police apprehensions and detention but on the social components within Aboriginal communities. You know that trickle down effect that kids are going to school, as they get a good night's sleep, there is not as much violence, things like that.[432]

Deacon Emmanuel Stamatiou of WADASO, a key player in the establishment of sobering-up centres concurred with this observation:

> Sobering-up centres interfere with the pattern of intoxicated persons in the home – as they do not return home – and the impact that they have on spouses, dependent children and the children's education. Sobering-up centres are remarkable in their minor interference in that pattern by taking intoxicated persons to a safe, clean, supervised environment where there is less

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429 Brooke Sputore, in conversation with the Committee, 5 March 2001.

430 Certainly, the Committee has become aware through meeting with various Indigenous groups and individuals that whilst Indigenous women were reluctant to have their men languish in lockups and police cells, they were equally fearful in some cases of having police return their menfolk to the family home in a still drunken state. This was and is a common occurrence in regions where there is no sobering-up centre and police transport the intoxicated person home.

431 Ms Brooke Sputore, Researcher, National Drug Research Institute (NDRI) Curtin University, in conversation with the Committee, 5 March 2001.

432 Ms Brooke Sputore, in conversation with the Committee, 5 March 2001.

> risk of injury to them or to others because of aggression and so on. In other words, the street environment is managed, which makes a difference to the whole township. I believe that is one of the big pluses.[433]

In response to a question from the Committee as to whether sobering-up centres were merely 'revolving doors', Richard Midford replied:

> [y]es it is a revolving door, no it isn't a cure, but it keeps people alive until something else kicks in and they decide to give up... The other thought was as I mentioned earlier, basically public drunks are at their worst when they are seen by the system, whether that is the hospital or police system, they don't get treated very well. Whereas if they are coming into contact with people who basically give them some respect, give them some courtesy, and give them some care, when they are in a situation when they do want to give up, they are likely to use that as a referral source.[434] To this day I think that is the way a lot of sobering-up centres have developed, the sobering-up service still exists quite separately but they will have another arm or they will have a linkage with a treatment organisation that they will then feed into. So that yes I guess that answer to your question is yes they are a revolving door. Sobering-up centres as part of a decriminalisation process [have been] a pragmatic, practical, immediately relevant harm reduction measure. It's not treatment, it's not cure but it reduces the harm that is associated with drinking.[435]

Finally, Ms Sputore commented that a clear result of sobering-up centres and the use of night patrols is that police are being used to do more work that is more 'crime related':

> [y]ou may find that there is actually an increase in the number of arrests by police. [In] discussions with police, what we actually find is that the patrols and sobering up-shelters are doing such a good job, the police are actually arresting more people doing other police duties. They are chasing up warrants, they are finding people for other offences, they are doing jobs that the community wants them to do.[436]

As such it is appropriate that the next section discusses the way in which the Western Australian police deal with and view public drunkenness.

Policing Public Drunkenness in Western Australia: Practice and Police Attitudes

There has already been some discussion of the role the Western Australian police play with regard to public drunkenness. Given the remoteness of some Western Australian communities, and the distances covered within them, the police being the only 24-hour service operating in the remote areas are by necessity going to be key players in dealing with intoxicated persons. The police readily acknowledge that the

433 Deacon Stamatiou, WADASO, in conversation with the Committee, 6 March 2001.

434 See also the comments of Professor Margaret Hamilton, Director of Turning Point Drug and Alcohol Centre, Melbourne, transcript of Public Hearing, 8 November 2000.

435 Richard Midford, in conversation with the Committee, 5 March 2001.

436 Richard Midford, in conversation with the Committee, 5 March 2001.

overwhelming majority of drunk people with whom the police come into contact outside Perth are Aboriginal.[437] The Police Service is also acutely aware of its responsibilities with regard to preventing Aboriginal deaths in custody:

> The majority of people within those areas, especially the northern areas, are Aboriginal. That is one of the causes for the shift in emphasis from management of an offence to the welfare of an individual. The majority of people who come into contact with the police due to drunken behaviour, especially in country areas, are Aboriginal. As you are aware, in the light of recommendations made by the Royal Commission into Aboriginal Deaths in Custody, it is incumbent on us to make sure that we do our best to keep those people out of custody.[438]

Nonetheless, the police acknowledge that because of a lack of welfare services in the more remote parts of the State, particularly sobering-up centres and detoxification centres, the reality is that police may have no choice but to keep intoxicated persons in holding cells. In such cases police ensure that a vigilant check is maintained on intoxicated people in their care and that emergency medical assistance is provided where necessary.

Many commentators, including the senior police representatives themselves with whom the Committee met, believed that after some initial misgivings the police service has accepted and in some cases embraced the decriminalisation of public drunkenness and the establishment of sobering-up centres.

This has also generally been the case in the Northern Territory, South Australia and New South Wales, at least at senior and policy levels. Midford described the police attitude in Western Australia as follows:

> The senior police in the early 1990's were incredibly supportive of it because they saw the benefits of the service. The more enlightened country sergeants were supportive of it because they saw that it was getting people out of lockups that shouldn't be there, it was going to lighten their workload and they didn't have to cop the consequences of coronial inquiries when people died in their lockup. The young constables on the beat tended to be a bit more moralistic about it, they tended to say "these people deserve what they get and they should go to lockups" and that sort of stuff. I think that has changed over the years and I think basically the police do see the benefits of it.[439]

One can actually get a more comprehensive sense of police attitudes in Western Australia than in other States because the views of officers at both senior and junior levels were professionally surveyed in a research report published in 1993. Although such findings are now somewhat dated, they do give an important indication of police officers' perceptions of, and reactions to, public drunkenness and sobering-up centres a year or two after decriminalisation had taken place. The survey by Daly and

437 Senior representatives of the Western Australian Police Service, in conversation with the Committee, 6 March 2001.

438 Commander Graeme Power, Western Australian Police Service, in conversation with the Committee, March 6 2001.

439 Richard Midford, in conversation with the Committee, 5 March 2001.

Maisey[440]of one thousand officers[441] found that the results were remarkably consistent with similar surveys in other countries and jurisdictions. The most important of these findings was that decriminalisation is perceived by police as having not resulted in any real change to police work. The authors, however, raise some important questions, which should be borne in mind in the Victorian context. They state that the two chief areas that warrant considered study are:

- How well do police officers understand the legislative changes?
- What do these legislative changes really mean to the police officers who are expected to carry them out? (Daly & Maisey 1993, p. 2).

With regard to both these questions the authors claim the officer is more likely to support change if he or she has a realistic and well informed understanding of the decriminalisation process and sobering-up centres:

> The important difference seems to be in the expectations held by the police officers as to the role and function(s) such alternatives are meant to play in the drunkenness cycle. If police officers think that the alternative is supposed to rehabilitate the public inebriate, they are bound to be disillusioned...Police officers who define improvement as 'cure' rather than harm reduction, will perceive that the lot of the inebriate has not improved. If there is a realistic expectation, consistent with the aims of the alternative to lockups (detox is different from sobering up, is different from treatment etc), then the alternative is more likely to be viewed positively and used more frequently (p. 6).

Moreover, in the context of sobering-up centres, the authors draw on more general research on non-custodial programmes to state that:

> By contrast, those places which have *included* the police from the beginning in the negotiation for alternatives to custody, tend to report more favourable comments from the police, after some initial 'teething problems' (Daly & Maisey 1993, p. 6) (Our emphasis).

The survey sought the officers' opinions with regard to both the perceived benefits of decriminalisation and the perceived negative aspects. The most common reasons it was felt decriminalisation had resulted in negative outcomes are grouped below.

- Loss of social control (41% of the sample);
- Loss of protection for the inebriate (34% of the sample);
- Loss of retribution (30% of the sample);
- The perception that the legislation does not solve the problem of chronic inebriation (30% of the sample);
- Loss of deterrence (25% of the sample);[442]

440 A. Daly and G. Maisey, *Police Officers Perceptions of Decriminalisation of Public Drunkenness and Sobering Up Centres in Western Australia, 1993.*

441 Four hundred were based in Perth and the rest in regional (mostly northern) Western Australia. Half of the surveyed officers responded. Most of these were constables (82%) or sergeants (15%).

442 Officers were encouraged to give multiple responses.

- The perception that the use of harsher charges is now necessary to achieve the functions previously achieved when drunkenness was an offence (11% of the sample).

The authors claim that the response with regard to loss of social control is a good example of officers misunderstanding the nature and effect of the legislation:

> Forty-one per cent of the respondents made comments that indicated that there was a diminution in their ability to control the public inebriate. What is interesting is that in actuality this is not so. Each officer has the same ability and right to detain a public inebriate as he/she had before. The fact that in most places there are not sobering-up centres means that the inebriate will most likely be detained overnight in the lockup. What seems to have changed is the police officer's *perception* of their ability to control (p. 10) (Our emphasis).

Similarly, the perception that the legislation does not solve the problem of chronic inebriation misunderstands the law:

> The legislation was not designed to fulfil this function. If police officers have a perception that the legislative change was supposed to solve the problem and it has failed to do so, *it would seem that insufficient preparation with police officers was done before the passing of the legislation* (Daly & Maisey 1993, p. 12) (Our emphasis).

The perception that the inebriate is better off under the old system of police detention is based on the idea that it was a time for that person to 'dry out', get nutritious meals and rest. But as the authors point out, that too is a misperception. In most cases the time in police detention would be no more and in fact usually much less than in the sobering-up centre (Daly & Maisey 1993, p. 11).

A concern of 13% of the police officers surveyed was that since decriminalisation there had been an increase in crimes, and in particular an increase in domestic violence offences. As a response, the Police Service '[i]ssued instructions to the effect that anyone aggressive (or known to become so) was not to be taken home' (Daly & Maisey 1993, p. 13).

As far as the positive aspects of decriminalisation are concerned, officers responded as follows:

- Reduction in workload (36% of the sample);
- Less time spent in court (34% of sample);
- No longer having to look after drunks (perceived as 'dirty work')[443] (27%);
- Inebriates no longer have criminal records (8.6%).

An interesting aspect of the survey was the comparison of responses it made from those officers who had taken an intoxicated person to a sobering-up centre and those who had not.

443 Of course this response is also based on a misperception. Decriminalisation did and does not mean that police officers will no longer have contact with 'drunks'. They are simply responsible for them now under a civil apprehension scheme.

1. Officers having used a sobering-up centre were significantly less likely to report more serious crimes were being committed since decriminalisation.
2. There were significantly fewer police officers reporting increases in domestic violence if there was a sobering-up centre in the town.
3. Where a sobering-up centre was not available, police officers were significantly more likely to say that they ignored public inebriates since decriminalisation.

Daly and Maisey claim these findings:

> [s]upport the importance of providing an alternative to the lockup as an essential part of ensuring that the purpose of the decriminalisation legislation is fulfilled. On the basis of the present survey two conclusions can be confidently stated. The first and perhaps most important is, where alternatives to lockup exist, they are used; and the second, where alternatives to the lockup do not exist, and high rates of public inebriation occur regularly, the potential for more alcohol related harm rather than less exists also (Daly & Maisey 1993, p. 15).

One of the observations made by Daly and Maisey in 1993 was that if confusion and misunderstanding as to the purpose of the legislation and the role of sobering-up centres was to be avoided, there needed to be much more open and frequent communication between the health and welfare agencies and the police. Eight years later it seems that little has changed. When the Committee met with senior representatives of the Western Australian Police Service they were told just how important a coordinated approach to service delivery in this area is:

> [t] he emphasis of care is on the welfare of the individual. In the light of the legislation, the Police Service does not believe it is its responsibility to be the sole arbiter of drunk people. Other government departments, including the Health Department, the Department of Aboriginal Affairs and the Ministry of Justice should be involved in their management... In effect, the Police Service is the only organisation that provides a service across the State 365 days a year. However, if at the end of day the emphasis of care is to be on the welfare of the individual, other agencies such as Health and Aboriginal Affairs should take up the lead role after that... people talk about sobering-up shelters and other government agencies, but we do not have the luxury of having them in every large country centre, which is what we would like, because substantial financial support and local and State government commitment are needed. We must bring those issues to the notice of government agencies and ensure that a whole-of-government approach is adopted to identify what needs to be done and what issues families need addressed. We must then implement corrective actions in any locality, whether it be under the guidance of the southern region, the north-eastern region or the metropolitan frontline policing area.[444]

There is one final aspect of policing in Western Australia, and indeed across the country, that is worth noting. Many of the people who work in the drug and alcohol

444 Assistant Commissioner John Standing, Commander Graeme Power, in conversation with the Committee, 6 March 2001.

field and particularly in sobering-up centres have stressed how important the personality and commitment of the local police officer is to the success or otherwise of the sobering-up centre.[445] This is particularly true of country and rural areas.[446] It is also borne out in the literature. Daly and Maisey write of the inconsistent, and often contradictory, pressure put on the local sergeant to deal with 'local drunks':

> There is political and management pressure to avoid taking the person to the lockup in case anything should happen while the person is in custody. There is public pressure to rid the town of the sight of drunk people and at the same time to provide some care and protection of these people. Given that the local officer in charge has control over the literal interpretation of the policy on publicly drunk persons and the indistinct nature of what constitutes 'the interests of the safety and welfare of these persons' (Police Gazette 1990) it is not surprising that the number of persons detained vary with town and area (Daly & Maisey 1993, p. 5).

In more recent times, Midford responded similarly:

> I think basically the police do see the benefits of it but I said it earlier – it depends on the sergeant at the time. You could get a really good one and it could work really well, you change the sergeant and the whole system changes because he, the police very much are the gatekeepers in this and if they are responsible and enlightened in the way they fulfil their role it works really well. If they are an obstructionist it can create all sorts of problems.[447]

A researcher with WADASO responsible for the sobering-up centre programme comments about how sensitive the operations of sobering-up centres are to rapid changes. In the context of policing he stated:

> I am told that the success of a sobering-up centre in a town is often dependent on the sergeant who runs the policing policies and how he views the role of the sobering-up centre. The policing relationship has a big impact on people who will be taken to the sobering-up centre first.[448]

The Western Australian Police Service has acknowledged the reality of these views. Deacon Stamatiou reflects on the changing attitudes of Western Australian police to the operation of sobering-up centres:

> In the early stages it was difficult to change police attitudes, but by 1996-97 the police hierarchy was saying that if we have a problem with any police sergeant in any town we are to notify those in authority and they will deal with the issue. They were right behind the concept of sobering-up centres and the need to divert people from lockups to sobering-up centres in towns in which such centres existed. The police culture changed during this period and was

445 This was certainly the view of most of the participants in the telephone hook-up that the Committee had with regional sobering-up centres in Western Australia.

446 This was also noted by sobering-up centre workers in Swan Hill and Mildura in Victoria, the Northern Territory and South Australia.

447 Richard Midford, in conversation with the Committee, 5 March 2001.

448 Greg Swenson, WADASO, in conversation with the Committee, 6 March 2001.

> very supportive of our involvement. We had their support to ensure that the police sergeant and the staff cooperated with the overall effort.[449]

Night Patrols

Patrols in Western Australia, as with other areas of the country in which there are high concentrations of Indigenous people, basically take one of two forms:

- Patrols constituted by Indigenous wardens (paid and/or volunteers) who work often in tandem with police to transport intoxicated persons to sobering-up centres; or
- Patrols, usually in metropolitan areas, which seek to mediate with (Indigenous) people with the aim of keeping them out of trouble with local police or defusing potential incidents before police get involved. Often the focus of such patrols is young people.

Both types of patrol are found in Western Australia.

Night patrols in the more remote parts of Western Australia, and to a lesser extent Perth and the larger towns, fulfil a similar function to those in the Northern Territory. As in the Northern Territory, most of the Western Australian Night Patrols are staffed by Indigenous volunteers from local communities, sometimes with a paid coordinator. Some patrol workers may also receive CDEP funds. Most patrols in Western Australia run at least five days per week between the hours of 6 p.m. and midnight. Their key role is to collect intoxicated persons from streets, parks and other public places and transport them home or to a sobering-up centre. As Commander Power of the North Eastern Region of the Western Australian Police Service stated:

> That keeps the police out of the loop, even though the police have a coordinating role in the background because we have the experience in deploying people and utilising proper patrol methods. Of course, those people need help to get these patrols going. The police are there on the periphery to guide them in the right direction, but that takes us out of the loop altogether. We can get those people who are picked up to their homes or to a sobering-up shelter, or the patrol can even make arrangements for other government organisations, such as the Aboriginal Affairs Department, Family and Children's Services or whatever to take a lead role in this. The Parliament of Western Australia has decided that the police should not be involved in the criminal side of drunkenness, and I support that 100 per cent.[450]

By-laws under the Aboriginal Communities Act also allow Aboriginal wardens to be appointed with the power to seize alcohol brought into dry communities. Charges can then be preferred against offenders at a later date. As Commander Power stated: 'We want to see the Aboriginal people self-regulating as much as possible. The more we can take ourselves out of the loop, the better it will be'.[451]

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449 Deacon Stamatiou, WADASO, in conversation with the Committee, 6 March 2001.

450 Commander Graeme Power, Western Australian Police Service, in conversation with the Committee, 6 March 2001.

451 Commander Graeme Power, in conversation with the Committee, 6 March 2001.

Workers in the field have claimed that the establishment of a patrol is absolutely necessary in promoting the success of sobering-up centres. Brooke Sputore argues that one of the most important benefits of patrols is that the amount of contact police have with intoxicated persons remains minimal. Drawing from some work the NDRI has done in Victoria, she stated:

> [w]here possible they [Indigenous people] try and avoid contact with police by ringing up patrols because what happens is: they may be only picking them up to transfer them into care, however being police and approaching an intoxicated person is often enough to get them violent or have an assault on police. While you might not have a charge for intoxication, you have got to charge assault on a police officer, which I think you call Trifectas... So they are issues and if you are going to think about sobering-up shelters you MUST think about patrols... What we have found with the sobering-up shelter if prior to it opening they didn't have the night patrol then eventually a night patrol seems to be established because what they have found is that a sobering-up shelter is only half it's worth until you have got the patrol. This is because with the patrol, in conjunction with the sobering-up shelter, you are basically reducing nearly the majority of police contact with intoxicated people. The general rule is that most sobering-up shelters now will accept referrals from police, hospitals, call-outs from local business or residents with the assistance of the patrol picking up those clients and bringing them back.[452]

A different type of patrol is that run by the Aboriginal Advancement Council of Western Australia in Perth. The Noongar Patrol is a community based project that aims to provide welfare and social assistance to Indigenous people, minimise and prevent conflict through mediation and improve relations between Indigenous people and police. It uses pro-active patrols in the central business district and the inner city (Northbridge) areas of Perth. It recruits only Indigenous people to be patrollers. A key aspect of the work of the patrol is its liaison with intoxicated persons, often juveniles, in the central retail and entertainment districts of Perth and Northbridge. The patrol takes two forms. A day patrol is based in Forrest Place, the main shopping area of central Perth. This patrol is in operation from 11.00 a.m. until 7 p.m., Wednesday to Friday. The night patrol operates in the entertainment precinct of Northbridge from 6 p.m. to 2.00 a.m., Thursday until Saturday. The director of the patrols explained the rationale of the service:

> Forrest Place was identified as a place where a lot of Indigenous people saw it as a meeting place and they were drinking, they were having a very social life. They were harassing the general public; they were begging for money; they were targeting people when they were knocking off from work. People were homeless and sort of just sleeping on the benches, and it was quite a messy sort of business... So what we did was we started to put services into Forrest Place and basically we have two patrol officers there and at the present moment we focus only in Forrest Place because that's actually the spot where

452 Ms Brooke Sputore, Researcher, National Drug Research Institute (NDRI) Curtin University, in conversation with the Committee, 5 March 2001.

> people do congregate and drink and behave in quite an antisocial way... Then once we got the workers in Forrest Place and the message went out to the community that from now on there are going to be patrol officers in Forrest Place and they're going to be patrolling and we're going to be dealing with social and welfare issues. We use the police as a back-up. We use the City of Perth two-way radio. We have direct communication with the Camera Room and it works quite well. One of the downfalls with the patrol is that we work from 11–7 and what happens is that anything that happens from 7 at night to 11 the next morning then there are no patrols there and it's a matter of the police attending to the incidents. Things like the homeless people sleeping behind the rubbish bins and in the alley way and those sort of things, I guess it's just a matter of when the police can come and wake them up and just let them know it's not the right place for them to sleep.
>
> The patrol right now for Northbridge... and that's basically to deal with the alfresco street [dining areas] where there are the youths that come in and do cause a bit of problems. Friday night they work from 6 o'clock at night to 2 o'clock in the morning and quite often a lot of the issues that do happen happen after the patrol knock off. The patrol, if it's going to be really effective, it needs to be going for twenty-four hours a day, seven days a week. I mean, to have it sort of staggering through the day, it does work in terms of just when the patrol are there they can deal with all the situations that are happening. But once they knock off and the message goes out that the patrol are not there, then you get the crowds that come in and try and beg and do the same sort of thing.[453]

The Noongar Patrol receives sponsorship assistance from, among other groups, the City of Perth and some local businesses. According to the Director this can be problematic:

> One of the problems that I've had with the patrol is that the business people, particularly in Northbridge, they see the patrol as being security officers and they see the patrol's role as physically having the power to remove people from Northbridge – we're talking about youth.
>
> They see the role of the patrol as stopping youth coming into Northbridge and they have this view that the patrol to be effective really needs to stop Indigenous people coming into Northbridge which we don't have the power, there's no legislation, there's nothing that actually can stop Indigenous people coming into Northbridge so and it's just a lengthy educational process with the business people in Northbridge.[454]

453 Ms Maria McAtackney, Director, Noongar Patrol Service, in conversation with the Committee, 5 March 2001.

454 Ms Maria McAtackney, in conversation with the Committee, 5 March 2001.

Patrollers complete security officer training and first aid certificates. But there is a key difference in the approach the patrol takes to the people it liaises with:

> The difference between the patrol and the security thing is that a security officer is trained purely to secure premises and to deal with the preface sort of security. It doesn't deal with welfare issues, it doesn't network with different organisations, like the patrol does. If the patrol does become a security firm, then it will lose its effectiveness because it won't be dealing with social and welfare issues and it will lose contact with all its networking service providers that they used to get – people that needed support and get them support.[455]

The two main benefits of the Noongar Patrol seem to be that, as with the rural patrols, Indigenous workers with local knowledge can defuse a problem without needing to call the police.[456] Workers find that if police are called at first instance the problem can escalate. People become angry, aggressive and end up in police lockups charged with offensive behaviour, abuse of police or assault. The patrol now finds that local retailers will often use them as a first 'port of call', thus preventing the situation getting out of hand.

The second benefit is that the patrol will often arrange for the transport of intoxicated persons to the Salvation Army sobering-up centre:

> In Perth, there is no sobering place that's culturally appropriate so we have to access mainstream services and Bridge House is one of the sobering places that we do use a lot and most of the time because there's this rapport and this relationship and also the patrol have a great depth of knowledge of the background of the people, so they can convince them to go into a sobering centre. Then we will make a referral and we will use the police backup to take them there and we'll just wait with them till they come. So that's one way we just get them somewhere where they can go and get a feed and have a sleep and then once they're ready they're out again.[457]

In addition to the Noongar Patrol, street patrols and outreach are also part of the work of the Noongar Alcohol and Substance Abuse Service (NASAS). This is a separate and broader based Indigenous controlled organisation that aims to provide a culturally appropriate alcohol and substance abuse service to and for Aboriginal people.

The outreach programme focuses particularly on juveniles. The outreach team on request will support Aboriginal youth whilst they are detained by police. The patrol will then transport youth to their homes or a safe environment. The outreach team, through its patrols, also distributes lunches to Aboriginal people living in inner city

455 Ms Maria McAtackney, in conversation with the Committee, 5 March 2001.

456 This is particularly true with regard to mediating between different feuding 'families'. The Committee has been told that there are basically two or three 'family groups' that congregate in Perth and its environs. It is not uncommon for members of these families to fight with each other due to a complex relationship of feuding and inter-family rivalries. In this case:

> 'What the patrol do is that they will mediate, they will defuse and they will attempt to defuse the situation. I would say 85% of the time they are successful because they have the knowledge of the family and they can talk to them in their own terms to get them to sort of modify their behaviour. So that does work' (Ms Maria McAtackney, Director, Noongar Patrol Service, in conversation with the Committee, 5 March 2001).

457 Ms Maria McAtackney, 5 March 2001.

parks and public spaces. A key focus of the outreach programme is to disseminate information about alcohol and other drug abuse and encourage young people to join a NASAS substance abuse programme.

Issues for Youth

As has been noted in the discussion of the changes to Western Australian legislation, police and social agencies have long been concerned about the rising use of alcohol and other substances amongst children and young people in that State.[458] In addition to the youth patrols and other services noted in the previous section, some of the main programmes for youth in Perth are those run by the Mission Australia and Drug Arm WA, a Christian based youth support agency servicing mainly the south-eastern corridor of Perth.

Mission Australia runs the 'On Track' Programme. The On Track Programme provides an inner city, after-hours response to 'at risk' adolescents, particularly those young people who are intoxicated or disoriented. The On Track facility provides a supervised venue for young people to take time out and sober up while they are waiting to be collected by parents or guardians. On Track youth workers provide support and information counselling to young people and their families, referring them to other support services where appropriate.

Whilst not yet an 'approved place' under the Protective Custody Act, the programme aims to provide a 'safe place' for intoxicated youth until such time as they have sobered up or been transferred to their homes or an appropriate and responsible person or agency. The On Track programme operates at Perth Central Railway Station and shares premises with the police station there. The advantage of such a location is that police can be on hand to liaise with On Track youth workers and at the same time take legal responsibility under the Act for the young person until such time as they are returned home or into the care of a responsible person. Whilst adjacent to the police station, the On Track rooms are not part of it. Although the young people are technically still in the protective custody of the police, they wait in the On Track rooms until such a time as they can be collected or transported home. The Committee was fortunate to meet with representatives of On Track during its field trip to Perth. Anne Russell Browne, the Regional Manager of Mission Australia (WA), explained the rationale for the programme and the problems that had been occurring prior to its establishment:

> A little niche opened up where we could see that holding these young people in the police station was not a very good idea. Firstly, police officers had to stay with them, so two operational police officers were not out doing their job; secondly, they were held in cramped conditions in a police environment that heightened their anxiety and perhaps their aggressiveness. They are often intoxicated on things other than alcohol and, as committee members would

458 The Committee has been informed by workers from many youth agencies, the police and drug and alcohol workers that the abuse of solvents, inhalants and petrol sniffing is a huge and growing problem in Perth and regional Western Australia. Anecdotal evidence from workers in Mildura and Swan Hill suggests that this is also a problem in some parts of regional Victoria such as the Murray River towns, although to a lesser degree. Whilst the Committee acknowledges the gravity of this problem, further discussion of this issue is beyond the scope of this Report.

> be aware, if they have been using solvents they will come down quickly and they may be aggressive as they start to sober up. As these young people were held for periods of up to four, six or eight hours they would become increasingly aggressive. They would take that aggression out on the authority figure – the police officer in uniform– and would often end up with a criminal charge for assaulting a public officer when in fact they had not been brought in for any criminal activity.
>
> We saw an issue that needed to be dealt with; and the concept was extremely simple, as successful ones often are. We have provided a safe waiting place that is closely associated with the Police Service but not run by the Police Service. It is operated by trained youth workers. We have been fortunate enough to get two Indigenous workers because the vast majority of young people brought in to the service are Indigenous. The young people are provided with a comfortable place to wait that is not a police station; it has a much more relaxed feel. They are provided with a hot drink and the necessary things to help them to feel better as they are sobering up, and they are also provided with the opportunity to talk. It is not a counselling service. It is not set up to do intensive therapeutic work; it is merely a point of contact and an opportunity for our trained youth workers to talk through with these young people about why they are in the city and what is going on in their lives and why it is that they have got themselves into this state and are unable to get home.
>
> If a young person comes in there once or even twice and we never see them again there is no follow-up, but the service does provide follow-up for those who are brought in on a regular basis. If we see them three times the workers would go and speak with their parents. We try to find out who else is working with that family and, if not, why not and look at other support services being put in place.[459]

Ms Russell Browne was pleased to state that since On Track has been operating there have been no young people preferred on criminal charges after having been taken into protective custody:

> The feedback is that the manner in which our people work with the young people has decreased the amount of violence within the police setting. The young people are not acting as aggressively as they did when they were dealing purely with police officers. That is partly to do with our presence and partly to do with the fact that we have been able to influence the behaviour of police officers just by being there. We have also learnt from them.[460]

The On Track programme also works very closely with the various street and night patrols and the Perth Inner-City Youth partnership, a group of statutory and non-statutory agencies that work in partnership to coordinate case management plans for youth at risk. A key focus of the partnership is to minimise the effect of alcohol and other drug abuse on the youth of Perth:

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459 Ms Anne Russell-Browne, in conversation with the Committee, 6 March 2001.

460 Ms Anne Russell-Browne, in conversation with the Committee, 6 March 2001.

> The inner-city youth partnership allows us to establish quickly which other agencies are working with a family or child and to fit into the case management plan already in place. If no case management plan has been put in place, we will take a role in developing one. However, we initially check very carefully to establish whether any other agency is involved. Very appropriately, we have a number of strategies to use. One size does not fit all, so we need a full range of strategies and each case must be looked at individually to ensure that we provide the appropriate level of support. What we do is part of a jigsaw in which other agencies are involved. We make contact to ensure that the other agencies know that we are involved and so that we can work together to achieve the best outcome.[461]

The agency Drug-Arm was established to fill in the gaps in services for intoxicated youth. Prior to the establishment of its 'Time Out Centre', young intoxicated people had few options. The Salvation Army sobering-up centre would not take juveniles, and the mainstream youth hostels and refuges would not take intoxicated persons. Ms Susy Thomas, the Director of Drug-Arm (WA) explained the operations of the service as follows:

> The time-out centre operates seven days a week from six o'clock in the evening until 10 o'clock in the morning. We staff it with house parents and support from youth workers on the premises. Young people are brought to us by the police, emergency accommodation services, Family and Children Services and other agencies and we provide a safe place for the young people to sleep over. We have an opportunity in the morning to refer them to other agencies or to talk to them about their issues. As Ms Russell-Brown said, if the same client comes to us more than three times, an alarm goes off in our brain: "Why is this person coming in repeatedly?" The next step is taken. The Protective Custody Act will lead to Drug ARM WA being an accepted place to which to refer people. Steps are being taken. The police are ensuring it is a safe place for young people to come.[462]

As Ms Thomas stated, Drug-Arm is seeking accreditation as an approved facility under the Protective Custody Act. One of the positive aspects of agencies such as On Track and Drug Arm is their generally positive relations with the police. The workers and representatives with whom the Committee met in Western Australia all emphasised how important the goodwill and cooperation of the police service is if such programmes are to be successful.

Local Government Initiatives

The Committee met with councillors and employees of the City of Perth during its visit to Western Australia. The services provided or administered by the Council to combat public drunkenness and substance abuse are similar to those offered by most capital city or large town councils across the country. Most of these measures are

461 Ms Anne Russell-Browne, 6 March 2001.

462 Ms Susy Thomas, Director, Drug Awareness and Relief Movement WA (Drug-Arm) in conversation with the Committee, 6 March 2001.

outlined in the City of Perth, *Safety and Security Action Plan 2000-2004*. This is a blueprint for an integrated scheme of crime prevention and detention initiatives in the city environs. Many of these initiatives consist of partnerships with police and government and community agencies across Perth. They include:

- City Safe – a forum for co-ordinating action between a wide range of agencies involved in crime prevention and public safety;
- Part sponsorship of the Noongar Patrol (discussed above);
- Closed Circuit Television – 91 cameras are placed in the city centre and Northbridge. They are staffed by six operators, 24 hours, seven days per week;
- Citywatch Police Post – a joint facility with W.A Police, it is located at the central railway station next to the 'On Track' facility discussed above;
- Security Officers – provide on-street security presence and public assistance;
- Eyes and Ears Programme – A street intelligence programme comprising parking inspectors, security officers and maintenance staff. 'Trained and resourced to identify and report any suspicious activity, incident, vehicle or person';[463].
- Supervised Taxi Ranks;
- Perth City Licensees Accord.

These crime prevention measures are a response to concerns of the city government that 'drunkenness, antisocial behaviour and alcohol related crimes are increasing in the city, particularly in Northbridge'.[464] Whilst local government laws that prohibit street drinking and their enforcement have contributed to a decline in street drinking:[465]

> [t]he increase in the number of drunken persons suggests that drinking activity is happening in licensed premises or elsewhere. Statistics suggest a likely link between drunkenness and disorderly conduct, fighting and other types of antisocial behaviour.[466]

Certainly, the two Perth City Councillors with whom the Committee met were concerned about what they saw as a significant rise in public drunkenness and related disorder, particularly amongst youth and under-aged drinkers. To this end, they did not see the decriminalisation of public drunkenness as being a success. They also saw the police as being reluctant to 'deal with the problem' as it is not 'real policing'.[467] The Chief Executive Officer of Perth City Council went further:

> [i]t's [public drunkenness] a total focus for us at the moment – both antisocial behaviour and drunkenness is consuming more time at the political level of this city than I've ever seen in my thirty years in this game. It's just totally the major issue. Everyone is focused on it. We just recently did a strategic session with

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463 *Safety and Security Action Plan 2000 – 2004,* City of Perth, October 2000, p. 14.

464 *Safety and Security Action Plan 2000 – 2004,* City of Perth, p. 10.

465 See local laws made pursuant to the *Local Government Act 1995* (W.A.).

466 See local laws made pursuant to the *Local Government Act 1995* (W.A.).

467 This is the view of Councillor McEvoy and Councillor McGill of Perth City Council only. It is stressed that it is not necessarily representative of the view of Council as a whole.

> elected people about upgrading infrastructure in the CBD and we talked not about upgrading infrastructure, we talked about how do we improve the safety and security of the city. And the major issues are to do with alcohol and drugs because of the impact that they have.[468]

The Perth Licensees Accord is one of the initiatives developed to deal with this perceived problem. The Perth Accord follows the same basic strategies that are typical of most Licensee Accords. Accords will be discussed more generally in Chapter 18. One aspect of licensing that is worth mentioning in the Western Australian context is the prevalence of 'de-licensing'. De-licensing, as the name suggests, is a process whereby licensed premises apply to the licensing authority to have their pub or club temporarily licensed for a period of hours in order to be able to hold functions for young people. Whilst such an initiative sounds innocuous in theory, the Councillors with whom the Committee met were concerned that there was at least the potential for young people to use other (illicit) substances at such venues. A further concern was the extension of trading hours and in particular the issuing of 6 a.m. cabaret licenses. Councillor McEvoy, herself a licensee, believed such licenses do have the potential to promote drunkenness and antisocial behaviour:

> [w]ith all due respect, nobody can go to a club till 6 o'clock in the morning and not walk out totally drunk, or the majority of them. But if they've been drinking all night, by that stage... [469]

With regard to regional Western Australia, the police have stated that most 'good size towns' have accords in place and even many small towns in remote places such as Wiluna have established an accord. Generally, they work well.[470] The police representatives with whom the Committee met believe the accords function well because the police and licensees generally see it as being in their best interests to cooperate in order to reduce problems associated with public drunkenness and alcohol misuse. Commander Power stated that:

> If hotels want to take advantage of things like late-night trading permits and other things under the Liquor Licensing Act then local governments will not give their consent unless the hotels are part of an accord. The outlets are given an incentive to become part of an accord.[471]

Conclusion

Western Australia is a good example of a jurisdiction in which decriminalisation of public drunkenness has been a success once appropriate services have been provided and the police have supported these initiatives. Certainly this is true if one uses the criterion of the number of intoxicated persons diverted from police cells to non-

468 Garry Hunt Chief Executive Officer, City of Perth in conversation with the Committee, 5 March 2001.

469 Councillor Judy McEvoy, in conversation with the Committee, 5 March 2001.

470 However, this is not the unanimous opinion of some workers in sobering-up centres. At least two of the representatives the Committee spoke to in remote Western Australian centres claimed that neither police nor licensees had any real interest in making accords work. According to these workers, this is particularly true of new owners or publicans taking over or new police officers arriving in town.

471 Commander Power, in conversation with the Committee, 6 March 2001.

custodial alternatives as the arbiter. The National Drug Research Institute cautions, however, that the best decriminalisation strategies are those which target both the supply of alcohol (liquor restrictions)[472] and the consumption of alcohol (awareness and education programmes, treatment, sobering-up centres, patrols etc).[473]

The other point that many experts with whom the Committee has consulted were at pains to stress is that if Victoria goes down the path of decriminalisation it will clearly need to establish generously funded sobering-up centres prior to legislation taking effect. Even more importantly, policymakers, police and workers in the field need to be quite clear as to the purpose and functions of sobering-up centres; what they can do and what they cannot:

> A great deal of attention at a number of different levels is required to engage the understanding of police and, particularly, local community groups about what sobering-up centres do. They are often misunderstood and all sorts of perceptions exist about what they do, which must be carefully clarified in the process of their establishment. There must also be a clear understanding with other provider groups in each area in which sobering-up centres are established. Sobering-up centres work best when other provider organisations understand what they can and cannot do.[474]

South Australia

The Law (Public Intoxication Act 1984)

Background

The impetus for decriminalisation in South Australia pre-dates the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). In 1973, the Criminal Law and Penal Methods Reform Committee of South Australia (hereinafter the Mitchell Report) handed down its First Report on Sentencing and Corrections. The Committee chaired by Dame Roma Mitchell comprehensively examined the law pertaining to public drunkenness and other summary crimes.

Before 1973, public drunkenness in South Australia was dealt with by a system of fines and imprisonment. For a third or subsequent offence, a sentence of three months was a possible outcome. The Mitchell Report explained the rationale for this provision:

> It seems that the legislature, in increasing the maximum term of imprisonment for a third offence to three months, had in mind that a cure for alcoholism might be effected if the offender served a substantial term of imprisonment without opportunity to ingest alcohol. The courts today would not sustain a sentence the length of which was determined by the likelihood of the offender's being cured of alcoholism whilst in prison. Apart from the impropriety of such a sentence, the likelihood of cure is slight (Mitchell Report 1973, p. 208).

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472 Liquor restrictions are discussed in greater detail in Chapter 17.

473 The Institute cites Tennant Creek in the Northern Territory as an excellent example of a combination of strategies working well. The Institute's views on the Tennant Creek model are outlined in the Northern Territory Case Study this chapter.

474 Deacon Stamatiou, WADASO, in conversation with the Committee, 6 March 2001.

Indeed, despite the fact that cases concerning public drunkenness rarely reach the superior courts, a decision of the Supreme Court of South Australia did comment on the futility of imposing penalties on drunkenness offenders. In *Gollan v Samuels*, Mr Justice Bright reviewed the sentence of a person convicted of public drunkenness for the three hundred and eighty-seventh time. Drawing from the findings of the Mitchell Report he commented:

> Reports by Committees of Inquiry do not of themselves change the law but they sometimes tend to indicate widespread public opinion, and they sometimes indicate that a particular form of punishment hitherto thought to be in the interests of the public or likely to be reformative in nature, can no longer be so regarded...
>
> I think that in the light of the views expressed in the ...reports and in the light of common experience it is reasonable to accept that sentences of imprisonment have no rehabilitative effect upon alcoholics.[475]

A number of submissions were received by the Mitchell Committee advising that the offence of public drunkenness should be abolished. Of interest is the fact that as early as 1973, the Police Commissioner of South Australia and his senior officers were of this view. Whilst recommending the abolition of the offence, the Mitchell Report stressed the need for substitute measures to be put in place:

> If drunkenness in a public place ceases to be an offence, there arises a need for some means of dealing with persons found drunk in public. There are several reasons for this. On humanitarian grounds the drunk should not be left to be run over by passing traffic or assaulted and robbed. The passing motorist should not be required to negotiate a street in which a drunk is lying or weaving his way. The drunk should not be left to die from malnutrition or excess of alcohol. Public order and decorum require that persons who through drunkenness have become an offensive spectacle should be removed from public sight (the Mitchell Report, p. 209).

The Report made the following recommendations:

- Any substitute measures adopted must ensure that police and prison authorities are 'not diverted from their proper task of protecting the public by the need to function as a social welfare agency for the inebriated' (p. 209);
- Troublesome or aggressive drunks [should] continue to be arrested and charged on other grounds, 'a proceeding which is clearly appropriate in the public interest' (p. 209);
- The Report recommends a regime of civil apprehension and detention similar to that established in the Northern Territory and Western Australia;
- The Report takes the unique approach of recommending a system of review for each apprehension by a Magistrate's Court. The purpose of the review is fourfold:

475 (1973) 6 S.A.S.R 452 per Bright J at 453.

> To afford protection for the police and detoxification staff in their exercise of their powers; to ensure that no-one is detained for more than a minimum period without judicial authority; to ensure that no-one is discharged until he is in a fit condition to leave; and to afford to detainees an opportunity to express to a court any protest they may wish to make about their detention (p. 210).

For example, with regard to the last point, it may be that a detainee who was in fact not drunk may wish to have this fact certified for insurance purposes or if he or she had already been put under a bond or recognisance not to consume intoxicating beverages.

- Finally, the Report makes the recommendation that, in appropriate cases, a magistrate should be able to retrieve the costs of conveyance to and costs of care at the sobering-up centre, including accommodation, meals and medical treatment, from the intoxicated person.

In 1976, the South Australian Parliament debated the recommendations of the Mitchell Report. Unlike the Western Australian Parliament, it was reluctant to decriminalise until such time as sufficient resources were put in place:

> It would be irresponsible of any Government to repeal the offence of being drunk in a public place without providing facilities to which persons who are found drunk in public places could be taken [the legislation will not] therefore be proclaimed until suitable arrangements are made for the reception of such people.[476]

Of interest was a proposal by the then Attorney-General that the government would establish a 'transport unit' to be located in the Department of Transport, the officers of which would be authorised under the proposed decriminalisation legislation to transport intoxicated persons either to their homes or sobering-up centres:

> It is hoped that with the development of this unit in the metropolitan and country areas police officers will be relieved as much as possible of their role in transporting persons under the influence of a drug.[477]

The government of the day also envisaged that in country areas sobering-up centres would be attached to, or at least assisted by, existing hospitals and medical services. It also rejected the recommendation of the Mitchell Committee that intoxicated persons should pay for their own transportation to and care in sobering-up centres:

> First, the intention of the new legislation is to place the emphasis on treatment rather than on punishment...The basic reason was that an assessment of the economics of this indicated that it was not a feasible proposition...In most cases in the past, the book-keeping and administration involved in collecting the books was not worth the effort considering the amount returned. Further,

476 South Australia, House of Assembly 1976, *Debates,* 25 November, p. 2529, per Hon. Peter Duncan (Attorney-General).

477 South Australia, House of Assembly 1976, *Debates*, 25 November, p. 2529, per Hon. Peter Duncan (Attorney-General).

> the problem developed where it was difficult for the police in the past to determine who could afford to pay and who could not.[478]

Despite the 1976 decriminalisation bill passing both houses of the South Australian parliament, the legislation was not a success. The legislation encountered the same sort of problems and resistance as the initial Northern Territory legislation in that there was no simultaneous provision for alternative diversionary programmes. In effect, it could be stated that public drunkenness was not decriminalised in South Australia until 1984. A new bill was successfully passed in that year and resulted in the *Public Intoxication Act 1984* (hereinafter the Act).

The Act

Public drunkenness was decriminalised in South Australia in 1984. Under section 7 of the *Public Intoxication Act*, however, a police officer or an authorised officer may apprehend and detain a person[479] under the influence of a drug or alcohol and who by reason of that fact is *unable to take proper care of himself or herself*.

Thus in South Australia the power to apprehend someone for being drunk in public is somewhat qualified.

Under section 4 of the Act, the term drug is defined as 'any substance declared to be a drug for the purposes of the Act'. In the second reading speech of the Public Intoxication Bill (April 1984), the then Minister of Health explained the rationale for such a wide and open-ended definition:

> Clause 5(1)(b) enables the Governor to declare any substance to be a drug for the purposes of the Act. This means that volatile solvents (glue, petrol) could be declared at a later date if appropriate so that police would have the power to apprehend glue sniffers, and take them home or to treatment. The police have felt powerless to act in such situations, although they often encounter the problem.[480]

If a police officer makes a decision that a person does need to be apprehended for their own wellbeing, as soon as reasonably practicable the officer takes that person to either:

- the person's place of residence (if any);
- to a police station; or
- to a sobering-up centre.[481]

This Act, unlike legislation from other jurisdictions, does not privilege one form of disposition over another. However, before the expiration of ten hours the officer in charge of the police station must either:

478 South Australia, House of Assembly 1976, *Debates*, 30 November, p. 2628, per Hon. Peter Duncan (Attorney-General).

479 Under section 6 of the Act 'person' includes children.

480 South Australia, Legislative Council 1984, *Debates*, 11 April, p. 3464, per Hon. J.R Cornwall (Minister of Health).

481 Public Intoxication Act 1984 (SA), section 7(3).

- discharge the person if in the opinion of the officer the person has sufficiently recovered from the effects of the drug or alcohol as to be able to take care of himself or herself; or
- transfer that person to a sobering-up centre.[482]

A person taken to a sobering-up centre may be detained by the person in charge of the centre. This power exceeds those given to comparable persons in other jurisdictions.[483] For example, in most jurisdictions once a person is transferred to a sobering-up centre or equivalent, the person in charge does not have the power to detain the intoxicated person against his or her will. At most, the person in charge or other staff member can resort to calling the police after the intoxicated person has 'bolted'.

A person must be discharged from a sobering-up centre where, in the opinion of the person in charge, he or she has recovered sufficiently so as to be able to take care of himself or herself or before the expiration of 18 hours from the time of apprehension.[484]

The Act applies equally to adults and children. If, however, a child is apprehended and detained, the parent or guardian of the child (if any) must be notified as soon as practicable after the commencement of the detention.[485] As far as possible, children in detention must be kept from coming into contact with adults detained under the Act.[486]

Children and adults alike are given rights under the Act to communicate with a solicitor, friend or relative. Solicitors may request that the detained person be released into the custody of the solicitor or a friend or relative capable of caring properly for the detained person. The officer in charge of the police station may accede to this question at his or her discretion if satisfied that the solicitor, friend or relative is in fact capable of caring properly for the intoxicated person.[487]

A person may, before the expiration of thirty days from the date of his or her discharge from a police station or from a sobering-up centre, apply to a court of summary jurisdiction, constituted of a special magistrate, for a declaration that at the time of the person's detention he or she was not under the influence of a drug or alcohol.[488] As indicated in earlier debates on the legislation, this may be necessary in cases where the person was suffering from a condition where the symptoms mimic intoxication and there could be civil or criminal repercussions if a person was wrongly found to be drunk or otherwise intoxicated.

Police officers may use reasonable force in apprehending an intoxicated person and may search that person for the purpose of removing objects that may constitute a danger to that person while in an intoxicated state.[489]

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482 Public Intoxication Act 1984, s. 7(4).
483 See Table 1, Chapter 5.
484 Public Intoxication Act 1984 (SA), section 7(5).
845 Public Intoxication Act 1984, s. 7(7).
486 Public Intoxication Act 1984, s. 7(10).
487 Public Intoxication Act 1984, s. 7(9).
488 Public Intoxication Act 1984, s. 8.
489 Public Intoxication Act 1984, s. 7(2).

A criticism made in the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody (1991) was that whilst the basic structure of the Act was sound, for many years South Australia had virtually no sobering-up centres and therefore most detentions under the Act were in police cells.[490] This criticism is by no means restricted to South Australia. Indeed, it seems to be commonplace that outside the capital cities and larger provincial towns, sobering-up facilities are sadly inadequate. The result of this metropolitan 'bias' is that people apprehended under public drunkenness legislation in remote and rural Australia are more likely to be detained in police custody.[491]

Policy Issues

Sobering-Up Centres in South Australia

Sobering-up centres in South Australia are funded and monitored by the Drugs and Alcohol Services Council (DASC). The DASC is a health centre incorporated under the South Australian *Health Commission Act 1976*. The organisation is governed by a Board of Directors, has its own constitution and is the State Government's authority on alcohol and other drug issues.

There are three sobering-up centres in Adelaide (Whitmore Square, Port Adelaide, and a youth sobering-up centre in Hindmarsh) and two in regional South Australia (Ceduna and Port Augusta). As discussed above, the South Australian legislation does give sobering-up centre staff the power to detain an intoxicated person against his or her will until such time as they have sobered up or before the expiration of 18 hours. DASC representatives with whom the Committee met stated that these provisions have not yet been proclaimed nor are they likely to be. It is thought that staff who are primarily working in a welfare capacity should not be operating as pseudo police officers:

> I'm not in favour of having a whole range of authorised persons that have got power to detain other than police. Because you know if you are playing in the park and you've got a couple of police officers there that have got the power to apprehend and move you or to take you to where ever. That has much more force than if you have a situation where you might have an authorised person, a sort of semi-security guard type person that decides that they've got the power to restrain an individual so that they can actually physically restrain them and just drag them off. And that would, amongst our Indigenous area and white population, cause a number of problems if either group was doing that to the other group. So that's an issue. Again the issue that I point out is it's not necessary in an approved premises or a sobering-up centre to have power to detain. Because the sort of people you get working in there aren't going to physically restrain people. And you're not promoting a concept that you've been publicly drunk you're locked up.

490 Royal Commission into Deaths in Custody 1991, *Final Report*, vol. 3, p. 11.

491 The fewer sobering-up centres there are in any given jurisdiction, the higher the likelihood that the intoxicated person will be held in a police cell.

> The modern police procedures these days also, which has changed over the years, enables the police to have a fair amount of discretion about the people they pick up, and I think it's indicated in some of the stats, that some people they take home, some people they take to a sobering up centre, some people they'll take to a police cell. But once they're in a police cell they can hold them for 10 hours. Sometimes they do that. Sometimes they release them to a friend. But I think looking in this whole area you need to look at the target profile, or the client profile.[492]

The Drug and Alcohol Services Council have collated figures for apprehensions under the *Public Intoxication Act 1984* and admissions to sobering-up centres.[493] In 1986/1987 there were 7914 apprehensions by police under the Public Intoxication Act, 4073 of these were in metropolitan Adelaide and 3841 in country areas. A steady decline in apprehensions is apparent over the next ten years. In 1999/2000 the figure for the total number of apprehensions in the State was 2729. Of these, 1501 were in country areas and 1229 were in metropolitan Adelaide. No comprehensive explanations have been given to the Committee as to why this may be the case. Anecdotal evidence, however, suggests that there has been a rise in self admissions to the sobering-up centres over the last ten years as more clients become aware of them. It is also an indication that the Mobile Assistance Patrols (MAP) are doing more of the work in transporting (Indigenous) clients to sobering-up centres that the police.[494]

Examining the apprehension data collected by DASC, it is apparent that a high percentage of those apprehended are Indigenous.[495] In 1986/87, of the total number of 7914 apprehensions made by police, 3397 were counted as Indigenous South Australians (4073 total metropolitan apprehensions of which 1004 were Indigenous apprehensions, 3841 total country apprehensions of which 2393 were Indigenous apprehensions). Although the 1999/2000 data reflects the general decline in apprehensions over the 12-year period, the percentage of Indigenous to non-Indigenous apprehensions remained fairly constant. The total number of apprehensions in 1999/2000 was 2729, of these 1076 or 39.4% were Indigenous people. Over the 12-year period there was never a year in which the number of Indigenous apprehensions fell below 36% of the total. Broken down into metropolitan and country figures, the percentage of Indigenous apprehensions to the total in 1999/2000 were 23% and 50% respectively.

With regard to admissions to sobering-up centres, in the year 1990/1991 (first year for which such figures were available) a total of 14,738 people were admitted across the five South Australian sobering-up centres. Of these admissions 2126 were referrals

492 Graeme Strathearn, Chief Executive Officer, Drugs and Alcohol Council of South Australia in conversation with the Committee, 7 March 2001.

493 Figures taken from Drug and Alcohol Services Council (SA), Data on Public Intoxication Act apprehensions and sobering-up unit admissions for South Australia: 1986/87–1999/2000, March 2001, unpublished.

494 For a discussion of Mobile Assistance Patrols, see below.

495 As of June 1994 the Indigenous population of South Australia was 22,000, which comprised 1.5% of the South Australian population. Forty-three per cent of the Indigenous population of South Australia at that date were resident in metropolitan Adelaide. See, Australian Bureau of Statistics, 'A Profile of Australia's Indigenous People', *Year Book of Australia* 1996, ABS Cat No 1301.0.

from police under the Public Intoxication Act. Of this total number the great majority (11,381) admissions were to the Salvation Army sobering-up centre in central Adelaide (Whitmore Square), 1404 were to the Port Adelaide centre, 65 to Hindmarsh, 591 to Ceduna and 1297 to Port Augusta. Of interest is that only 1081 of the admissions to the Whitmore Square centre were as a result of a police referral, compared to 456 admissions out of 591 in rural Ceduna being a police transport or referral. In the year 1999/2000 there were 10,862 total admissions across the five sobering-up centres of which 747 were police referrals. Of these admissions just over half (5933) were to the Whitmore Square centre (552 police referrals), 1228 were to Port Adelaide (70 police referrals), 1611 were to Hindmarsh (60 police referrals), 900 to Ceduna (44 police referrals) and 1190 to Port Augusta (21 police referrals).

A comprehensive picture of Indigenous admissions to sobering-up centres is not available, as statistics based on Aboriginality were only collected by DASC from 1997-1998. For the period 1999/2000, however, of the 10,862 admissions to all South Australian sobering-up centres, 6073 were Indigenous (55.9%). Of the 5933 admissions to the Whitmore Square (Salvation Army) centre over half were Indigenous (3650), but only 208 of the 1228 admissions to the Port Adelaide centre were Indigenous. In Hindmarsh, Ceduna and Port Augusta the numbers of total admissions to Indigenous admissions were 1611 to 243, 900 to 892 and 1190 to 1080 respectively.

In summary, both apprehensions under the Public Intoxication Act 1984 and admissions to sobering-up centres have declined over the last ten years, in the former case dramatically so. Unfortunately, there has not been a comprehensive evaluation of sobering-up centres or apprehensions in South Australia to explain why this may be the case. Some tentative suggestions were given by a DASC representative:

> But if you go back years ago. I can't remember the figures but they were having like a thousand apprehensions a day for public drunkenness. I'm going back 20 to 30 years now. Almost that. But they were horrendous figures and they were all over the State. But like I mentioned there's a huge population of the chronic skid row recidivist alcohol dependent persons that have seemed to have either died off or there's better support mechanisms through boarding house accommodation and more controlled drinking type environments that look after these people. And they get better access to a whole range of services. These days if you walked through Adelaide you would obviously see a drunk but you don't often see a drunk that's absolutely zonked out laying in the middle of Rundle Mall. They don't go there.[496]

It may also be that a high number of people who may otherwise have been apprehended by police are now being dealt with and transported to sobering-up centres or taken home by the Mobile Assistance Patrol (see below).

Unlike other jurisdictions, South Australian Police seem to take a comparatively high number of people apprehended under the Public Intoxication Act to their homes. In the year 1999/2000 of the 2,733 people apprehended under the Act, 23% were taken

496 Mr Graeme Strathearn, DASC in conversation with the Committee, 7 March 2001.

to their homes and only 21% to sobering-up centres.[497] David Watts, a Senior Project Officer with the DASC believes this group of people who are taken to their homes tends to be the non-chronic and non-troublesome drinker who may simply be wandering around after being 'out on the town'.[498] In such cases police do and should use their discretion to transport this type of intoxicated person home, leaving the sobering-up centres for the more chronic type of alcoholic or drinker. Such a process, however, does seem to contradict the reason why sobering-up centres were established in the first place and the process in other States.

Conversely, high levels of apprehensions recorded under the Public Intoxication Act in any given area are often used in submissions to government as to why a sobering-up centre should be established in that locality. For example, a submission is currently before the South Australian Cabinet to establish a new sobering-up centre in Coober Pedy based on apparently very high levels of public drunkenness and consequent apprehensions in this part of South Australia.

A lack of apparent formal evaluation studies or cost benefit analyses make it difficult to establish with any certainty whether the decriminalisation process has been an unqualified success in South Australia. Nevertheless, evidence given by expert workers in the field suggests that on balance there have been definite gains as a result of decriminalisation:

> And has it been successful? I guess the only way I could comment on it is it's definitely reduced the number of appearances of people before the court system and it's definitely reduced the number of public drunks being admitted into correctional facilities. And I would suggest that it's definitely exposed that group of the population to a whole range of other services. So I'll then argue that that in itself it has been well worth the exercise.[499]

Salvation Army Sobering-Up Centre

The Salvation Army Sobering-Up Centre is located in Whitmore Square in central Adelaide. The centre offers a safe and supportive place to sober up or withdraw from the effects of alcohol or drugs. As with most Salvation Army programmes in the capital cities and larger towns of Australia, it provides a range of drug and alcohol programmes. It provides referral to:

- Medical Detoxification Units;
- Drug and Alcohol Rehabilitation Programmes;
- The Salvation Army Bridge Programme, a Community Drug and Alcohol Outreach and Treatment programme;
- Telephone support to individuals and families of those affected by substance use; and
- Assistance in accessing other health and welfare services.

497 Figures supplied by DASC.

498 David Watts, DASC in conversation with the Committee, 7 March 2001.

499 Graeme Stathearn, DASC in conversation with the Committee, 7 March 2001.

The Centre is open every day, 365 days a year. To be eligible a client needs to be male or female over the age of 18 years.[500] It receives its referrals from the police, MAP, other community agencies or self-referrals.

The sobering-up centre has recently employed two Aboriginal outreach workers at Whitmore Square in an attempt to cater for the culturally specific needs of Indigenous clients. These workers (one female and one male of Aboriginal origin) assist Aboriginal clients with their immediate needs and if appropriate their ongoing recovery.[501]

Other recent initiatives have been the employment of a Domestic Violence/Drug and Alcohol worker to address the specific needs of intoxicated women. This part-time worker links female sobering-up centre clients with the Bridge Programme (Salvation Army Drug and Alcohol Programme) and Bramwell House Women's Shelter (Salvation Army). A new women's facility has also been recently established at Whitmore Square. As part of this a women's bedroom, lounge and outdoor area has been developed to provide more privacy for women using the sobering-up centre.

Referrals to the sobering-up centre are breathalysed on arrival. Anyone thought to be intoxicated to dangerous levels is not admitted. Instead, they are taken to a hospital. The Salvation Army sobering-up centre will not accept referrals from people who are violent or appear to have the potential to become so. In such cases, usually the police are called and the person is transferred to the police cells.

City Homeless Assessment Support Team (CHAST)

The CHAST programme is a comprehensive community outreach programme based in Adelaide that attempts to provide an integrated service to people with mental health problems who may also be homeless and or misusing alcohol or other drugs. The CHAST programme specifically targets such discrete groups as Indigenous people and youth. Its key aim is to integrate the various services and workers that would ordinarily operate separately in addressing the needs of people with multiple problems. An extensive discussion of the CHAST Programme is to be found in Chapter 24, which discusses mental health.

Indigenous Specific Drug and Alcohol Services

Aboriginal Drug and Alcohol Council (ADAC)

ADAC is the peak non-government body for Aboriginal drug and alcohol agencies in South Australia. It is the largest Aboriginal community controlled body in South Australia. ADAC represents about 27 Aboriginal communities across South Australia. It was set up in 1993 as a direct result of the Royal Commission into Aboriginal Deaths in Custody. Its role is to act principally as an information, advisory and advocacy

500 There are limited facilities for young people who are intoxicated to sober up at the 'Archway' centre run by the Uniting Church in suburban Adelaide.

501 According to Mr John Wright, Assistant Director of the Salvation Army's Network Services, 62% of the sobering-up centre's clientele are of Aboriginal descent. Whilst Indigenous community agencies working in the drug and alcohol field admire the attempt of the Salvation Army to address the needs of Indigenous people they still believe a sobering-up centre run by a non-Indigenous agency is inappropriate for their people. These views are canvassed later in this chapter.

centre for the Aboriginal community, the wider community and to relevant professionals and institutions, on substance misuse issues.

It has played a key role in monitoring 'Dry Area' applications in South Australia and providing advice to Indigenous communities on liquor licensing legislation and restrictions. The introduction of 'Dry Areas' and the impact that Dry Area legislation has had on Aboriginal communities and families has been a substantial issue in many Aboriginal communities. One of ADAC's roles has been to sit on committees that are responsible for establishing Dry Areas, such as the Coober Pedy Dry Areas Review Panel, and advocate on behalf of the Aboriginal population in the region. The Dry Area concept is discussed in greater detail later in this chapter.

Aboriginal Sobriety Group and Mobile Assistance Patrol

The Aboriginal Sobriety Group (ASG) is a community based organisation which provides care and support to Aboriginal people who wish to lead a drug and alcohol 'free' lifestyle. It provides several community services associated with the prevention and treatment and of alcohol abuse.[502] Many members of the ASG Board and its staff have former alcohol addictions. Many Aboriginal people associated with the ASG also have somewhat ambivalent attitudes towards the decriminalisation of public drunkenness. Major Summer, a founding member of the ASG and currently a caseworker with the service, is generally opposed to locking up intoxicated persons in police cells. Nonetheless, he has had grave concerns about the history of decriminalisation in South Australia:

> My concern about making public drunkenness not a crime – is that its going to leave a lot of people on the streets, it's going to leave a lot of people in the park, it's going to leave a lot of people destined to be sick, that's going to be dying from alcoholism, dying from other diseases, their body that must wind down from alcohol and disease. I notice with our own people when they stop public drunkenness that's when our people started to die from alcoholism.[503]

Major Summer believed that when Aboriginal people were put in lockups, at the very least their bodies had time to recuperate:

> Their body had time to reverse itself to get rid of all the rubbish they had put inside of themselves even if they were out for sometimes six months before they got charged It was a time for them to go in there – they get three cooked meals a day, a good bed at night and they would come back looking really fit and ready to fight the world again But when they stopped that people didn't have the time to let their body to regenerate. They were drunk every day – every time you'd see them they'd be drunk.

502 These include: Cyril Lindsey House, a 'dry' hostel providing short-term accommodation to homeless Aboriginal men; Allen Bell House, a drug and rehabilitation hostel for women and children; and Kaingani Tumbetin Waal, an alternative secure care programme for 'at risk youth'. Cultural and Heritage Services Programmes that assist clients to discover their Aboriginal culture and increase public awareness of Aboriginal heritage are also provided.

503 Major Summer, Aboriginal Sobriety Group in conversation with the Committee, 8 March 2001.

> That's the problem I see with the cutting of the drunkenness – I don't say lock people up for this. What I'd like to see is to that we have a place where everything happens for their own health and safety and put there and given good care.[504]

Major Summer, and indeed all Indigenous people and organisations with whom the Committee met in South Australia, were unanimous in wanting a sobering-up centre for their people that was culturally appropriate, and managed and operated by the Indigenous community. ASG believed that the Salvation Army runs a good service and is very well meaning, particularly in employing Indigenous staff. Nonetheless, they believe it is in most cases not appropriate to combine Indigenous and non-Indigenous clients with substance abuse problems in the same service. The level of culturally specific awareness is simply not available in a non-Indigenous service.

Mobile Assistance Patrol (MAP)

This service is one of the most important run by the ASG in the context of public drunkenness. In many ways the service operates in a similar manner to the Night Patrols in the Northern Territory, New South Wales and Western Australia.

It transports people under the influence of alcohol or other substances from public places to places of care, safety and support, including the Salvation Army Sobering Up-Centre. It will often work in conjunction with South Australian Police.

The MAP patrols the parklands, streets and other public places of Adelaide to basically check on the welfare of intoxicated Indigenous people and their families. A major part of their activity is to transport the intoxicated person to home, a sobering-up centre or hospital if thought appropriate. The MAP Patrol operates from 3 p.m. to 1 a.m. on most days. It is staffed by salaried workers and has a full-time paid coordinator. The MAP does both pro-active outreach (patrols the parks and public areas assisting people in need) and also reacts to telephone calls seeking assistance at particular locations. These calls may come from ambulance officers, the police or other community agencies.[505] The MAP generally has a good relationship with these agencies. However, MAP faces some significant problems.

First, MAP workers feel the hours in which they operate are too constrictive. As one worker told the Committee 'Hang on, fellers are getting drunk before 3 p.m.'

Second, MAP would like to be able to employ a female worker to deal specifically with the problems impacting upon Aboriginal women and their children, whether this is a result of the woman being intoxicated herself or because of problems associated with her partner being drunk. Of particular concern in this context is the high number of Indigenous children who are taken into care ostensibly because of problems associated with their parents' drinking.[506]

504 Major Summer, 8 March 2001.

505 Currently the MAP are undergoing training conducted by the South Australian Ambulance Service to allow them to better deal with first aid and medical emergency matters.

506 The ASG are currently in negotiations with the Department of Human Services to obtain additional funding for a female worker and extended hours of operation.

Third, the geographic areas that the MAP covers are far too extensive given the resources available to them. If, for example, a worker takes an intoxicated person back to Elizabeth, a satellite suburb on Adelaide's northern extremity, the patrol van can be tied up for at least two hours. This effectively constrains the ability of patrol workers in central Adelaide to efficiently use their time.

Fourth, whilst the MAP has a generally good relationship with the Salvation Army Sobering-Up Centre, they believe that on occasion the Whitmore Square shelter is too selective about who they will receive into the Centre and who they will exclude. They also believe the sobering-up centre is not culturally appropriate for Indigenous people.[507] This is despite the commendable efforts of the 'Army' to employ Indigenous workers.[508]

Fifth, there are particular gaps in service provision where the MAP believes the intoxicated person they pick up has the ability to inflict potential domestic violence on his (or her) partner if taken home. In such circumstances the Salvation Army will not accept them and neither will the hospitals unless there is a medical emergency. The MAP therefore has little choice but to call the police and have the person transferred to a police cell. The South Australian Aboriginal Legal Rights Service argues that this can have flow-on complications. In particular, intoxicated persons who are aggressive can be charged with a series of criminal offences including resisting arrest.

Nonetheless, given all the constraints under which MAP operates the Committee believes that it, and the ASG in general, must be commended for the valuable work undertaken.

'Kalparrin'

Equally commendable is the work undertaken by the 'Kalparrin' Community Recovery Programme in Murray Bridge, South Australia. Kalparrin is a Ngarrindjeri word meaning 'Helping with a heavy load'.

Kalparrin 'Nunga Farm' was established in 1975 by a group of Aboriginal elders seeking alternatives to alcohol, for themselves and others in the community. These elders believed that mainstream drug and alcohol services could not cater for the needs of Aboriginal people and were not culturally appropriate. Indigenous people who used the services rarely stayed at those places.[509] Since then, Kalparrin has continued to develop and provide programs in the Murray Bridge region, 100 kilometres east of Adelaide.

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507 Because, they don't recognise anything that's Aboriginal. It's very institutional, it's very hospital like or clinical. But that's not to say that it's a bad service because it's not a bad service. The Salvation Army run a good service but a lot of the fellows that would come to a sober-up unit or a detoxification unit – simply don't fit. They say this is a white man's program and we really don't fit (Worker at Kalparrin Community Recovery Programme in conversation with the Committee, 7 March 2001).

508 The Salvation Army in turn claims that the ASG misunderstand the nature of the Salvation Army's policy. They state that they will only refuse clients when they are violent or potentially so, when there are medical complications necessitating a transfer to hospital, or when they are so full that their capacity to care for the client would be jeopardised.

509 Representatives of Kalparrin in conversation with the Committee, 7 March 2001.

In 1984 Kalparrin 'Nunga Farm' became an incorporated body providing substance misuse services, and expanded in order to deliver better services. The name 'Nunga Farm' was changed to Kalparrin Inc. As Kalparrin progressed and became more recognised the program expanded, as did the property.

Since inception, Kalparrin has provided a holistic service catering for the individual's spiritual, social, emotional, and physical wellbeing, and is sensitive to Aboriginal and Torres Strait Islander traditional culture and value systems. Kalparrin has a Christian foundation and finds that the culture/value system of each belief system compliments and supports the others.

Kalparrin Community operates a multi-faceted program providing culturally appropriate services to people and their families with substance misuse problems.

The services are provided to people in the Adelaide Hills/Southern region and to people referred through other agencies.

Some of the programmes include:

- Mobile Assistance Patrol (MAP)

The Patrol operates in Murray Bridge. It is funded to provide assistance to persons under the influence of alcohol or other drugs or substances and at risk of harm to themselves or others. It also assists those people indirectly affected or at risk of harm as a result of substance misuse (partners and children for example). The Patrol provides assistance by transporting them to a safe place. This may be to their homes (unless there is the potential for domestic violence occurring), an Aboriginal hostel, the hospital, or an Indigenous drying-out shelter in Murray Bridge township. The Patrol assists in providing an alternative to detention or arrest for trivial matters and reduces contact with courts and judicial process.

- The Waili Shelter

This shelter provides emergency overnight accommodation for adult persons who are homeless, intoxicated, or at risk of harm, and provides an alternative to being locked up in the police cells. Referrals come from MAP, police or other agencies. When the Committee met with Kalparrin representatives they were informed that referrals come from all over Australia. Clients may be referred to other programmes from Kalparrin, or it may be the first point of entry to programmes operated by Kalparrin.

- The Waili Hostel

The hostel provides culturally sensitive accommodation and support for persons recovering from the ill affects of alcohol/other drugs, or harmful substance. The hostel encourages residents to heal their body, remain sober, and develop strategies to improve their lifestyle. Counselling, advocacy, and referral services are provided.

- The Barrie Wiegold Hostel

This hostel is a fully supported residential program. Accommodation comprises of rooms designed for single persons or twin rooms for single parents/couples. The hostel is situated on the Kalparrin 'farm' property, a 15-minute drive out of Murray Bridge. As with all Kalparrin programmes this is a 'dry' hostel and participants must be

non-users of alcohol or other drugs. The programme is essentially a self-help model with support given to participants through twice weekly compulsory group meetings, ongoing support and counselling for individuals from Aboriginal Elders (counsellors). Most staff and Counsellors are former alcoholics. The responsibility for healing is placed on the participant, as it is Kalparrin's belief that 'one must own one's own healing and vision for the future'. The staff do all they can to assist and support the process by being available as required, and by being positive role models. The particular needs of Indigenous women are catered for by the employment of female workers/counsellors, many of whom have also been former alcoholics. As a part of recovery there is a particular focus on Indigenous 'women's issues' and the promotion of aspects of Indigenous culture and heritage pertaining especially to Aboriginal women.

- Kalparrin Units

Self-contained units, built by the residents themselves have been assigned to the recovery programme after residents have completed the initial stages. They provide the 'next step' to recovery. Tenants must provide their own meals and budget and they are encouraged to be independent. Support is provided as needed, so that patients can accomplish goals leading to empowerment and confidence to enter the broader community with success.

Three unique things about Kalparrin stand out and truly impressed the Committee when they visited there in March 2001.

First, family members and children are allowed to live with the person undergoing recovery on the farm. Kalparrin believes that having one's loved ones around the client assists that person's recovery. Any signs of domestic violence towards a family member, however, are not tolerated.

Second, there are no time limits on a stay at Kalparrin. This is also viewed as in the best interest of the client's recovery:

> One of the things we're trying to do and what we recognised a long time ago, was that mainstream programmes were just short periods like 14 days or you could extend it for another month or thirty days or whatever but then you were expected to go and do something else. And those mainstream programs consisted mainly of just counselling and what do you call it when you've got craft work. There's a fancy word for it …that's it occupational therapy and when you do metal work and is it macrame or something and that's fine. If you've got a limited time but what we found out is that if you've been drinking for ten, fifteen, twenty years – 14 days, 30 days no good to you. It's Mickey Mouse stuff and leatherwork and all that is not going to help you.
>
> So, when we developed our program we had to look at it over a longer period and we actually had to work with the individual people and the families what their needs are and not what a panel of experts say they are. It's a whole different ball game and people need a lot more time than 14 days or 30 days to overcome an addiction that's been troubling them for most of their life and everything that goes with alcohol abuse or substance abuse. You've got your

> liver, your heart, your blood pressure, sugar diabetes, you name it, it's everything. Then you've got your spiritual problems and your emotional problems, then your financial problems, family problems and 14 days are not going to do nothing for you.
>
> A lot of old fellows including some of the old fellows round here, would gladly be locked up for 14 days just to sober up and get the JP or Magistrate to lock you away for that time so you could have a break. But it never done you any good. When you come out you're straight back into it. So that's why the elders said we had to develop something that's going to get people more time and in that time it's got to be realistic stuff and that's why we always recognised that employment is a key part to the rehabilitation for anybody.[510]

Representatives of Kalparrin stated that this long-term approach helps prevent the revolving door syndrome whereby after an initial period of recovery, an alcoholic will lapse into destructive drinking patterns:

> We say well OK let's not worry about a four months programme, let's not worry about a three months programme let's worry about you. We start to address your needs and we start fixing things up. We start looking at the poverty cycle and we start changing that. We start looking at your drinking or your drug taking or whatever it is and we start fixing that up. We start talking about rehab and we start identifying what you need and those needs start to get met. But we're not going to say you've got to work out why you're drinking at once because otherwise you're going to fail.
>
> We'll give you some skills and if it takes you six months to work out why you're doing it [drinking] then that is OK.
>
> And you don't have to exit the programme or go out in a month's time and come back and just do the same thing. You come in and you stay here. So, if it takes you twelve months, if it takes you two years that's OK as long as you stay off the drink.[511]

Kalparrin is a totally dry environment. Clients are expected to totally abstain from alcohol and other drugs. If a client does become intoxicated, whilst he or she is not removed from the community, he or she is expected to stay at the drying-out shelter in town until such time as they are sober.

Third, the members of the Committee who visited Kalparrin were most impressed with the employment programme run by Kalparrin.

Recovering clients work on the Kalparrin farm tending a variety of livestock and harvesting crops. They are taught trade skills in building and maintenance. Many of the houses on the Kalparrin farm site have been built by Kalparrin residents. Running costs and capital are provided by ATSIC and 'work for the dole' or community employment programmes.

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510 A representative of Kalparrin in conversation with the Committee, 7 March 2001.

511 A representative of Kalparrin in conversation with the Committee, 7 March 2001.

Finally, the dignity and worth of each individual is stressed at Kalparrin. Each person is believed to have a positive contribution to make to the recovery of another:

> We don't discount anyone's value. Anyone, the cook, the cleaner, the gardener – anyone – the maintenance person can have input into your rehabilitation and that's the way we encourage that.[512]

The members of the Committee who visited Kalparrin were extremely impressed with the programmes conducted there. They can certainly understand why people all over Australia travel to undertake recovery. A system similar to Kalparrin would certainly be appropriate for Victorian Indigenous communities.

'Dry' Areas in South Australia

Under Section 131 of the *Liquor Licensing Act 1997*, South Australian Councils can seek a declaration to declare a public area 'dry'. The declaration can prohibit the consumption and/or possession of alcohol in large areas of the Council or specific streets or designated precincts.[513]

Councils that wish to declare all or part of their municipality a dry area must make a submission to the Licensing Commissioner for South Australia. This submission must:

1. Demonstrate that a range of measures have been considered or implemented to solve problems being experienced by the community;
2. Show that a broad plan including a number of strategies that address the underlying causes are in place to support the Dry Area;
3. Detail how the Dry Area will be monitored for its full impact on specific groups and in order to ensure it is contributing to solving the problem.

In addition, where a Dry Area Declaration may potentially affect specific members of the community:

a) Consultation must be undertaken with the groups directly affected;

b) These groups as well as other relevant community groups must be part of the decision-making process at the local level.[514]

Mr Bill Pryor, the Licensing Commissioner for South Australia, believes there are three basic models for Dry Areas in the State:

First, there are the applications for Dry Areas in tourist precincts, particularly those by the beach. The rationale for such applications is to promote the beach resorts as pleasant 'family oriented' places of recreation.[515]

> Now, I don't know whether that's a bad thing to tell you the truth, but at least people can go to the beach and they can enjoy the beach. It doesn't seem to have created enormous social problems. So, I think [these type] of dry areas

512 A representative of Kalparrin in conversation with the Committee, 7 March 2001.

513 The penalty is an expiation fee of $160.00 with a maximum penalty of $1,250.00.

514 *Declaration of a Dry Area: Process and Implications Paper* City Strategy Committee, City of Adelaide, September 2000, Attachment D, p. 11.

515 Good examples of this type of Dry Area are those found in the City of Holdfast Bay. This municipality takes in the seaside tourist areas of Glenelg and Brighton. A discussion of initiatives in this municipality is to be found later in this chapter.

> have worked well .It hasn't stopped public drinking but what it's done is stop public drinking in the day. It has been, in my opinion very well policed. They [police and by-laws officers] tend not to prosecute, ...they walk up to a group of young people and say it's a dry area these are the options – you can pour it out and put it in the rubbish bin or you come with us. And the majority simply pour it out or they [the police] take the grog away.[516]

Second, there are the applications that Mr Pryor calls 'nuisance ones':

> [t]hey tend to be where you've got a Member of Parliament visit the local community. You've got a lot of young people hanging around at the park, so they declare the park dry. It really doesn't achieve anything but it keeps the kids out of the park. They just go to the next park or go down to the river or something like that. I don't care if they have them or they don't but they're almost of no consequence.[517]

Third, and by far the major category, according to Mr Pryor, are the applications for dry areas specifically targeted at Aboriginal communities.

The declaration of dry areas, particularly in areas where there are high concentrations of Indigenous communities is a controversial issue in South Australia. The National Drug Research Institute makes a distinction between those applications which are initiated by Aboriginal communities (the community control model) and the model used by local and State governments to declare Dry Areas as a strategy for controlling public order (statutory control model). A recent research paper published by the NDRI has looked at the declaration of Dry Areas:

> There are a variety of arguments for and against dry areas. On the one hand, they improve the chance that community members will be able to live without high levels of alcohol related harm and constant disturbances. This in turn results in a range of positive effects for both individuals and communities. On the other hand, more people may leave their home communities to drink, thus increasing the risk of motor vehicle accidents, and a greater proportion of personal income may be spent on alcohol purchased from 'sly groggers'.
>
> The attitudes of Indigenous people towards dry areas usually depend upon the motivation behind applications. For example, moves to establish dry areas in locations with significant aggregates of Indigenous people are usually supported – although perhaps not by drinkers – because communities themselves initiate applications. In contrast, applications for dry areas in cities or towns are generally not supported as they appear to be aimed at removing Aboriginal drinkers from public view (Bourbon et al. 1999, p. 68).

Mr Pryor stated that in rural or outback Aboriginal communities in South Australia, he would prefer to declare areas dry or impose licensing conditions only at the behest of the community itself:

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516 Mr Bill Pryor, Licensing Commissioner for South Australia in conversation with the Committee, 8 March 2001.

517 Mr Bill Pryor, 8 March 2001.

> If it's not initiated by the community we simply won't impose a condition. We have had licensees ask to have conditions imposed on their license when Aboriginal communities would come into their premises. We say no, unless the Aboriginal community wants it we are not going to do this, as it won't work. It simply won't work... The whole point is really to get the Aboriginal community to use this as a tool themselves, to say to their people, "No you're going down here, your not getting grog and you're not bringing it back". If they are not behind it, it will never work, and it's really exactly the same as dry areas. So if the community is not behind the dry areas, it's never going to work. All we will be doing is fining people and they are not going to be able to pay and we are also getting them into the legal system and we don't really want to do that.[518]

If a Dry Area is imposed upon, rather than initiated by, an Indigenous community it runs the risk of being branded 'discriminatory'. Nowhere has the polarisation of community views over the declaration of Dry Areas been felt more than in what has become known as the 'Victoria Square Controversy'.

A Dry Area for Victoria Square?

Victoria Square is located in the centre of Adelaide's business, commercial and government district. It is a large grassy park bounded on one side by the Hilton Hotel and on the others by the Supreme and Magistrates' Courts and other government and administrative buildings.

Indigenous South Australians claim that Victoria Square has enormous cultural significance for their people. It has been known as a meeting and gathering place for both local Indigenous people and Aboriginals from other parts of Australia for at least over 100 years.[519] One of the key Indigenous drug and alcohol services in South Australia – the Aboriginal Sobriety Group (ASG) – explained the significance of Victoria Square to their people:

> People see [Victoria Square] as an information zone, because you can find anyone – any Aboriginal person in Adelaide – you go there and ask. Someone related to them or someone would have seen them, or even if people come from interstate, they know them... Yes, well you have people from Darwin, Northern Territory, a lot of people from there, a lot from WA. A lot of Koories from New South Wales, they're even coming from Victoria. Yes, so it's not just only Aboriginals from here.[520]

The Chief Executive Officer of the Aboriginal Drug and Alcohol Council (ADAC), the peak body representing Indigenous drug and alcohol services in South Australia concurred with this view:

> If you actually go into the Square on any given day the majority of the people that are there perhaps don't even drink anyway. The whole Square area has

518 Mr Bill Pryor, 8 March 2001.

519 Although some (non-Indigenous) people with whom the Committee has met dispute this claim.

520 Major Summer, Aboriginal Sobriety Group, in conversation with the Committee, 8 March 2001.

> become a significant meeting place for Aboriginal people in Adelaide for well over a hundred years. There are documented cases where Aboriginal people basically just go to Victoria Square as a form of a central point in town. I know that if you are an Aboriginal person that came here from Darwin for example or Victoria or wherever and you are actually trying to look for someone else that you might be related to its more than likely you would head toward Victoria Square. Somebody there would perhaps know where your relatives were.[521]

For over twenty years a heated debate has being taken place as to whether Victoria Square should be declared a dry zone. The supporters of the scheme argue that Victoria Square has degenerated into an area that is predominantly used by [Indigenous] people to consume alcohol and create nuisance. According to this view it is unsafe, unpleasant and unsightly and deters tourists from visiting the central district of Adelaide.

Representatives from Indigenous and other organisations who oppose the declaration of a dry area for the Square have put forward a number of arguments to the Committee as to why such a declaration makes for bad policy.[522]

First, the representatives of many Indigenous organisations with whom the Committee met did not deny that some Indigenous people consumed alcohol in the Square and had done so for a long time.[523] Nonetheless, they claim that the numbers of drinkers 'bandied around' were often exaggerated. Furthermore, they claim that the problems that do arise in the Square should be treated as health and welfare issues. Greater provision should be made for welfare services than the penalising by fines or the 'moving on' of Aboriginal people. A common theme from these representatives was that many of the problems in Victoria Square have arisen because Aboriginal people never 'learned how to drink':

> [a]nd you know Aboriginal people never learned to drink socially. Prior to the [citizenship] referendum in '67 alcohol was forbidden to Aboriginal people...for 130 years it was criminalised, so [when Indigenous people could legally drink] it became a quick fix, quick high, and no opportunity was given to learn to drink socially. So the best role model you saw was your uncle, your granny, your mum or dad or cousin, fully charged and drinking it up quick.[524]

A representative from the ASG, a former alcoholic with long experience of the way in which alcohol impacts upon Aboriginal communities, agreed with the above statement. He recalled his own experience of drinking after the 1967 referendum:

> Even before they allowed Aboriginal people to drink there should have been education about it – about the damage it does to the body, the mind. All that

521 Mr Scott Wilson, Chief Executive Officer, Aboriginal Drug and Alcohol Council, in conversation with the Committee, 7 March 2001.

522 The Committee visited Adelaide during a time in which the debates over Dry Zones had reached their peak (March 2001). One month after this visit, the Council of the City of Adelaide passed a motion by five votes to three to declare the whole of the central business district and the inner city area of North Adelaide dry.

523 Such organisations included: Aboriginal Sobriety Group, Aboriginal Legal Rights Service, Aboriginal Drug and Alcohol Council, Drugs and Alcohol Council and 'The Kalparrin Programme'.

524 Mr Scott Wilson, Chief Executive Officer, Aboriginal Drug and Alcohol Council, in conversation with the Committee, 7 March 2001.

> education should have been there before – people thought oh yeah great, I'm allowed to drink. They didn't realise that they'd get addicted to it.[525]

The Acting Chief Executive Officer of the ASG, Mr Richard Young, believes that the former 'criminalisation' of Aboriginal drinking helps to explain the patterns of 'binge drinking' and excessive consumption of alcohol amongst Indigenous people in areas such as Victoria Square:

> One of the things that's coming out now in conversation are the patterns of drinking. Before [the referendum] it was illegal for Aboriginal people to drink so they would just skull it down, because if they were seen in possession they knew they were going to jail. So rather than just take little mouthfuls they would just skull it down. And then it was decriminalised by the Federal Government. They could be in possession of alcohol but there was no education for them to just drink bits at a time. So this history if you like of binge drinking is connected back to criminalisation of being in possession of alcohol.[526]

It is claimed that if policymakers and service providers understood the historical and cultural context as to why some Indigenous people drink to excess, they would be in a better position to devise policies that address the underlying problems rather than devise 'quick fix solutions' such as dry zones.

Second, Indigenous representatives state that the supposed connections with Aboriginal drinking in Victoria Square and violent behaviour has been blown out of all proportion. Whilst some people may engage in behaviour that could be characterised as having 'nuisance value' (begging, soliciting, verbal abuse) there is very little evidence of violent assaults in this part of Adelaide. On the contrary, the greatest concentrations of violent assaults are claimed to occur in and around hotels and nightclubs in the entertainment districts of Hindley Street and Rundle Mall. This is a view that has been stated to the Committee by impartial observers in addition to those from Indigenous community groups.[527] For example, the Licensing Commissioner stated to the Committee:

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525 Major Summer, Aboriginal Sobriety Group, in conversation with the Committee, 8 March 2001.

526 Mr Richard Young, Chief Executive Officer, Aboriginal Sobriety Group, in conversation with the Committee, 8 March 2001.

527 The Committee has received evidence that shows that the levels of assault are indeed far greater in the Hindley Street precinct compared to Victoria Square where the numbers of assaults and incidents of violence are negligible. This fact has also been alluded to by an Adelaide City Councillor who voted against dry zones in the recent Council decision on the matter:

> For 12 years now this city has had two dry zones – in Rundle Mall and Hindley Street East – and yet the closely-guarded police statistics consistently show that these two areas remain the least safe in the city. A majority of offences against the person committed in the city are related to alcohol consumption within licensed premises – not consumption in the public realm.
>
> With the scare-mongering tactics of the mass media, most notably that organ of wisdom, *The Sunday Mail*, and the election-motivated threats of our Premier, you would be forgiven for thinking that we are in the midst of an epidemic of drinking in the public realm. Police statistics show that Victoria Square records such a minuscule number of reportable offences as not to warrant a consistent police presence. And yet make no mistake, the prime motive for this debate is our fear of difference – of Aboriginal people gathering in a public place in visible numbers.
>
> The people who will be most affected by a city-wide dry zone are our already most marginalised – some Aboriginal people, the homeless, those with substance abuse and

> My view is that probably Victoria Square doesn't warrant a dry area... Now, the police might disagree. They might have figures, but I don't believe that Victoria Square and North Terrace are any more dangerous than a whole range of other places. Now [Victoria Square's] a nuisance none of us like walking past. You can be called a so and so, yes it's a nuisance...[But] In my view, we've got far more dangerous places [In Adelaide].When I spoke to Council I said if you're going to do it, it ought be the whole business district, because young people will still try and go down through [the central entertainment area] ...with bottles of beer etc and are far more dangerous than say someone sitting over in Victoria Square.[528]

Third, Indigenous representatives believe that Aboriginal people have been used as a scapegoat to push the dry zone policy. One aspect of the dry zone debate has been that if a zone has to be declared it should encompass the whole of the city, not just the areas where Indigenous people are concentrated. Furthermore, if the Council did decide to make the whole city 'dry' it should not be a decision characterised or justified by the problems of a minority of Indigenous people in Victoria Square. As Richard Young somewhat succinctly stated 'We don't want to be [your] stick that tells the non-Aboriginal people that they no longer can drink'. He continued:

> We're responding to [dry zone debate] by saying that the government and the city council has been debating this for so long but the decision should not be made by using Aboriginal people as the means to justify a [dry zone] This only creates further division between the Aboriginal and white communities...it does not further reconciliation... Our argument is don't use Aboriginal people as the means for putting in a law that will affect all people. You make that decision based on the best interests of the community.[529]

Scott Wilson believes at, least in part, such 'scapegoating' is based on an underlying, if unrecognised, racism:

> If they want to keep sections of Adelaide dry, we believe that they should not just pick out those little areas where Aboriginal people congregate. You know, you have got Hindley Street and Rundle Street where on any given night you could have a thousand people who are as drunk as anything and there doesn't seem to be a problem with that, but when you are of a different skin colour

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> mental health problems; people for whom the option of private social space in which to congregate is denied. This population, our underclass, is growing in numbers.
>
> Our police already have ample powers to effect public order – the *Public Intoxication Act 1984(SA)*, and the *Summary Offences Act 1953(SA)* deal with begging, indecent language, gross indecency, drunk and disorderly behaviour. I have the greatest of respect for our police – they need more resources, not more laws. More foot patrols in areas of high activity will do more to improve safety – and the success of recent and current special operations only proves this to be the case.
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> (Councillor Greg Mackie, City of Adelaide, Letter to the *Adelaide Review*, April Edition 2001, p. 2.)

528 Mr Bill Pryor, Licensing Commissioner for South Australia, in conversation with the Committee, 8 March 2001.

529 Mr Richard Young, Chief Executive Officer, Aboriginal Sobriety Group, in conversation with the Committee, 8 March 2001.

> where you are a bit more visible, ...the only answer seems to be a dry-zone without having any of the other [welfare] facilities.[530]

Moreover, it is felt by those who oppose the dry zone that it will do little to solve the wider problems of alcohol consumption, violence and related problems. A key concern of many community groups, Indigenous and non-Indigenous, is that some hotels, particularly in the entertainment precincts are willing to sell alcohol to intoxicated people as long as they take it off the premises to drink. Inner-city Adelaide Administrators Group Chairperson, Mr David Wright, has been quoted as stating:

> Indigenous people in Victoria Square are being made the scapegoats for much wider problems of alcohol abuse. A dry zone will not stop hotels selling alcohol to intoxicated people.[531]

Richard Young of the ASG claims further that some liquor stores in the inner city and around Victoria Square target their sale of cheap cask wine at lower income groups, particularly Aboriginals. Liquor stores and hotels will sell alcohol to intoxicated people despite 'knowing full well there is a clear mandate not to serve people that are drunk':

> The thing is they will serve take-away, they will allow those people to go into the public streets with [alcohol they have sold] ...but they will not allow those people to sit and drink in their front bar. So their attitude to them is "yep we can sell it and the problem's gone away" and yet if those same people want to be sitting in their front bar and drink they would straight away use the excuse, you are drunk I cannot serve you because you are drunk. They are happy to serve them take-away because they know any of the trouble that comes with it is not on their doorstep.[532]

Furthermore, it is argued that the exemptions allowing drinking in open spaces, which will be permitted under the Dry Zone legislation, will inevitably have a 'middle class bias'. In other words, it is claimed that exemptions will be readily given to sidewalk cafes and restaurants that cater for affluent and usually non-Indigenous people.

Fourth, Indigenous representatives believe that to declare Victoria Square or other areas of the central business district a Dry Area will only result in displacing the problem. There is already evidence that a process of 'moving on' Aboriginal people from the Square has simply meant that large concentrations have gone to areas on the central city edge, particularly the West Terrace Cemetery.[533]

The view of displacement is supported by academic research conducted by Mark and Hennessy that has examined equivalent dry zone legislation and policy in New South Wales:

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530 Mr Scott Wilson, Chief Executive Officer, Aboriginal Drug and Alcohol Council in conversation with the Committee, 7 March 2001.

531 'Dry zone vote yes', *The Advertiser*, 3 April 2001, p. 3.

532 Mr Richard Young, Chief Executive Officer, Aboriginal Sobriety Group, in conversation with the Committee, 8 March 2001.

533 An area that the ADAC claims may be preferable to Council as it is 'out of sight and out of mind'.

> Not surprisingly, prohibited drinking in certain areas means that Aboriginal people will move to other areas to drink. The places available are restricted because:
>
> - often Aboriginal people do not have access to private property near liquor outlets because they live out of town;
> - some Aboriginal people do not meet the standard of dress required to enter public bars, because of poverty and cultural norms about dress (Mark & Hennessy 1991, p. 16).

Mark and Hennessy make three further points that South Australian Indigenous groups say are applicable in the Victoria Square debate and dry zone applications generally in South Australia:

> First, the New South Wales dry zone legislation did and does not curb public drunkenness;
>
> Second, many of the proposed areas for dry zones are not primarily those adjacent to liquor outlets as mandated by guidelines attached to the relevant legislation;
>
> Third, there was rarely sufficient consultation done with Aboriginal people during the application process (1991, p. 17).

Representatives from the Drugs and Alcohol Services Council (DASC), a government agency that gives expert policy advice on drug and alcohol issues, believes that in the particular context of Victoria Square the declaration of a dry zone will simply displace the problem:

> We haven't supported the motion of a Victoria Square dry area or a city wide dry area simply because we believe it would shift the problem of Aboriginal drinking somewhere else in this city and out of sight, out of mind.[534]

Representatives from the South Australian Police, however, do not believe there is a problem of displacement nor do they believe there is there any empirical evidence to support such a claim.[535].

Fifth, some representatives with whom the Committee met believe that despite the Liquor Licensing Act requiring a lengthy process of evaluation, consultation and the provision of alternative services to deal with the social cost of alcohol consumption, this is often not done:

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534 Mr David Watts, DASC, in conversation with the Committee, 7 March 2001.

535 Assistant Commissioner Paul White, South Australian Police in conversation with the Committee, 7 March 2001. Representatives from the South Australian Police support the concept of a dry zone for central Adelaide on the basis that it will assist police to prevent in its crime prevention capacity – the 'Broken Windows Theory':

> We need to deal with the small problems in society as much as the big problems and here I'm talking about crime. There's a thesis about broken windows. You've probably heard of it but what it says is if you ignore one broken window other broken windows will develop and in principle applying it to social life. If you ignore signs of crime and disorder, first the community becomes concerned, and second it encourages further crime and disorder.

For a discussion of the 'Broken Windows' thesis, see the seminal work by Kelling and Wilson (1989).

> In South Australia under the [Liquor Licensing Act], the 'Dry-Zone Act' basically, if you have a look at that, it says that before an area can become a dry-zone precinct a whole series of things are supposed to be put in place. Alcohol Services, sobering-up shelters, detox units – there is supposed to be community consultation, community education processes, that proceed before that happens. Unfortunately, for some reason none of those facilities, none of those processes are put into place. An area applies to a local government to become a dry-zone. From our point of view that seems to be almost given a rubber stamp by the parliament. Usually the dry-zones are instigated for a three-year period. At the end of that three-year period there is supposed to be an evaluation of the impacts. But unfortunately, once again, for whatever reason, that council area just puts in for an extension for another three years and that is, well from our point of view, that seems to be an automatic rubber stamp. There is no evaluation at all and there hasn't been from our knowledge up until this date of any of those dry-zones.[536] [537]

Notwithstanding these criticisms it would seem that the City of Adelaide has established a lengthy and comprehensive process to ensure all interested parties have been 'given a voice' in this protracted debate.[538] Not the least of the consultation process was the commissioning of a private research company (Hassell Pty Ltd) to produce a report on views with regard to a dry zone and possible alternative services that will need to be put in place.[539] Adelaide City Councillors in support of the zone have also called for additional funding for appropriate detoxification, sobering-up and treatment centres.

Finally, those who oppose the declaration of a Dry Area for Victoria Square in particular, and South Australia generally, state that the use of such interventions has the potential to 'recriminalise' public drunkenness. This is because some Indigenous, and or indigent, people will not be able to pay, or choose not to pay, the expiation notice. Such unpaid fines could eventually result in criminal penalties. The Licensing Commissioner believes there may be a potential for this to happen but it depends on the type of model being proposed. In cases where Indigenous communities initiate the application it is probable that far fewer people will infringe the regulations:

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536 Mr Scott Wilson, Chief Executive Officer, Aboriginal Drug and Alcohol Council, in conversation with the Committee, 7 March 2001.

537 The Drugs and Alcohol Council agrees that some Councils are less than thorough in the way they put in strategies to address drinking as a whole when seeking a declaration for a dry area in their municipality. Mr Graeme Strathearn, Chief Executive Officer, DASC in conversation with the Committee, 7 March 2001.

538 Representatives of the City of Adelaide, in conversation with the Committee, 8 March 2001.

539 Ironically this Report has claimed that 80% of the 300 people surveyed opposed a dry zone. The Report claims that a dry zone will:

- Fail to combat crime and public safety;
- Disadvantage Aborigines, the homeless and people suffering mental illness;
- Fail to address a shortfall in services or solve drug problems;
- Push the problem into other parts of the city and into homes.

The tenor of the Report is that the City of Adelaide should be rather developing strategies to assist intoxicated people and drug addicts.

This Report is to be distinguished from another Report also commissioned by the City of Adelaide. According to Adelaide *Sunday Mail* this Report written by McGregor Tan Research 'has found an overwhelming number of South Australians supported a dry zone' (Craig Clarke, 'Hidden council poll: Secret report calls for dry zone in city', *Sunday Mail*, 25 March 2001, p.8.

> I think it would [result in 'recriminalisation'] in Victoria Square. It doesn't in places like Coober Pedy because there is such co-operation with the Aboriginal community – they're actually good and they want it but if we impose the dry area on Aboriginal communities where they don't support it, they don't want it, I'll bet you they simply say, we will drink here and we will make this a protest and you pull us over to book us, you'll fine us and we're not going to pay, and we'll have to television cameras there the first day. The first Aboriginal community member who goes to gaol for non-payment of a fine for drinking in Victoria Square. I could almost bet that [publicity] would be what would happen. Now, unless they look at something – some alternatives, I would say that unless they look at other strategies there's no doubt that Aboriginal people are not going to comply if they don't agree with it. No doubt about it.[540]

Since the Drugs and Crime Prevention Committee returned from its trip to South Australia, the City of Adelaide has voted by a slim majority to declare most of the Central City a Dry Area. From June 2001, a 12-month trial dry zone for the central business district and the inner city areas of North Adelaide will commence subject to approval from the Licensing Commissioner. It would seem the decision has deeply divided both Council and the general community.

The Committee expresses no opinion on the merits or otherwise of such a decision or otherwise for the City of Adelaide. It believes, however, that the Victoria Square 'controversy' does demonstrate the potential influence local government has over matters pertaining to alcohol consumption, public drunkenness and alcohol related harms in both urban and regional municipalities. It also demonstrates that policy in this area cannot be seen to negatively impact upon particular groups in the community, especially those who are disadvantaged. The Committee has discussed the role of local government and the prevention of public drunkenness and problem drinking in Victoria in Chapter 16.

Licensing and Safety Issues in Adelaide

The City of Adelaide, as with most Australian capital cities, has comprehensive city safety and crime prevention programmes and plans that seek to reduce problems associated with alcohol and other drug use in the city environs. Many suburban municipalities also have initiated similar measures. The City Strategy Committee of the City of Adelaide has produced a Drug and Alcohol Misuse City Safety Action Plan.[541] As with similar plans in the City of Melbourne, this plan depends on key stakeholders working in partnership to address alcohol and drug related violence and related problems within the central city and North Adelaide. Such stakeholders include government departments (Attorney-General's Department, Department of Human Services), the Indigenous Community, non-government community agencies, licensed premises, the Liquor Licensing Commission and South Australian Police. Examples of some of the initiatives and strategies under the plan include:

540 Licensing Commissioner, in conversation with the Committee, March 2001.

541 City of Adelaide, *Drug and Alcohol Misuse and City Safety Action Plan*, City of Adelaide, September 2000.

- Employment of a Drugs Action Officer and a Neighbourhood Safety Officer to develop community safety projects within the city;
- The Licensed Premises Rape and Sexual Assault Project;[542]
- The installation of an extensive CCTV network to monitor key areas of the City of Adelaide, particularly in entertainment precincts;
- Safety audits for urban design;
- In conjunction with South Australia Police, the employment of Aboriginal Police Aides in the central city;
- Development of improved lighting plans for key city streets;
- Safe transport routes and safe public waiting areas for bus, taxi and train transport;
- Development of the City of Adelaide Licensees Accord;
- Replacement of toilet and ablution blocks in Victoria Square with new 'automatic closing' facilities. This is in order to deter assaults, violence and nuisance allegedly occurring in the old toilet blocks;[543] and
- The declaration of the City of Adelaide as a Dry Area.

In addition to meeting with officers of the City of Adelaide, the Committee consulted representatives of the City of Holdfast Bay. Holdfast Bay was chosen on the basis of containing two of Adelaide's premier tourist beach resorts – Glenelg and Brighton.

Glenelg, in particular, is an area that attracts many tourists. It has a variety of hotels, restaurants, outdoor cafes and entertainment venues. It also hosts a number of outdoor festivals such as the Glenelg Jazz Festival. It is one of the main areas in Adelaide where there are major New Year's Eve celebrations.

The Holdfast Bay area is one that has gone from having 'massive problems' with alcohol related disorder to being viewed as a 'showcase' for good safety and urban management and crime prevention. Some of the ways in which these impressive results have been achieved have included:

- A local Licensees Accord based primarily on the Geelong City Licenses Accord;[544]
- Agreements with Licensees to have consistency of licensing hours. This agreement minimises the possibility of different venues having their 'Happy Hours' at different times of the evening thus preventing extended 'pub crawls';
- Similarly, during major public events such as New Year's Eve or the Jazz Festival, agreements are struck with licensees that they will only serve alcohol in their premises in plastic containers and that bottle shops would stop selling takeaway liquor after 8 p.m.;[545]

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542 This project which seeks to reduce problems associated with sexual assault at and around licensed premises is discussed further in Chapter 24.

543 An initiative that has been contested by Indigenous community groups. Such groups refute the allegations of disorder and violence that are made in relation to Victoria Square and the facilities therein.

544 See Geelong City Licensees Accord, discussed in Chapter 18.

545 Exemptions are granted by the Council to allow public drinking at some public festivals where it is thought the participants will behave responsibly. Usually these are festivals organised around a theme such as an ethnic celebration. Compare this with the problems associated with more general street festivals discussed in Chapter 14.

- The declaration of the foreshore, jetties and entertainment precincts as dry zones with only exempted cafes and restaurants permitted to serve liquor. Police are permitted to confiscate and dispose of alcohol in open containers within the dry precincts; [546]and
- The establishment of a Council Security Patrol.

The use of a Security Patrol to 'police' and patrol the streets and public areas of Glenelg is a unique concept in municipal governance. Mr John Banks, Director of Community Services for the City of Holdfast Bay, explained to the Committee this scheme and the rationale behind it when they met with him and the Council's Crime Prevention Officer, Ms Alison Miller:

> Well, the initial security patrol grew out of Council's desire to check on the licensing provision of some of the hotel licences that provide security guards themselves and what we found was that the hotels weren't actually [providing security] or they had a bar person who put on a security tag at the time and said that was their security guard. So our security guards were initially engaged to watch the other security guards. Whilst they were out there we then expanded their duties to patrolling neighbouring streets and gradually they picked up more and more Council inspectorial type duties. They were supplied with mobile phones so they could be contacted by the local residents if they were concerned about drunks coming down the street and problems to that effect.
>
> Gradually that expanded, from intensive weekend type activity, to some three or four nights a week. Then we put the patrols on more or less full-time over the summer period till the situation that we've had for the past five or six years where they've been on seven days a week from 7 p.m. at night to 7 a.m. in the morning so it's a 24-hour patrol. The patrol number is advertised to local residents by newsletter.[547]

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546 The City of Holdfast Bay has generally been recognised as one of the Councils that has done extensive consultation with community groups as required under the legislation. Ms Alison Miller, the Crime Prevention Officer for Holdfast Bay states that their dry zone has generally been approved by most stakeholders in the community, including Indigenous groups:

> There is always a sunset clause on the dry areas legislation but one of the requirements under the Act to get dry areas implemented under State legislation, is that you actually consult with a number of bodies and you actually have strategies in place to address the causes of the public drinking or of the crime associated with alcohol in public places. So every time we want to apply to get dry areas renewed again for another three years we have to go through an extensive consultation process. We get agencies like the police, Aboriginal Sobriety, the security patrols, Councils regulatory staff to actually write in support of renewing the dry areas. In one particular case, I did a survey of about 200 residents around the Seacliffe dry area to get some feedback from the community about whether they thought it should continue or whether they thought it in fact worked.
>
> And unanimously people said yes it's a great idea, don't get rid of it. And in some cases we've actually extended some of the dry areas as a result of people recommending that you really need to put one in this street because there's people drinking in car parks etc. But it is a requirement under the Act that you actually address the causes of the problem rather than just put a dry area there and displace it.
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> (Ms Alison Miller, City of Holdfast Bay in conversation with the Committee, 7 March 2001.)

547 Mr John Banks, Director Community Services, Holdfast Bay, in conversation with the Committee, 7 March 2001.

Security patrol personnel are authorised employees under the South Australian Local Government Act, in addition to being licensed security personnel. They therefore have a hybrid role which can entail responding to residents and licensees' complaints about vandalism, noise, graffiti, and nuisance, serving expiation notices for a variety of offences and asking people to leave public areas if they are in contravention of local by-laws. They even perform more mundane duties such as hosing out Council toilets and checking the locks and alarms on Council properties.

In terms of controlling public violence, the Patrols powers are relatively limited. They primarily observe disorder around licensed premises, make notes of what is happening and if necessary call the police and provide statements to the police. Patrollers file weekly reports and summaries with Council of their observations. This enables Council to engage in forward planning to minimise disruption and disorder in the areas in which violence is being commonly observed. Patrollers also observe any contravention of licensing laws by the licensed venues. This information is then relayed to Council and may form the basis of a prosecution before the Licensing Court. The Council believes one of the strengths of the Patrol is its ability to allay public concerns with regard to disorder or perceived disorder in their community:

> They're very good at conflict resolution and, more often than not, particularly with groups of young people that are rowdy or perhaps they're sitting along the beach front outside residents' [houses] with their music turned up loud and they're drinking. The residents invariably say that security patrols turning up has the effect of dissipating the group or calming it down or whatever.[548]

The Committee is somewhat concerned about the mixed role of Council Patrollers – part by-laws inspector, part police officer. Whilst it generally applauds the initiative and energy of the City of Holdfast Bay in addressing the problems of alcohol related disorder in their municipality, it believes the use of the Council Security Patrol blurs the distinction between, and the demarcated responsibilities of, the police and municipal officers. The City of Holdfast Bay responds to these concerns by claiming that accountability mechanisms have been built into the system. These include inter alia, the filing of weekly reports to Council that are then sent to police, comprehensive training, the wearing of uniforms and the display of clear identification tags. Ms Miller justifies the patrols by stating:

> Well, there *is* a cross-over of duties. I mean if you look at things like hooliganism on the jetty and people jumping off the jetty or riding skateboards in public areas, yes you could say that was a police duty. But some of those are offences under by-laws and therefore, as licensed inspectors, they have a duty to go in and enforce the by-laws and issue fines and those sorts of things but I guess – I mean some of the duties of the police you could say are just peace keepers, just undertaking conflict resolution duties and it works for us and we've got an area here that's got millions and millions of dollars of development that may not have come to an area that was riddled with behavioural problems.[549]

548 Ms Allison Miller, City of Holdfast Bay, in conversation with the Committee, 7 March 2001.
549 Ms Allison Miller City of Holdfast Bay, in conversation with the Committee, 7 March 2001.

Notwithstanding this justification, the Committee does not believe that it is a system that should be emulated in Victoria.

Conclusion

On balance, nearly all agencies and individuals in South Australia with whom the Committee has met are supportive of the decriminalisation of public drunkenness and would not want to see a return to the days when being intoxicated in public was classified as a crime. Such views inevitably come with qualifications.

Indigenous community groups believe decriminalisation can only work effectively for their people when sufficient culturally appropriate services are put in place to keep Indigenous people out of the cells and end the 'revolving door syndrome'.

Police support decriminalisation and believe the current system works, at least when appropriate support systems are put in place:

> I think in an operational sense that it's just a waste of time to take drunks before a court. It doesn't solve anything. I mean it might solve a young person who says I'm not going to do it again, I'm not going to get locked up again. But the reality is if they do get drunk again well then they're going to be detained or held somewhere unless we take them home. I think the legislation is right this time. I don't know, no one's pointed any flaws in it to me, there may be some, but I don't know of any. People are usually taken to their homes, to a detox centre or to a police station as a last resort.
>
> I think, and I can't speak on authority here, but outside of Adelaide I think that the legislation most probably works fine. In country towns for example where you know the parents or you know where the person lives and the police will just take them home. I'm sure it is used with great effect. The problem in the city of course is the volume of people. There's the distance to their homes for us or for anyone else who provides that service and there's the availability of sufficient support services and I think that's if anything where we fall down. We'd have to say where we fall down in the City.[550]

Another senior police officer states:

> Well I suppose my first comment would be that I believe that yes it is successful on the basis that we can't just look to the Court itself to deal with these social problems. We've go to look at alternate options. Under diversion there are a range of options whether it's alcohol or drugs. I think for alcohol what we have it seems to me to be a good way to try and deal with the social problem without necessarily criminalising the people involved.[551]

Rather than having concerns about the decriminalisation of public drunkenness per se, the South Australian police or at least those representatives with whom the Committee met showed far more disquiet about the extension of trading hours in

550 Assistant Commissioner Paul White, Crime Support, South Australian Police, in conversation with the Committee, 7 March 2001.

551 Superintendent Tom Osborn, Officer in Charge, Adelaide Local Area, in conversation with the Committee, 7 March 2001.

licensed premises and the ease with which liquor is made available under current licensing laws. Assistant Commissioner White also believes that to a certain extent the individual, the family and the community must take responsibility for the problems associated with alcohol related harms:

> I suppose for me, we as police, need to deal with problems as they occur on the streets and have a range of tools that are available to us to do that. So certainly the current approach where we take them to the sobering-up centre works, but what I'm concerned about is that have public attitudes been relaxed as a result of it's decriminalised to the point where it's more acceptable behaviour. And that's something we need to deal with as a community and there's no real simple solution to that. We need to say as a community there are acceptable levels of behaviour that people should conform to and not continually go over that line. But in fact that seems to be happening a lot these days. In areas like the CBD you've got a high concentration of young people coming into the area to visit it. They don't live in the area and there is a smorgasbord of licensed premises that they can go to and then drink to their heart's content. I would personally like to see a reduction in trading hours.[552]

Representatives of local government with whom the Committee met are of the view that the safety and crime prevention measures put in place by Councils, in addition to licensing accords and local laws restricting public drinking, are effective enough to control public drunkenness without the need for criminal offences. Ms Alison Miller from the City of Holdfast Bay, stated in this regard:

> From my perspective as a crime prevention officer, it's all about community safety – it's all about community responsibility. It is not about calling on the police for more resources whenever you have a problem. If we suddenly had a problem of public drunkenness, I would want to know why, and why it was in that particular location, and where they were coming from, and why they were drinking, and who the group was, and a number of different things rather than just saying let's get the police to target that area.[553]

In South Australia, people are relatively positive about the 16-year history of the decriminalisation of public drunkenness in that State. Views are far more polarised about the use of legislation to declare municipal areas 'dry'. In summary, however, the following advice from a member of the South Australian Aboriginal Legal Rights Service is worth repeating:

> I don't think it should be a crime where you should be arrested for being drunk, but I think if you are going to do it in Victoria [implement decriminalisation] then you should put appropriate services in place to cater for what you are planning to do. If you don't you will most probably have a problem that we have had over here for a number of years. This includes a lack of services, or services not catering for Aboriginal people... If you don't have

552 Assistant Commissioner Paul White, Crime Support, South Australian Police, in conversation with the Committee, 7 March 2001.

553 Ms Alison Miller, City of Holdfast Bay, in conversation with the Committee, 7 March 2001.

> the detoxification centres, and you don't have the sobering-up centres, and you don't have mobile assistance patrols to help cater for the Aboriginal community, and if the Victorian government is not going to put any money into it, I would say you would be wasting your time.[554]

554 Mr Tauto Sainsbury, South Australian Aboriginal Justice Advisory Council/Aboriginal Legal Rights Service, in conversation with the Committee, 7 March 2001.

PART H:
Law, Policy and Indigenous People

20. Royal Commission into Aboriginal Deaths in Custody – An Australian Overview[555]

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) investigated a total of 99 deaths in custody of people identified as Australian Aboriginal or Torres Strait Islander. The overwhelming proportion of the deaths were Aboriginal men (88 men compared to 11 women). Sixty-three of these deaths occurred in police cells or custody and 33 in prison custody. Three deaths occurred in juvenile detention centres. Western Australia and Queensland had the highest numbers of deaths (32 and 27 respectively). Victoria had a total of three deaths in custody during the relevant period under investigation (1 January 1980–31 May 1989).

Tabulated according to the reason for the deceased's final detention or incarceration, public drunkenness was overwhelmingly the most serious offence associated with deaths in custody. In 27 out of 87 cases, a person had been detained for the crime of public drunkenness. In an additional eight cases, a person had been detained for being publicly drunk in jurisdictions where public drunkenness was not a crime per se. In many cases where a more serious charge was the subject of the final detention, for

555 **Sources:**

Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *Interim Report*, (The Muirhead Report), AGPS, Canberra, 1988.

Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *Final Report,* vol. 1, (The Johnston Report) AGPS, Canberra, 1991, chapter 2, pp. 35ff.

Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *The Royal Commission Cases: A Statistical Description,* Research Paper no. 21. AGPS, Canberra, 1991.

See also, Royal Commission into Aboriginal Deaths in Custody (RCIADIC), *Public Drunkenness – Australian Law and Practice*, Research Paper no. 3, AGPS, Canberra, 1988.

example assault or sex offences, alcohol was a contributory factor. Importantly, in the context of this Inquiry, in all three cases of deaths in custody in Victoria the deceased had been placed in custody for the offence of public drunkenness.

One of the key findings of the RCIADIC, therefore, was the central importance detention for public drunkenness occupied in Aboriginal custodial over-representation:

> Even a quick perusal of the cases that are to be considered by the Royal Commission clearly indicates that public drunkenness is an issue of central relevance (RCIADC 1988, p. iii).

Of particular concern was the fact that drunkenness was the most frequent offence for which Aboriginal people who died in custody were originally incarcerated (see RCIADIC, *Final Report*, Chapter 2). Drawing from the National Police Custody Survey, Commissioner Elliot Johnston, author of the *Final Report,* stated as follows:

> [The Survey] report indicates that a total of 8,536 cases of public drunkenness leading to custody occurred, making up nationally 35% of the cases for which the reason for custody is available. (This proportion varied between the jurisdictions, with the Northern Territory having the highest proportion: 70%.) Overall, some 46% of the public drunkenness cases were Aboriginal people and more than three-quarters of the female drunkenness cases (78%) were Aboriginal. Drunkenness cases made up 57% of the Aboriginal custodies compared with 27% of the non-Aboriginal custodies. These data indicate that, throughout Australia, a substantial proportion of the work of police officers involved in community policing and lockup supervision was that of handling public drunkenness cases. This applies in all jurisdictions regardless of the legal status of public intoxication (RCIADIC 1991, *Final Report*, vol. 3, part D, ch 21.1.2, p. 6).

The Commission had stressed the high rates of incarceration of Aboriginal people in police cells for public drunkenness, which they characterised as essentially non-criminal behaviour. After outlining the efforts of some Australian jurisdictions to decriminalise such behaviour (see below) Commissioner Johnston commented:

> One objective of such reform has been to reduce the role of police in responding to public intoxication. Yet the statistical evidence available indicates that the number of police interventions and detentions in police custody usually increases after decriminalisation (RCIADIC 1991, para 21.1.3).

A key issue for the Committee has been to determine whether this situation has changed in the last 10 years. The Committee explores this issue in Chapter 22.

21. Royal Commission into Aboriginal Deaths in Custody – The Victorian Experience

The impact of deaths in custody of Aboriginal people and the attendant problems associated with public drunkenness of Aboriginal people has not been discussed or problematised to the same extent in Victoria as in most other Australian States and Territories. One major reason for this is obviously the much lower percentage of the Victorian population that is counted as Aboriginal or Torres Strait Islander.[556] Nonetheless, as stated earlier, all three of the Indigenous people who died in custody in this State were incarcerated for public drunkenness charges. Commissioner Wooten was to state with regard to the deaths of the three Victorians:

> James Archibald Moore, like Harrison Day and Arthur Moffat, the other two Aboriginals into whose deaths in Victoria I have inquired, owed his custody to the archaic and ludicrous laws relating to drunkenness that still apply in this state (RCIADIC 1991b, p. 1).

During the period of the investigations of the RCIADIC, arrest figures from areas in Victoria with relatively large numbers of Aboriginal people showed that a disproportionate number of arrests for drunkenness involved Aboriginal people. The RCIADIC's *National Police Custody Survey* (Preliminary Findings) found that Aboriginal people in Victoria were over-represented in police custody by a factor of 13:2. Aboriginal people in this period were also three times more likely to be in police custody in Victoria for drunkenness than were non-Aboriginal people.[557]

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556 The estimated resident national Aboriginal and Torres Strait Islander population as at 30 June 1996 was 386,000. Over half of the Indigenous population resided in New South Wales (28.5%) and Queensland (27.2%) and just over a quarter in Western Australia and the Northern Territory. Aboriginal and Torres Strait Islander people comprised 28.5% of the population of the Northern Territory, the highest proportion of any State or Territory.

In 1996 the total number of Indigenous Australians resident in Victoria was 22,000. This comprised 0.5% of the Victorian population and 5.9% of the national Indigenous population overall.

Source: Australian Bureau of Statistics, *Aboriginal and Torres Strait Islanders – A Statistical Profile from the 1996 National Population Census*, AGPS, Canberra, 1999.

557 See Royal Commission into Aboriginal Deaths in Custody (RCIADIC) 1989, *National Police Custody Survey*, Research Paper no 8, Canberra. See also, Law Reform Commission of Victoria, *Public Drunkenness,* Report no. 25, Victorian Government Printing Service, Melbourne, 1989.

A related matter is the issue of Victorian Aboriginal people being allegedly over-represented in the criminal statistics for the offence of using obscene language (section 17 of the *Summary Offences Act 1966* (Vic)). The RCIADIC claimed that:

> [c]harges about language just become part of an oppressive mechanism of control of Aboriginals [and is used by police]…when there is no more tangible offence to charge

As a result of the findings of RCIADIC, at both a national and Victorian level, the *Final Report* made several recommendations to divert offenders charged with public drunkenness away from the criminal justice system in those jurisdictions which had not decriminalised this offence. The most pertinent recommendations are as follows:

Recommendation 79

That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.

Recommendation 80

That the abolition of the offence of drunkenness should be accompanied by adequately funded programmes to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.

Recommendation 81

That legislation decriminalising public 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.

Recommendation 84

That issues relating to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organisations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.

Recommendation 85

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*[558] (Our emphasis). 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.

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them with, or at least none that would be likely to result in conviction (cited in Taylor 1995, p. 236).

Whilst this is clearly an issue of concern with regard to the relationship of Aboriginal people to the criminal justice system in Victoria, it is not specifically germane to the reference of this Inquiry. For a general discussion of Aboriginal people, the criminal justice system, and the summary offence of indecent language, see Mackay and Munro 1996.

558 See discussion in Chapters 10 and 22.

As a result of the findings of the RCIADIC, Western Australia enacted the *Acts Amendment (Detention of Drunken Persons Act) 1989*, decriminalising the offence in Western Australia. This left Queensland, Tasmania and Victoria as the only remaining States to consider public drunkenness a criminal offence.[559]

The (then) Victorian Labor Government responded to the findings of the *Interim Report* of the RCIADIC by investing the former Law Reform Commission of Victoria with the responsibility of producing a report on public drunkenness in Victoria.

559 The Northern Territory was the first jurisdiction to decriminalise public drunkenness in 1974. New South Wales followed suit in 1979, and the Australian Capital Territory and South Australia in 1983 and 1984 respectively.

22. Victorian Responses to the Royal Commission post-1991[560]

Victoria, whilst not decriminalising public drunkenness, did put into effect other strategies as a response to the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The funding of Aboriginal Sobering-Up Centres and the establishment of Aboriginal Community Justice Panels (CJPs) are two of the more important initiatives in the context of the issue of public drunkenness.[561] The Department of Justice stated that this response was based on the view:

> [t]hat the implementation of these schemes satisfied the intent of the RCIADIC recommendation in relation to public drunkenness (ie diverting Indigenous people from police custody), whilst acknowledging that before decriminalisation could occur:
>
> *"…appropriate strategies need to be in place to deal with all persons found drunk, both Aboriginal and non Aboriginal"* (Department of Justice, Victoria, Submission to the Drugs and Crime Prevention Committee Inquiry, 2000, para 17).[562]

Gardiner and Mackay have also argued that the Victorian government based its response on:

> [a] lack of alternative facilities to police custody, and the high proportion of non-Aboriginal people charged with offences in this category make it impractical to remove the relevant laws from the statutes (1997, p. 17).

Cunneen and Mc Donald are more critical of this approach. They state that the Victorian government argued that decriminalisation:

> [w]as not simply applicable to Aboriginal people. Aboriginal people in Victoria were not the bulk of the people coming into the system through drunkenness laws or public order laws. Therefore the development of the CJPs represented a half way solution which is supposed to give the same outcome as decriminalisation (1996, p. 107).

Cunneen and Mc Donald and some other commentators do not agree with this proposition. Indeed, they argue that in proportionate terms far many more

560 For a general account of the Victorian response, see RCIADIC 1996/97, *Victorian Government Implementation Report.*

561 Community Justice Panels are discussed in Chapter 13.

562 The quote in italics is taken from the RCIADIC 1996/*97 Victorian Government Implementation Report* p. 42.

Indigenous persons are processed for public drunkenness offences in comparison to non-Aboriginal offenders. These arguments have been canvassed in Chapter 10 of this Report.

Sobering-Up Centres

References to sobering-up centres have been made several times in this Report. This first part of the chapter focuses on sobering-up centre services provided by and for the Indigenous communities of Victoria. The second part of the chapter draws upon the 'voices' of Indigenous community groups and individuals themselves and their views on the decriminalisation of public drunkenness. Comparisons will be made with Indigenous sobering-up centres in other States and Territories where relevant.[563]

The Indigenous Sobering-Up Centre programme commenced operation in January 1990, following a recommendation from the RCIADIC that alternatives be established to divert people found drunk in public places from police and prison cells. Whilst the centres were established specifically for people of Aboriginal origin, 'it was also stressed that the admission of non-Aboriginal people to the Centre should not be precluded, and that it was up to the individual centres to decide whether to admit non-Aboriginal people' (Department of Human Services 1997).

In Victoria, the Committee has visited sobering-up centres and met with their staff in Mildura, Swan Hill, Morwell and Melbourne. It has become acutely aware of the problems they face and the constraints under which they work.

As already commented, wherever possible it is thought preferable to place Indigenous people detained for public drunkenness into the care of Aboriginal Sobering-Up Centres. Indeed, Victoria Police Operating Procedures advise police members to notify the Victoria Aboriginal Legal Service, community justice panels and where relevant a sobering-up centre:

> [I]f appropriate, the Watch-house Keeper may release the person in custody into the care of a [sobering-up] centre worker who will then be responsible for the person's welfare until sober (Victoria Police 2000, Manual: Operating Procedures, 12.5.2.1).

Due to resource constraints such an option is not always possible.[564]

Currently there are seven Koorie sobering-up and detoxification centres operating across the State. These provide a safe, culturally appropriate, and hygienic environment in which Koorie people can 'dry out' for up to 48 hours.[565] It has been pointed out to the Committee that one of the benefits of the sobering-up centre, particularly one that is culturally appropriate, is that it is far more difficult to commit suicide in this environment:

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563 The sobering-up centres outside Victoria that the Committee visited included Alice Springs, Tennant Creek and Darwin (Northern Territory); Sydney and Newcastle (New South Wales); Adelaide and Murray Bridge (South Australia) and Perth (Western Australia). The Committee has also participated in a telephone hook-up of all sobering-up centres in Western Australia.

564 See Chapter 13 – 'Police Procedures'.

565 These centres are located in Northcote, Corio, Bairnsdale, Morwell, Mildura, Swan Hill and Shepparton.

> The suicide rate of Aboriginals is directly related to how many are in custody and consequently if you reduce the custody numbers you obviously will in fact deter people out of that system. And keeping them in a sobering-up unit is probably not a good place to commit suicide even if you are intent on doing so, because after all you are basically in a hostel type environment. You may be in your own bed, but what I am saying is there is other people around, it is not locked up, you could get up and walk out, even though the detention power to hold you there is still there (Van Groningen transcript 2000, p. 11).

Some common themes have arisen from meeting with Indigenous drug and alcohol workers, staff in Indigenous sobering-up centres and representatives of other Indigenous community groups. They can be grouped into ten main categories:

1. Sobering-up centres currently have to be 'all things to all people'.
2. Sobering-up centres must be viewed as only one part of a holistic approach to Indigenous health and wellbeing.
3. Sobering-up centres operate best in a communal, friendly, relaxed and culturally aware rather than formalised and clinical environment.
4. Sobering-up centres are poorly funded and resourced.
5. With sufficient levels of funding sobering-up centres can be put to other community uses at times of low demand.
6. Sobering-up centres need to rely on the cooperation of well trained and culturally sensitive police officers. Currently this is not always the case.
7. Sobering-up centres should have appropriate 'best practice' guidelines to assist their operations. These do not currently exist.
8. Sobering-up centres need to be appropriately linked to other Indigenous and mainstream drug and alcohol, health, welfare and legal services. A lack of coordination and appropriate services results in sobering-up centres operating in a vacuum.
9. Similarly, sobering-up centres and other agencies working with Indigenous intoxicated persons should enter formal Protocols with Victoria Police and other relevant government departments.
10. Sobering-up centres in most cases should work in conjunction with an Indigenous 'night or community patrol'.

These themes will now be collapsed into broad discussion points and examined in detail.

Sobering-up centres as 'all things to all people' and funding constraints

Sobering-up centres now have a much broader role across the State than that which was originally outlined when they were established (Department of Human Services 1997, p. 1). This is both their strength and their weakness. It is a strength in the sense that for many Aboriginal communities the sobering-up centre is viewed as a community resource to be shared and used by the whole community. Thus, for example, a sobering-up centre may be also used for emergency accommodation. On the other hand, this change in role is problematic. As a Review of sobering-up centres in 1997 found:

> Koori Alcohol and Drug Prevention workers are often concerned that the community expects them to provide more services than their funding allows. Workers often find that they are expected to be responsive to their community 24 hours a day (Department of Human Services 1997, p. 1).

This fact has certainly been impressed upon the Committee at the various sobering-up centres it has visited. The following comment with regard to the Morwell sobering-up centre Bendin House is typical:

> I think the saying is that when you work for a Koorie organisation it's just not 9 to 5. It's 24 hours a day, 7 days a week. I think that's one thing that fails to get recognised from funding bodies obviously…It's really important you've got that level of interest in the community because if you're talking about service providers you've got to live dangerously in fact.[566]

The Melbourne Sobering-Up Centre based in Northcote works under similar but possibly more onerous constraints. It serves an enormous geographic area bounded by Pakenham in the east, Geelong in the west, Portsea in the south and Whittlesea in the north. Moreover, it also caters for a transient population from rural areas and interstate who drift to Melbourne. Glenn Howard, the Director of Ngwala Willumbong,[567] the agency responsible for administering the sobering-up centre, argues that the Melbourne sobering-up centre faces much more acute problems because of its huge catchment area, insufficient funding, a significant poly-drug user population and the lack of a close-knit community that may characterise rural centres:

> Melbourne doesn't have a [defined community]...most of the sobering-up centres in the State are set up in rural environments and it's a bit like – I suppose where you live [in small communities] most people know each other, you can always call up people in the community to help out and fund raise things like that. Melbourne's totally different because you get a lot of transient people coming through, such high numbers, and there was never a community justice panel in Melbourne to deal with police contacts with Aboriginal people particularly on drunk and disorderly issues.

The workload of sobering-up centres has been substantially increased by the exponential growth in people presenting to the centres or being transported there by police with substance abuse problems other than or in addition to alcohol abuse. The phenomenon of poly-drug use has been discussed extensively in this Report. In the context of the demands upon sobering-up centres and their workers it is an enormous problem. Sobering-up centres are not licensed to deal with people going through serious drug and alcohol withdrawal. Units for both alcohol and other drug withdrawal are usually attached to hospitals because of the critical health and medical issues involved. For an untrained person to cope with a person withdrawing from a 'cocktail' of drugs is fraught with danger:

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566 Mr Peter Hood, Chairperson, Central Gippsland Aboriginal Co-operative in conversation with the Committee, 26 April 2001.

567 Glenn Howard, Director of Ngwala Willumbong in conversation with the Committee, 9 October, 2000. Some extracts from conversations with Mr Howard in this chapter are repeated from Chapter 7.

> These centres were set up to deal with just alcohol...essentially someone who's drunk is relatively I mean there are dangers but when you're mixing alcohol with a whole lot of other hard drugs and you then bring in people with psychotic episodes, a whole range of mental health issues etc. Then you take that person and you've got a duty of care to look after them and then all these other things then emerge. I mean you could take someone who for all intents and purposes looks drunk, two hours later they're climbing the walls and doing all sorts of things...
>
> One of the big difficulties we've got at the moment is that the police contact us about a person, we go in there, we don't know what they've been on, if they're out of it then we've got really no means of determining what they've been using. We take them back to the sobering-up centre, the person starts withdrawing. We're not licensed or set up as a withdrawal centre. I mean those have to be hospital based facilities and because of the delay in getting people into de-tox which can be up to a couple of weeks, we end up we're stuck with that person. We can't throw them back on the street and yet we could be running all sorts of incredible risks by having that person there.[568]

These problems are exacerbated when police, insufficiently trained in drug and mental health issues, have an inaccurate understanding of what sobering-up centres can and cannot do. The following statement has been quoted in part before in Chapter 7 with regard to liability issues but bears repeating in this context:

> [Police are]... untrained in the assessment of what could be mental health issues and a whole range of things. What they refer to us is a drunk and what we find is sometimes quite different from what we have been referred. Police also have quite an unrealistic expectation of what we can do, we're funded to provide an alternative to incarceration and yet we've been called in by police to deal with domestic violence situations where alcohol and drugs [are involved], missing persons, dead bodies, they call us because we're the only Aboriginal show in town after 5.00pm at night.[569]

Mr Howard reiterates that this is particularly a problem for Melbourne:

> ...it's different to what's happening in the country. The frequency of hard drug use is much less in the country and with the Community Justice Panel to support similar issues for them but not as critical as what's happening you know in Melbourne.[570]

Ideally, Glenn Howard believes sobering-up centres, particularly those in metropolitan districts, should have properly established intake centres. For safety reasons these intake centres should preferably be staffed with at least two workers. This is rarely the case. A sobering-up centre staff worker claims the following scenario is all too familiar:

> So, if you've got a house full of people, and you've got a male being referred and they're sitting in a custody centre for two hours waiting for someone to

568 Glenn Howard, 9 October 2000.
569 Glenn Howard, 9 October 2000.
570 Glenn Howard, 9 October 2000.

> be released then if there's a woman [staff member] back at the house with people who can be withdrawing, going through all sorts of episodes and it's a highly dangerous environment for everyone in the situation and when you load on to that that you could end up with a mix of women, men, young people in a tiny three bedroom dump in X, I call it a dump but it's an inadequate facility. Then, from a management perspective it raises all sorts of risk factors let alone for the people who are there and it worries me that particularly women, some of them are mixing with aggressive men and those sorts of things.[571]

An intake centre would be able to assess and filter potential clients who have serious drug or health problems that require medical attention or hospital, in addition to providing referrals for clients presenting with mental health problems. Such a facility is part of the Perth sobering-up/treatment centre and works well. The caveat would be that the centre must be run by and for Indigenous people. Such a service is far preferable to police just 'dumping these problems on our front door'. The Victorian Aboriginal Justice Advisory Committee (AJAC) supports this proposal. AJAC are aware that:

> ...Victoria Police often refer Koorie people with mental health issues and/or poly-drug use to the Community Justice Panels program and the Sobering Up Centres. The flow on effects of this on these services cannot be underestimated and underlines the need for proper assessments of individuals prior to calling on volunteer services (in the case of CJPs) and sobering up centres which were established to address alcohol misuse, not treatment/withdrawal as per a medical model.
>
> ...the fact remains that, in practice, the informal mechanisms which exist have resulted in unanticipated responsibility being thrust upon individual services and workers... The result of this is that the Sobering Up Centre staff are required to address multi-faceted issues including psychiatric and other mental health issues and poly-drug use for which they are neither appropriately trained or funded to provide.
>
> A similar scenario occurs on a regular basis with the Community Justice Panels program. Workers from both these programs spoke of their fears that one day a Koorie person presenting with these problems could die while in their care.[572]

Submissions to the Review of Koori Drug and Alcohol Services in 1997 from drug and alcohol workers indicated that the lack of a metropolitan Community Justice Panel meant that sobering-up centre staff:

> [n]eed to undertake a significant amount of outreach work, providing 'night patrols' to locate Kooris who are drunk in public and take them to the sobering-

571 The worker prefers to remain anonymous in case funding for the worker's service is withdrawn or reduced due to 'speaking out'.

572 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 8.

> up centre, before they are arrested. Ngwala Willumbong Aboriginal Co-operative asserts that this service [is] *additional* to the standard requirements of a sobering-up centre but is vital in keeping Kooris out of prison, particularly in a metropolitan area where there is no Community Justice Panel to undertake such a service (Department of Human Services 1997, p. 12).

The submission of the Aboriginal Justice Advisory Committee states that under-funded sobering-up centres, and Community Justice Panels in rural areas, in effect:

> [f]unction as informal diversionary programs given that they are currently providing services that are very different to what was originally envisaged. One of the strengths of these programs is that they provide an alternative to Koorie people who come into contact with the justice system.
>
> The position of people who are processed for public drunkenness offences highlights the tension that exists between the law and health sectors, between punishment and rehabilitation.
>
> The true value of these programs lies in their ability to manage this tension – to satisfy the requirements of the law and the requirements of appropriate drug and alcohol intervention.[573]

Ironically, it has been the increase in poly-drug use in Melbourne that has diminished the ability of Melbourne sobering-up centre workers to perform night or community patrols. This is for three reasons. First, there is a more urgent need to monitor those who have mixed drug toxicity problems back at the centre. Second, night patrol work, particularly in the back alleys of inner Melbourne, can also be dangerous. Third, bail procedures at the Melbourne Custody Centre on occasion can be cumbersome. As there is no police officer readily available at the custody centre, it is not unknown for sobering-up centre staff to have to wait for two hours or more in order to have a person bailed into their care. This has flow on effects that can result in the sobering-up centre being on occasion seriously understaffed.

Trying to adequately serve the needs of people with mixed drug toxicity is not the only expectation placed upon Victorian sobering-up centres. Problems associated with having people with psychiatric disorders delivered to sobering-up centres have been discussed at length in previous chapters. Sobering-up centres have also raised concerns with regard to young people:

> Sobering-up centres stressed that their services really did not adequately meet the needs of young people, but as no other more appropriate services were available for this age group, they cater for them to the best of their ability – whether this involves contacting youth workers or their parents, or keeping them in the centre (Department of Human Services 1997, p. 9).

Similar concerns have been expressed with regard to the needs of women. In submissions to the Review of Koori Drug and Alcohol Services in 1997:

> Communities also stressed the need for development of standards for dealing with women coming in to the centre. There are concerns that allegations may

573 Submission of the Aboriginal Justice Advisory Committee (Victoria), April 2001, p. 7.

> be raised if male staff have to deal with women; in addition there are specific cultural concerns about this situation...centres often have to call on the goodwill of female volunteers to assist when a female is admitted to the centre (Department of Human Services 1997, p. 9).

This was certainly the situation in Swan Hill when the Committee visited the sobering-up centre in that rural Victorian town. All women clients were cared for by a local Indigenous woman who was called upon by the male coordinator of the centre at all times of the day and night.

Concern has also been expressed that many women are unable to use the service, as they do not have access to childcare arrangements. A worker from the Melbourne Sobering-Up Centre expresses the added frustration of providing services specific to women with limited funding:

> But where [funding] it becomes incredibly critical is, if I use the Winja Ulupna,[574] the women's house, is virtually six beds for you know the Aboriginal community from part of South Australia, New South Wales or Victoria. And if you accept that women often have more difficulties or more bags to carry as far as child protection being involved, domestic violence and whatever other exploitation they've had through their partners etc. The men don't tend to carry that stuff. They do but not as a whole. It's the women that's stuck with that and having to, through a sobering-up centre trying to get then a women into de-tox and into a facility which only has six people...
>
> See at the moment if you're an Aboriginal woman and you go through the sobering up centre and you're lucky enough to get into de-tox and you're lucky enough to crack it for a bed at Winjya it's a bit like a tattslotto. If you've got the issue with child protection and the kids are off in foster care while you're doing a recovery and not much is happening in between, so when a person finishes in recovery, she's discharged, someone-else is into that bed before it even cools down but nothing's been done at that end – whatever her parenting issues might be or her relationship issues and those sorts of things and again this is where you've got to address those sorts of things if you really want to stop that revolving door spinning so fast.[575]

The fact that Indigenous people are prepared to accept such unrealistic expectations made of them is in part a testament to the strength of their communities and their willingness to work for those communities under extraordinarily difficult circumstances. For example, without staff being prepared to work exceptional hours and the unpaid effort contributed by volunteers to these programmes, they would not be able to function as well as they do in the circumstances.[576] The Aboriginal Justice Advisory Committee states from the outset of the sobering-up centre and associated

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574 The Committee has been told this is the only rehabilitation centre exclusively for Indigenous women in Australia.

575 Representative from Galiamble Aboriginal Drug and Alcohol De-toxification and Treatment Centre, in conversation with the Committee, 9 October 2000.

576 Although the Indigenous community generally appreciates the commitments of volunteers in many Victorian sobering-up centres, in order to guarantee the privacy of its clients, the Melbourne sobering-up centre does not have volunteers working in their centre.

programmes, Aboriginal community organisations were given inadequate funding and resources to address myriad problems associated with alcohol and now poly-drug abuse. Glenn Howard claims that the Aboriginal community accepted a 'very miserable amount of dollars to fix a major problem'.[577] The funding was accepted on the basis that to do otherwise was to neglect the urgent needs of those communities.[578]

When the Review of Koori Drug and Alcohol Services was published in 1997 it recognised that sobering-up centres relied on large amounts of volunteer labour to compensate for relatively low levels of funding and only minimal budget adjustments to account for salary or consumer price index increases. Moreover:

> There are vast disparities in funding levels from region to region, with the implication being that some sobering-up centres have to employ large amounts of volunteer work to provide the service. In addition many alcohol and drug workers believe that they are significantly under-paid given the duties they perform. It is therefore relevant that services be costed at current award rates to provide a more equitable level of funding across the state (Department of Human Services 1997, p. 11).

Four years after the Review it would seem little has changed or improved, at least according to Koorie drug and alcohol workers in the field. One Koorie drug and alcohol worker that attended the forum convened to discuss the Drugs and Crime Prevention Committee's Inquiry into Public Drunkenness was scathingly critical of funding services for sobering-up centres. He claims the shortfall is based on racism and discrimination. Funding Koorie drug and alcohol programmes, he claims, is a case of 'giving peanuts to keep the monkey happy'. Whilst it is doubtful that there is any intentional discrimination in funding arrangements between Indigenous and mainstream agencies, it is testament to the level of frustration some Indigenous workers and agencies feel with respect to current funding agreements.[579]

Frustration has been expressed not only with the quantum of funding but also the way in which it is distributed and the processes that agencies have to follow to procure it.[580]

The Victorian AJAC argues that current annual funding arrangements do not allow agencies to plan for the longer term:

> At the moment an inordinate amount of time is taken up with administrative matters as opposed to strategic planning, research, developmental activities and evaluation. By way of example, Forum participants were informed of one agency funded by 6 regions of the Department of Human Services. Despite

577 Mr Glenn Howard. Comments made at a forum of Victorian Aboriginal Drug and Alcohol workers convened to discuss the Drugs and Crime Prevention Committee's Inquiry into Public Drunkenness., 15 February 2001. This forum is discussed in more detail in Chapter 23.

578 See submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 8.

579 For obvious reasons this worker chooses to remain anonymous.

580 The Committee was advised that Ngwala Willumbong receives funding for the Melbourne Sobering-Up Centre from four regions within the Department of Human Services. Each region is required to provide five percent of its drug and alcohol budget to Koorie drug and alcohol services. This money then funds the sobering-up centre and Koorie drug and alcohol workers.

> repeated requests from the agency to roll the various agreements into one Funding and Service Agreement, the Department has been unwilling to co-operate thus far.
>
> The lack of funding allocated for these programs can be attributed to the fact that diversion generally lies somewhere between Corrections and Health and prevention is left largely undefined in terms of Departmental responsibility. To complicate matters further, there is a lack of understanding generally within Government as to the benefits which can be accrued through diversion, while the lack of agreed outcomes for diversion programs makes demonstrating the value of these programs an almost impossible task. [581]

As such AJAC has submitted the following recommendation to the Drugs and Crime Prevention Committee:

> In line with the Victorian Aboriginal Justice Agreement it is recommended that where appropriate for Koorie community organisations, funding from all departmental sources should be integrated into a single funding and service agreement. Further, funding should be provided on a three year basis consistent with the specified aims of the program.[582]

The operation of Indigenous sobering-up centres: A holistic approach

A central tenet of the Indigenous view with respect to the operation of sobering-up centres is that these centres must be viewed as only one part of a holistic approach to Indigenous health and wellbeing.

The Indigenous concept of health and wellbeing differs from traditional Western approaches. The National Aboriginal and Torres Strait Islander Health Strategy views health as:

> Not just the physical well-being of the individual but the social, emotional and cultural well-being of the whole community. This is a whole of life view and it also includes the cyclical concept of life-death-life. Our working definition of primary health care is essential health care based on practical, scientifically sound socially and culturally acceptable methods and technology made universally accessible to individuals and families in the communities in which they live through their full participation at every stage of development in the spirit of self-reliance and self-determination (National Aboriginal Health Strategy, p. x).

ATSIC (Victoria) also argues that public drunkenness needs to be regarded as a health issue (a person with a problem) not a police issue (an offence to be controlled). Furthermore, the term 'health' must be looked at in broad, holistic and culturally sensitive parameters:

> The police are not able to do more than allow the person to become barely sober enough to be able to leave the lockup. The person's broader health and

581 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 11.

582 Submission of the Aboriginal Justice Advisory Committee (Victoria), April 2001, p. 11.

> social needs are not attended to. The person may not even have had anything to eat and drink, if the police officers consider the person may react to food (eg the person may fall asleep, vomit while unconscious and choke). Yet, Aboriginal people need to be assisted by a range of support services. They may need to be 'detoxed' or sobered up in a closely supervised environment, supported through the side-effects of 'coming down', have accommodation arranged, be reconnected with family and relatives, and simply listened to in order to check out what state of mind they are in (eg depressed and suicidal). Being arrested does nothing to actually resolve any of the issues that led to the public drunkenness. It reinforces a downward cycle of low self-esteem and loss of control. It exacerbates recidivistic tendencies...
>
> Paramount to any such approach is to focus on strengthening Aboriginal families and developing strategies to alleviate family violence, such as places that provide a supportive environment for Aboriginal people to go when drunk (eg Healing Centres), gender specific support groups, mentor programs for younger people, rehabilitative and diversionary programs (eg vocational skills transfers, social youth clubs), anger management counselling, cultural immersion programs, camps and so on.[583]

Indigenous Healing centres and programmes based on holistic concepts of health have been employed in Maori and Canadian Indigenous communities for many years.[584] Part of the holistic model is based on working not just with the individual but with families,[585] couples, children and the broader Indigenous community. Often these 'healing communities' are in relatively isolated rural areas or outside provincial towns.[586] Glenn Howard of Ngwala Willumbong explains the concept:

> [t]here are certainly models around which have demonstrated that if you have a far more holistic approach to dealing with substance misuse then [the results are beneficial]. Some of the Canadian models which look at working with couples, with families and if you've got the woman and kids in child protection, you've got family units you can link the alcohol recovery or drug recovery with parenting programs that sort of thing where you've got a facility to bring whole communities in, or whole families in and take people through a whole lot of structured I use the word "therapy" but...you can deal with relationship issues and all those sorts of things. I mean that to me is the ideal world if you like.[587]

583 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 5.

584 Examples of these programmes can be found at Pound Makers Lodge and Round Lake in Canada and the Taha Maori Programme at Queen Mary Hospital in Hanmer Springs, New Zealand.

585 In Indigenous culture the family has a much broader meaning than the Western nuclear family. It commonly extends to people such as aunties, uncles, cousins and even those who are not immediately related by blood ties.

586 Kalparrin in South Australia is an example of this type. See Chapter 19.

587 Glenn Howard, Director, Ngwala Willumbong in conversation with the Committee, 9 October 2000.

Evidence was given to the Review of Koori Alcohol and Drug Services that stressed the importance of sobering-up centres linking consumers into other alcohol and drug services such as de-toxification and treatment post sobering-up. In the views of the workers, this could best be done where the sobering-up centre is part of a healing centre or at least linked to an integrated model of prevention and treatment facilities managed by and for Indigenous people. One worker who responded to the Review stated:

> Sobering-up services ...could be more appropriately placed within the context of a 'spiritual healing centre', which would be located on a large area of land in the country and allow individuals and families to receive a wide range of health services through a holistic spiritual approach to Koori peoples' health and well-being (Department of Human Services 1997, p. 8).

It was also recommended by the Review that sobering-up centres be allowed to keep clients with their consent at least 48 hours to provide the service user with options for after-care support. In other words, the sobering-up centre, as part of a holistic programme, should also function as short-term accommodation in appropriate circumstances in order to facilitate medium and long-term supports appropriate to the person's needs. A worker from Ngwala Willumbong explains why giving a client some time to recuperate at the sobering-up centre can be so important:

> There's certainly a core group who are continually presenting, but that's almost part of the whole recovery relapse syndrome anyway. Sometimes, people mightn't re-present for twelve months, sometimes a couple of years. It'll just depend on whether or not you can actually link them into services that are going to help them. What I mean by that is that the john's coming into the sobering centre tomorrow and today and he's back again in two days time, then it could be because we haven't been able to find him somewhere to live or we haven't been able to get him into a de-tox situation or we haven't been able to, after the de-tox, been able to get him into a rehab centre. Where we've been able to pull those things off on people then the revolving door on that person really slows down, almost grinds to a halt. The ones who revolve the most are the ones who for whatever reason can't get the follow ups happening – because the people we're getting are presenting with a whole range of problems, their alcohol and drugs is really just the tip of the iceberg. It's all these other judicial – justice issues, health issues, homelessness issues, domestic violence, you know child protection, all those sorts of things.[588]

The holistic model of a sobering-up centre is advocated strongly by two of the key Indigenous bodies in the State.

In its formal submission to the Drugs and Crime Prevention Committee, ATSIC make the following recommendations in accord with these views:

- ATSIC Regional Councils urge a more wholistic and public health approach be adopted when dealing with public drunkenness amongst Aboriginal people, instead of the current policing approach which

588 John, Worker at the Northcote sobering-up centre, in conversation with the Committee, 9 October 2000.

brands Aboriginals as offenders and does little to help them address the underlying problems.

- ATSIC Regional Councils wish to work closely with State Government, to set as a priority the immediate strengthening of existing Aboriginal controlled Sobering Up Centres and to establish an Aboriginal controlled detoxification unit within a broadly focussed Koori Healing Centre.[589]

AJAC has put forward a similar recommendation to the Committee:

> A key recommendation arising from the Forum on Public Drunkenness is a demonstrable need for Aboriginal community controlled treatment facilities which can accept referrals from the justice system of people affected by substance misuse. These facilities would provide a holistic and culturally appropriate response to treatment based on a clinical, preventative, rehabilitative model and linked closely to the Koorie culture and spiritual and emotional well being.
>
> The holistic nature of these facilities is based on the recognition of the interplay of various social issues such as employment, income, health, housing etc and where appropriate the need for a range of support services to address these. To this extent, the success of these facilities and of diversionary practice for that matter is based on initiating the process of social change rather than simply treating substance misuse.[590]

On the other hand, when sobering-up centres do not operate as part of a holistic model but operate alone, there is a risk that consumers 'fall through the cracks'. Sobering-up centre workers told the Committee that often a consumer may be willing to seek on-going treatment, however long waiting lists, insufficient culturally appropriate treatment services and an inability of the mainstream sector to understand the particular needs of Koorie people often meant that people were not able to access these services.

It was thought by many workers who responded to the Review that even the name 'sobering-up centre' was not appropriate:

> It was suggested that a new name be developed, which [takes] into account that services are also provided for people affected by drugs, that services other than just 'sobering up' are [or should be] provided (for example, information provision and referrals), and that the service is considered a community resource[591] (1997, p. 8).

Glenn Howard of Ngwala Willumbong made the same point at the forum on public drunkenness recently. He stated:

589 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, pp 5, 7.

590 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 9.

591 A recommendation of the Review was to rename sobering-up centres 'Koori Community Alcohol and Drug Resource Centres' (Department of Human Services, 1997, p. 14).

> You need a much broader, more comprehensive and encompassing approach. Calling it a sobering-up centre enables government to put only a limited amount of resources into it whereas for Aboriginal people its about health, education and welfare; these are all interlinked.[592]

This position on the nomenclature of sobering-up centres reflects an approach that is viewed by its supporters as not only holistic but less formal, more caring and clearly culturally sensitive. Such an approach need not, however, eschew professional service delivery. Some of the Indigenous sobering-up centres across the State are working according to such models.

Bendin House: A Best Practice Model?

Bendin House, the sobering-up centre based in Morwell, combines both the caring and the 'professional' facets of running alcohol and drug services for Indigenous people. It is an excellent example of 'best service delivery'.[593] As with most Indigenous sobering-up centres, Bendin House operates under the auspices of a community controlled cooperative. The Central Gippsland Aboriginal Co-operative is responsible for a wide range of health, medical, legal, recreational and welfare services. These include:

- *Ninde Dana Quarenook Health Service* (medical, dental, mental health, disability, child and maternal, aged care and many other programmes);
- *Woolartarbe Werna* (Social and Emotional Well-being Centre);
- *Wanjana Lidi* (Family Centre);
- *Gunaj Lidi* (Child Care Programme)
- Legal Advice;
- Housing Programme;
- Drug and Alcohol Programme;
- Juvenile Justice Programme and Youth Group; and
- Cultural Heritage Programme.

Whilst Bendin House is not a 'healing centre' per se, it is linked to all of the above programmes and is physically located next to the Co-operative's premises.

Members of the Committee and staff were privileged to visit the Co-operative and be shown around Bendin House by its manager Mr Ringo Hood. Their impressions were most favourable.

Bendin House, is a seven-bed facility for both men and women. The Centre, although very basic, exudes warmth, dignity and care.

A significant aspect of the Centre's facilities is that each person is allocated a single room. Privacy is considered to be important. However there is one bedroom that has

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592 Mr Glenn Howard. Comments made at a forum of Victorian Aboriginal Drug and Alcohol workers convened to discuss the Drugs and Crime Prevention Committee's Inquiry into Public Drunkenness.

593 This is not to minimise the good work done by sobering-up centres in Swan Hill, Mildura and other areas of the State the Committee has visited. We focus on Morwell simply as one case study of a service that is well integrated with a complete and indeed holistic package of health, welfare, legal and cultural services.

three beds. This is where family members are taken if they are at risk of domestic violence in their Community. If a family comes to the Centre, the staff find alternative accommodation for the violent family member. Referrals are also made to the local refuge.

This is a 'Rolls-Royce service'. Meals are provided and clients are given a shower and their clothes are washed. When the person sobers up they are encouraged to undertake ongoing detoxification and rehabilitation if appropriate. Staff will assist them with referrals to relevant agencies and will also follow up clients by visiting them at home.

Another important aspect of the Centre's mission is its willingness to do extensive outreach work. Centre staff often drive round the areas where intoxicated persons congregate. They will either take intoxicated people back to their homes or the Sobering-Up Centre. Rather than tell groups to move on they will set up a barbecue or buy fish and chips so that drinkers and their family members will get something to eat. This slows down the drinking, lessens the absorption of alcohol and provides at least some basic nutrition. More importantly, this outreach helps staff develop a close relationship with members of their community. Because of such initiatives, workers have found that people are more likely to seek assistance from the Co-operative now than they were before.

Bendin House is also a good example of a sobering-up centre being used as a community resource during non-peak periods. This is similar to the way in which some Western Australian sobering-up centres are utilised during periods of low demand.[594] For example, every fortnight a woman's workshop is held at Bendin House for women who require support with alcohol addiction. The workshops offer practical skills programmes such as gardening and cooking. Lifeskills for men are also viewed as an important part of Bendin House's work:

> Laurie, Peter, Ringo and myself, we're starting up a men's group. And what that aims at is to conduct the young men of our community, a way to spend a bit of personal time with them, to advise them as to how they should be leaders in our community. How they can better support their families to guide them in the right direction so they're not going to be using substances like inhaling and drinking at such a young age and this sort of stuff. We're trying to give them the opportunity to go out and do programs like fishing and golfing and camping and all of these sort of things. Because the only programs they know is sitting in their home, breaking the law, drinking, open fighting, all that sort of stuff. Yes. Because [of] their families. They've seen it through their families you know, generation after generation that that's all they know.[595]

The centre is also available at most times for counselling, both formal and informal or even just a 'yarn':

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594 See Chapter 19.

595 Mr Willie Pepper, Legal Advisor, Central Aboriginal Co-operative, in conversation with the Committee, 26 April 2001.

> If people are around and they want to drop in for a cuppa or have something to eat or kickback then I think we should provide that. The service is not just for sobering-up purposes and therefore it should be a community, well it's actually a community...If people want to come in every day of the week just to have a feed or just to talk I think it's a way of getting around their problems if there are issues and they have them... I think they're safer here than being out in the street. At least you know if you come here you know that you're going to get a feed and you're going to get a good conversation and it's going to be comfortable. And if they come here we'll certainly transport them home. It's best if you just let them come in here and you've gained their confidence.[596]

A key feature to the success of Bendin House, according to its manager, is the close relationship they have with:

- the client;
- the client's family;
- the other government and non-government service providers in Morwell;
- police; and
- publicans and licensees.

A most impressive feature of Bendin House is its relationship with local police. Eighty per cent of referrals to the Centre come from the police.[597] A notable aspect of the work undertaken by the Centre is that it is able to guarantee police that they will have a worker at the police station within an hour to collect an Aboriginal person being held at the police station for being drunk. They provide this guarantee for a remarkably large area covering Morwell, Moe and Traralgon. Ringo Hood explained that Aboriginal people are more likely to become aggressive if they are being apprehended or detained by police, whereas they settle down and usually sleep when collected by a worker and taken back to the centre. If the problem presents as a mental health issue then they call the Crisis Assessment Team. If medical assistance is required an ambulance will be called.

The police cooperate by ensuring that they contact Centre workers and if the police cannot wait for the worker then they will take the person back to the police station.

> [The police] may say well look we've got someone here can you please come and pick them up. We'll wait until you arrive. But the majority of the time they'll take them back to the police station and I think it's more for safety reasons rather than [punitive ones]. It would be irresponsible if they rang us and said Joe Frazer is sitting on the park bench over there, we've got to go but can you pick him up.
>
> But the police that we're dealing with they're really good anyway here, they'll take them into the cells rather than just leave them.[598]

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596 Mr Ringo Hood, Manager, Bendin House Sobering-up Centre, in conversation with the Committee, 26 April 2001.

597 Contrast this with other jurisdictions.

598 Ibid.

In return, the local police respect the work that the Centre does. To a certain extent, however, this has been recently compromised by the local police station having a new intake of young constables from Melbourne. These 'greenies' doing their country rounds are for the most part unaware of the work of the Centre and more generally the cultural implications of working in an area with relatively high concentrations of Indigenous people. The problematic issue of police training and placement in relation to sobering-up centres will be discussed later in this chapter.

Mr Hood believes that the Centre also has a good relationship with licensees. If an Aboriginal person is drunk in the pub the licensee will give the Sobering-Up Centre a 'courtesy call' and a worker will collect the person.

The above discussion indicates how important a sense of community and fellowship is for Indigenous people. It should not be thought, however, that the 'caring approach' which exemplifies this is synonymous with an 'unprofessional' approach. Brendan O'Kane, the Executive Officer of the co-operative, is at pains to stress that all workers at Bendin House are in the process of seeking or are intending to seek professional community development accreditation through La Trobe University:

> This is a bit of a shift for this community to start pushing its community workers to get their accreditation, and the word professional is being used around here now increasingly I think for the first time. It was actually a word you wouldn't use I think five years ago for fear of being regarded as a bit too white. But now we are unashamed to say that's what we're pursuing.[599]

This raises the broader issue of training of sobering-up centre and associated workers. Whilst it is not expected nor desirable that workers in Koorie sobering-up centres formalise their approach to their clients to the point that they alienate them, some basic requirements are desirable and, in the case of first aid, mandatory. AJAC claims that training needs to be specific to the area of drug and alcohol work and must be part of an ongoing process. They recommend that:

> Training is critical to a successful diversionary program. Specific and ongoing training must be provided to staff of diversionary programs and should include key stakeholders such as police, magistrates, court workers and those providing treatment and other services. Training should address the needs of staff and the specific tasks and function each stakeholder is expected to perform.[600]

Mainstreaming, Networking and Protocols

Many Koorie workers believe that the 'caring attributes' that are brought to Aboriginal sobering-up centres are missing in mainstream services. Whilst such a view may seem harsh, it does seem that no matter how well intentioned mainstream services may be, they struggle to come to understand many aspects of Indigenous culture.

Koorie Alcohol and Drug workers find that training with regard to Indigenous issues is inadequate in many of the agencies with which they interact:

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599 Brendan O'Kane, Executive Officer, Central Gippsland Aboriginal Co-operative in conversation with the Committee, 26 April 2001.

600 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 12.

> [A]boriginal people are extremely reluctant to use some mainstream services and we're doing our best with those mainstream services to try and make them more Koorie friendly but it's not uncommon for us in getting somebody to de-tox for them to last a couple of days and just walk out because they feel so alone, isolated and what have you...
>
> I mean the stuff we've been working on for years now is trying to get some mainstream services to work better. You can do that to a certain degree but the most effective methods we've had of getting somebody through de-tox is virtually having an Aboriginal worker with them, particularly for that first six or eight hours. Now that's very resource intensive but we see that as a decent investment because you're actually going to get a person up to that stage, well then you can start addressing all these other sorts of issues, particularly if you get them into a rehab centre, then when the withdrawal stuff has been dealt with and then you can slowly start dealing with all these other particular sorts of problems...
>
> We develop people with all this stuff, audit tools and cultural framework tools to try and help mainstream agencies address some of the problems because what you tend to hear is an argument that Aboriginal people will not use mainstream services and what you don't hear is what's wrong with that mainstream service that is stopping Aboriginal people from coming in the front door. I mean if it was a milk bar, you'd be really worried about do you have the right products, have you got the right hours, have staff got the right attitude, things like that. So, we're doing stuff with a lot of agencies to try and get those things to change to make those services more accessible. But it's a real grind to be able to do it. We're funded to do A and we're trying to do B C & D as prevention tools.[601]

Indeed, a major concern of workers expressed at the public drunkenness forum was that sobering-up services may be 'mainstreamed' if public drunkenness offences are decriminalised and an expanded sobering-up centre programme is put in place. In the words of one participant: 'Will we have huge sobering-up centres that Aboriginals will be forced to attend along with non-Indigenous people?' A lack of sensitivity or at least understanding of the culture and customs of Indigenous people – whether they be urban, rural or tribal Aboriginals, is one of the main reasons Indigenous community groups are advocating for their own community run sobering-up centres in Perth and Adelaide.[602]

Mainstreaming, however, is not to be confused with cooperative reciprocal partnerships and protocols with mainstream agencies, according to Koorie drug and alcohol workers.

During the consultations for the Review of Koori Drug and Alcohol Services in 1997, it was apparently agreed by most stakeholders that to ensure continuity of care for

601 Glenn Howard, Director, Ngwala Willumbong in conversation with the Committee, 9 October 2000.

602 See Chapter 19.

service users, sobering-up centres should develop and maintain linkages with mainstream alcohol and drug services, hospitals, police, mental health services and the Office of Corrections. In turn, these agencies should make concerted efforts to develop culturally appropriate training packages for their staff and these should be conducted, wherever possible, by Indigenous trainers. For the most part these initiatives have not been developed. For example, according to many Indigenous groups the training of Victoria Police from recruits to senior members is woefully inadequate. All police need to undertake culturally sensitive training with regard to Indigenous issues. It is not a matter of training only police members stationed in areas where there are high concentrations of Indigenous people. The rotation system of placement in Victoria Police means that every police member may serve in a region in which a knowledge and understanding of issues pertaining to Aboriginal people is essential. A lack of sensitivity amongst 'front line constables' has the ability to undo a lot of good work which may have been done by previous efforts. Again, the Committee stresses the point made earlier in the context of the Western Australian system. The individual police officer, his or her practice and personality, can make an enormous difference, for better or worse, in the way in which public drunkenness is dealt with. This is particularly the case in small rural towns.[603]

The problem is not restricted to country towns, however. Glenn Howard of Ngwala Willumbong recounts that during the Melbourne Grand Prix an influx of 'ring-in' police has the potential to exacerbate tensions between local Aboriginals and law enforcers:

> Councils will become more involved as the Grand Prix happens. The heat will step up on Fitzroy Street. Local St Kilda police if they deal with it, it will not be too bad. *They* will leave Catani Gardens alone but out of town police who act as reinforcements will probably arrest and move on at fairly high levels.[604]

The problem of inconsistent policing is not unknown to workers from the Morwell sobering-up centre. Generally the Morwell Co-operative staff have a 'fantastic' relationship with the local police:

> Even with the police. A lot of the police stations now, back 12 or 10 years ago, they would charge you for anything. Now we've got to the stage where the Police will call us before they even charge them. And talk to you about them and so on and they've actually let a few of them go... Police are starting to be more culturally aware of the needs for the Koories, virtually from the kids right through to the adults. So that's taken a long time to erase that barrier.
>
> But one of the problems that I've found just now is that going back 4 or 5 weeks ago most of the Police within the Latrobe Valley, there's always a really good bunch because they're guys that you've known and like we've worked with for many, many years. And now we've just had an influx of about 25 to 30 new soldiers out of the Academy and that's been, it's just been a nightmare,

603 See Chapter 19.

604 Mr Glenn Howard. Comments made at a forum of Victorian Aboriginal Drug and Alcohol workers convened to discuss the Drugs and Crime Prevention Committee's Inquiry into Public Drunkenness.

> chaos. Because with the other senior staff they'd ring you up, they'd welcome you to the stations and you could work out those [issues], whereas you get these new supermen, they come in and they think that you know their way.
>
> I mean we get the call to come down and you get down there and before they'd open the door up and you'd just walk straight in. Whereas now these young fellows come out – oh yeah who are you blah lah lah, where are you from, just a moment and they'll go out and come back in, who do you have to speak to, go back out, come back in... Now if these guys were accustomed to just being a little bit more considerate or culturally achieved of how things are done in the areas or the zones we wouldn't have any of this problem.[605]

Willie Pepper believes the key to minimising this conflict does lie in the amount and the content of the training that police members receive with regard to Koorie issues. Moreover, such training cannot be restricted to lectures at the Academy, particularly by a non-Indigenous instructor. It should be ongoing and take place in the field:

> I think it's essential that blokes like us need to get in there to welcome these guys down to introduce them [police] to how we deal with things... And that's why I think it needs to go back to us going around to each station saying listen we're here, even if we go around in a group, or I'd prefer to get away from us going to a police station. I'd prefer all these young fellows to come around here so we can show them. We'd show them about, we'd show them what we've got and how we can assist them and we can go from there... So I mean a lot of the young fellows that get down here from the Academy, it would probably be good if whoever was in charge could get them together, or bring them down like we're saying. And we'll sit down and have a yarn and say well this is how things are being done now, this is how it used to be, you know coppers used to run around kicking doors and everything else, but it's not like that now. What happens is the coppers if they want to see somebody they'll ring any of us, do you know where this young guy is, okay we'll make a time and bring him in and it's done that way. So it's like an agreement this way.[606]

It has long been advocated that these 'agreements' be formalised into flexible but clear and certain protocols. The Review of Koori Drug and Alcohol Services recommended in 1997 that:

> Formal protocols should be developed for referrals made to or from large organisations such as the police, office of corrections, hospitals and general practitioners, but that linkages with individuals in other services are often better developed through the maintenance of a positive, trusting relationship (Department of Human Services 1997, p. 10).

This recommendation is also endorsed by the Final Report of the *Review of the Commonwealth's Aboriginal and Torres Strait Islander Substance Misuse Programme.* The Report states that sobering-up centres are most effective when linked in partnership

605 Mr Willie Pepper, Legal Advisor, Central Gippsland Aboriginal Co-Operative, in conversation with the Committee, 26 April 2001.

606 Mr Willie Pepper, 26 April 2001.

with other Indigenous and non-Indigenous government and non-government agencies:

> Diversionary programmes often have a limited span if they are not part of a comprehensive set of strategies to deal with public drunkenness. Other agencies must become involved – women's shelters and refuges, treatment agencies and hospitals. Formal and informal procedures involve police delivering people to an Aboriginal organisation/community organisation or similar facility as an alternative to incarceration. Workers must have skills to adequately deal with intoxicated people. Sobering-up shelters shift the focus to care rather than punishment and are a successful initiative to reduce personal and community harm and in preventing custodial action (Department of Health and Aged Care 2000, p. 50).

Protocols minimise the potential for uneven and inconsistent policy approaches to public drunkenness and uncertain relations with sobering-up centres and associated agencies. They can be comprehensive documents outlining a range of reciprocal responsibilities, powers and duties such as that between the New South Wales Police and New South Wales Departments of Health and Community Services.[607] Alternatively, they can be smaller agreements confined to a limited area between local agencies. The protocol between the Tennant Creek Police and the Julalikari Council is an excellent example of this type.[608] Both types of protocol or agreement have been recommended by representative Indigenous organisations in their submissions to this Inquiry:

> ATSIC Regional Councils call for something like the NSW "Protocol" to be developed in Victoria, between themselves and other relevant Aboriginal organisations (such as Victorian Aboriginal Legal Service, Community Justice Panels, Aboriginal Hostels and sobering up centres) and the Victoria Police and other relevant Government Agencies (such as Dept Human Services) (ATSIC).[609]

> The Victorian Aboriginal Justice Agreement recommends that Victoria Police develop local protocols with Koorie communities. These protocols would cover service delivery and be developed to address issues of concern such as public drinking. It can be argued that the need for such protocols would be all the more relevant in the event that public drunkenness is decriminalised given that Victoria Police would be seeking to access Koorie based programs and services on an increasing basis (AJAC).[610]

Finally, it is clear that sobering-up centres will be at the forefront of any new system to deal with public drunkenness and its associated problems. If this is the case, it is imperative that comprehensive guidelines and standards be developed to assist sobering-up centres in their daily operations and ongoing planning. Such guidelines

607 See Chapter 19.

608 See Chapter 19.

609 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 9.

610 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 14.

should be negotiated and implemented with funding and overseeing bodies in collaboration with the Indigenous organisation responsible for the sobering-up centre. The Victorian ATSIC takes this position further. It argues that Indigenous groups must become key participants in and representatives on government policy bodies pertaining to the health and welfare of Indigenous people. To this end:

> ATSIC Regional Councils recommend that they be provided with a position on alcohol and drug specific advisory bodies, such as the Premier's Drug Prevention Council and the Turning the Tide Taskforce, so that the views of Indigenous Victoria are able to influence government policies and legislation.[611]

Moreover, programme evaluation of sobering-up centres pursuant to such standards should be done in consultation with the Koorie community and with the involvement of Koorie people in the design and implementation of the evaluation process. AJAC claims that if this is not done it '...significantly impacts on the ability of Government agencies to obtain a true and transparent picture of service delivery to Aboriginal communities'.[612] For years, Indigenous sobering-up centres have argued that they are 'left in the dark' as far as clear and precise service requirements and operational guidelines are concerned. Indeed a senior employee of one Aboriginal cooperative has told the Committee that only by borrowing a standards manual pertaining to Queensland sobering-up centres has his agency any idea as to what one government expects as appropriate benchmarks or standards.[613]

AJAC has strongly recommended in its submission to this Inquiry that service standards be developed to assist sobering-up centres:

> There needs to be clear lines of communication between the various stakeholders involved in the delivery of the program. This should include formal mechanisms which outline the roles of stakeholders, policies and procedures associated with referral, assessment, service guidelines and specific ongoing training for workers involved in the program.[614]

The Victorian Department of Human Services has recently commissioned an independent evaluation of Koorie Community Alcohol and Drug Resource Services and Workers. This review is currently being conducted by the Turning Point Alcohol and Drug Centre. Its terms of reference will cover sobering-up centres. It is hoped that the review will address the issues of appropriate standards and benchmarks and indeed all of the concerns that have been raised by Victorian Indigenous communities and expressed in this chapter.

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611 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 11.

612 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p .12.

613 Victorian Drug and Alcohol Worker in conversation with the Committee. The worker prefers to remain anonymous. The Queensland guidelines are a comprehensive package covering every conceivable contingency for the establishment and administration of sobering-up centres (called Special Care centres in Queensland). Staff are provided with clear procedures, roles and protocols for working in such centres. See *Guidelines for the Establishment and Operation of Special Care Centres* 1999, Queensland Health Department.

614 Submission of the Aboriginal Justice Advisory Committee (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 11.

23. Decriminalisation of Public Drunkenness: Indigenous Voices Speak

That Indigenous people can speak with both one and many voices can be clearly discerned in this chapter. It is drawn from the views of Indigenous community workers across Victoria. These workers came together in a forum in February 2001 to discuss the Drugs and Crime Prevention Committee's Inquiry into Public Drunkenness. The forum was organised by the Victorian Aboriginal Justice Advisory Committee and convened by its Chairperson, Mr Alf Bamblett.

The Victorian Aboriginal Justice Advisory Committee (AJAC) was formed following the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It operates in all States and Territories as an independent monitoring body overseeing the implementation (or not, as the case may be) of the Royal Commission recommendations. AJAC representation is drawn from a network of locally or regionally based Aboriginal agencies and is served by a central Secretariat.[615]

The one-day Forum on Public Drunkenness held on 16 February 2001 brought together around 45 delegates from Koorie organisations throughout Victoria to discuss the implications of the Inquiry into Public Drunkenness. The Forum's focus was also to examine current practice in diversion of Koorie people charged with drunkenness and to explore best practice diversionary models of service delivery.[616]

Forum participants included alcohol and drug and health workers from local and state-wide Koorie organisations, client service officers from the Victorian Aboriginal Legal Service, Community Justice Panels, Victoria Police, the Victorian Aboriginal Community Controlled Health Organisation Inc, the Victorian Aboriginal Education Association Inc, the Victorian Aboriginal Community Services Association Limited, the Aboriginal Housing Board of Victoria, the Department of Justice and the Aboriginal and Torres Strait Islander Commission.

The morning sessions commenced with Members of the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness addressing the Forum and informing participants of its Terms of Reference and the progress of the Inquiry.

615 AJAC has produced a submission to the Drugs and Crime Prevention Committee based on the results of the forum and previous community consultations undertaken by them. This submission has been referred to frequently by the Committee in this chapter.

616 It is stressed that the views expressed in this chapter reflect the opinions of the participants only. Unless otherwise indicated they are not necessarily the views of the Drugs and Crime Prevention Committee.

The Chairperson of the Victorian Aboriginal Justice Advisory Committee, Mr Alf Bamblett, then provided an analysis of Victorian legislation vis a vis the practices in other jurisdictions. He then presented a thorough outline of issues pertinent to Indigenous communities in this State with regard to public drunkenness. Some of the problems raised were:

- The problems with the way in which various Aboriginal health, drug, and alcohol policies and programs are funded. The lack of ongoing and recurrent funding meant agencies spent inordinate amounts of their time writing funding submissions rather than concentrating on the work for which they were paid.
- The fact that members of the Indigenous community on occasion can go down to the cells to bail people out for public drunkenness and be locked up themselves.
- The fact that community justice panels and sobering-up centres are not in every region and that workers from those programmes often have to cover large distances. On occasion this results in intoxicated persons being held in police cells for longer than they should.
- The fact that on occasion apprehension legislation in jurisdictions that have decriminalised public drunkenness legislation has been used as a first point to 'get Aboriginal people in' for other offences. Concerns were also expressed that if public drunkenness offences were decriminalised in Victoria, police would simply use other charges such as indecent language or conduct provisions to police Indigenous people.

Alf Bamblett's introductory remarks were followed by a panel discussion made up of a representative from the Geelong Community Justice Panel, Glenn Howard from Ngwala Willumbong and Willy Pepper from the Victorian Aboriginal Legal Service (VALS). Their individual and collective view seemed to be that:

- There are still problems with regard to the police interacting with the Aboriginal community. Police are still not calling the Community Justice Panel members as frequently as they should. Problems have also been experienced with police identifying someone of Aboriginal descent. The Community Justice Panel member related anecdotal accounts of police officers not believing at the interview stage that the client was an Aboriginal. According to Mr Edwards, many Aboriginal people are apparently not being asked whether they are Aboriginal in circumstances which clearly require it. Mr Edwards believes this is in clear breach of Victoria Police operating procedures.
- In one sense, whether the public drunkenness laws are decriminalised or not 'is irrelevant'. It was stated that unless you consider prevention, education, and treatment issues and develop culturally sensitive strategies to address them, then the establishment of sobering-up centres will be mere 'band-aid' solutions.
- Funding policy is far too compartmentalised and spread out across alcohol and drug, mental health and justice departments without sufficient coordination.

Following these presentations, the floor was opened up to forum participants. Forum participants argued that drunkenness and behaviours associated with it are best addressed through a holistic health paradigm rather than by the criminal justice

system. To date, the criminal justice system has failed to address these issues in any way other than a punitive one.

The Koorie community members present at the Forum argued for the need to address the underlying issues of substance abuse. Some of the areas in which participants were in overall agreement are as follows:

- Sobering-up centres are not of themselves sufficient measures to address the problems of public drunkenness in the Indigenous community. They provide an essential service but cannot be seen in isolation. They need to be part of a comprehensively linked and holistic system of health and drug services. These would include, sobering up centres, de-tox centres, rehabilitation programmes and 'healing places'.
- Relations with the police emerged as a major problem for most agencies. This varied from the unrealistic expectations police have of sobering-up centres to the blatant racism expressed by certain officers to members of the Aboriginal community. Nonetheless, there seemed to be a consensus that where police–Aboriginal relations were good, programmes worked far better and more efficiently.
- Aligned to the above point, participants also regretted the generally unsatisfactory relationship between Aboriginals and local government, particularly in rural towns. Participants felt that local public drinking regulations were generally enforced discriminatorily in country areas and in areas of Melbourne such as St Kilda.[617]
- A major complaint of participants was the lack of coordination between government services and departments. Often an agency may be funded from four different sources. This leads to confusion, uncertainty and duplication of effort in areas such as funding submissions, programme guidelines and accountability structures. A lack of coordination amongst Aboriginal organisations themselves was also complained of.
- Poly-drug use and the associated problems were seen as a huge problem compared to ten years ago. Of particular concern to some groups was the prevalence of chroming and other forms of inhalant abuse amongst young Aboriginals.
- Duty of care and liability questions were seen as important. It was felt that any new system following decriminalisation must have clearly delineated responsibilities for the care of intoxicated persons, particularly between police and sobering-up centres or other health agencies.

Most participants agreed that there was a need for a broader range of options allowing for different levels of intervention than were currently available. The issue of resourcing, in terms of both financial and broader support for these programs, was seen as vital to their success. The forum participants agreed that the principles that should guide the development of prevention and treatment facilities should be based on the principles contained in the Victorian Aboriginal Justice Agreement. These principles:

617 See Chapter 16 on local government.

> Recognise that improved justice outcomes for Aboriginal people require Aboriginal community and government agencies with relevant and related responsibilities to work together to achieve specific goals/outcomes.
>
> Recognise that improved justice outcomes will only be achieved when the Aboriginal community and organisations are empowered to act on their own behalf and when adequate resources are available (Department of Justice, Victoria, Victorian Aboriginal Justice Agreement 2000, p. 26).

Participants at the Forum had divergent views regarding the issue of decriminalisation of public drunkenness as an offence. The following responses indicate the concerns that participants expressed with regard to possible decriminalisation.

- Decriminalisation or a change to legislation is a necessary but not sufficient reform. Decriminalisation will not work without a substantial injection of funding into the infrastructure required to treat alcohol related harms.
- There was a great deal of discussion regarding police powers to detain intoxicated people. This was based on the fact that police are currently required to follow specific protocols and procedures and must follow minimum standards of care. A great deal of discussion centred on whether another agency/program would be able to replicate these procedures and standards and indeed if this was advisable. One community worker from Swan Hill stated, 'if we take away responsibility from the police, if there is decriminalisation then there will be more drunks in the streets and more deaths. At least police now have a duty to follow protocols of medical attention'.
- An ATSIC Regional Councillor expressed concern that one of the implications of decriminalisation would be an increase in domestic violence. This view has been expressed by many people with whom the Committee has met. Forum participants argued that protocols must be established that prevent intoxicated persons being taken back to the family home if it is thought there is a likelihood of domestic violence occurring.
- The Community Justice Panels representatives at the Forum referred to the importance of the relationships established with Victoria Police, which resulted in the increased use of cautioning rather than arrest. It was felt that the building of strong collaborative arrangements, such as those established in the Morwell district, was critical in terms of diverting Koorie people from the justice system.
- On the other hand, it was argued that the decriminalisation of drunkenness would have little if any affect on the degree to which Koorie people come into contact with the justice system, given the inconsistent application of the law (such as police cautioning). Anecdotal evidence of increased police arrests during the fruit picking season and new police recruits harassing Koorie youth were examples often used to support this contention.
- Many participants were somewhat cynical about the prospect of decriminalisation. They believed if public drunkenness was no longer an offence, police would simply use other public order offences and resisting arrest as a means for detaining or arresting Koorie people.

- Many of the participants who supported the decriminalisation of public drunkenness did so on the basis that it was important that Aboriginal people do not receive convictions for this type of offence. It was argued that this is particularly relevant for young Koorie people who, if convicted of this offence repeatedly, may build up a problematic relationship with police as a consequence.
- The speakers were divided as to whether decriminalisation should not occur prior to the necessary services being established.

That not all of the forum participants have uniformly welcomed the prospect of decriminalising the offence of public drunkenness does not surprise the Committee. Indeed, some of those Aboriginal people working in sobering-up centres, community justice panels and various community agencies with whom the Committee has met have also have stated that without proper diversionary programmes in place decriminalisation could create more problems than it solves.[618]

This view is reflected in the official recommendations of the Forum as outlined in the submission of the Aboriginal Justice Advisory Committee to the Drugs and Crime Prevention Committee. The following includes some of the most pertinent points.

- The key principle, which lies behind the recommendations made by the Royal Commission, is the need for law reform to eliminate police intervention in unnecessary cases on the one hand, and on the other hand to improve police management of public drunkenness through the provision of diversionary programs and services (such as sobering-up centres). Central to this is the emphasis, throughout the Royal Commission Final report, on involving Aboriginal communities in establishing an efficient and effective service delivery model in partnership with Government agencies.
- Participants *indicated a preference for decriminalisation of public drunkenness* but in the context of strengthening and augmenting the existing service system and devising meaningful treatment programs which will address drunkenness/substance misuse from a holistic standpoint.
- Forum participants believe that, at the end of the day, decriminalisation in and of itself will not reduce the over-representation of Aboriginal contact with police and the justice system. There is a demonstrable need for Aboriginal community controlled diversionary programs and services, which are adequately funded, with properly trained workers and underpinned by a clear set of policy guidelines. In all, this must be driven by a partnership approach between Government and the Koorie community which recognises and pays due respect to Koorie involvement.[619]

This is also the view of the Tumbukka and Binjirru (Victoria) Regional ATSIC Councils, which had key representatives present at the Forum. ATSIC claims that the major players or stakeholders that have influenced legislation and policy with regard to

618 Indeed, one worker in regional Victoria told the Committee that she would prefer to see the offence of *habitual* drunkenness re-instated. She believed this offence should result in the compulsory penalty of long-term placement in a drug rehabilitation centre. 'This is the only way we can save our people from dying…' Aboriginal Community Worker in conversation with the Committee. For obvious reasons the person prefers to remain anonymous.

619 Submission of Aboriginal Justice Advisory Committee to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. April 2001, p. 14.

alcohol use have been traditionally the regulatory authorities such as the courts, police and local governments or those with commercial interests such as the alcohol, entertainment and advertising industries. The involvement of welfare and community groups, particularly Indigenous ones, has been less apparent. The submission from ATSIC to this Inquiry stressed that:

> Peak and related Aboriginal organisations, such as the ATSIC Regional Councils, Victorian Aboriginal Justice Advisory Committee, the Aboriginal legal or health services or the Aboriginal alcohol and drug sobering up centres have had insufficient input to related government policy... ATSIC Regional Councils recommend that they be provided with a position on alcohol and drug specific advisory bodies, such as the Premier's Drug Prevention Council and the Turning the Tide Taskforce, so that the views of Indigenous Victoria are able to influence government policies and legislation.[620]

The Victorian Aboriginal Justice Advisory Committee, on behalf of the Forum participants, stated that the Victorian Parliament has been given an historic opportunity to think 'outside the square'. To not only decriminalise public drunkenness offences but to develop and implement the services and strategies that will ensure decriminalisation is not merely a hollow victory for Indigenous Victorians. AJAC concludes its submission by stating:

> The 45 participants at the Forum and so many others are leaders of their communities and have the ability and the willingness to drive change. This must be galvanised and supported by Government through partnerships, strategic planning and resourcing. Otherwise – what exactly is the alternative in the face of yet another lost opportunity?
>
> In a nutshell, the Victorian AJAC contends that the Aboriginal leaders and drivers are ready, willing and able to inspire and create the services and programs which will see meaningful outcomes for the Koorie community. We await a response from Government.[621]

620 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001.

621 ibid, p. 15.

PART I:
The Differential Impact of Public Drunkenness

24. Homelessness, Young People, Women and Mental Health

As the Inquiry has progressed, what initially seemed to be a relatively straightforward problem to address has proved to be a social issue of great complexity and difficulty. This has been in part because the problems associated with public drunkenness in Victoria are by no means restricted to any one group within the community. It would seem that there is no one problem, issue, or community associated with intoxication in public. Rather, problematic public drinking takes on different forms and guises and creates different dilemmas and challenges in addressing the Inquiry's terms of reference, depending on the specific group within the community. The Committee has identified the homeless, young people, women and people with mental health problems as being groups for which public drunkenness impacts upon differentially. Policies will need to be implemented that are tailored to the particular needs of these discrete groups.

Homelessness

The Committee is aware of the enormous social problems associated with homelessness in Victoria. Many of the agencies and individuals with whom the Committee met have stressed the links between homelessness, poverty and substance abuse. The Ministerial Advisory Committee overseeing the Victorian Homelessness Strategy (VHS) has recently published a comprehensive working report on Homelessness in Victoria[622] (hereinafter cited as VHS Report). It introduces this Report by stating:

622 Victorian Homelessness Strategy, *Building Solutions for Individuals and Families Who Experience Homelessness* Working Report of the Ministerial Advisory Committee, Department of Human Services, Victoria, April 2001, p. 3.

People who are homeless or at risk of homelessness also experience a range of other difficulties:

- Some of the poorest health situations in our society;
- Lower rates of literacy and numeracy, and lower education standards, than the rest of the community;
- High rates of family breakdown and violence;
- Increasingly high rates of substance abuse;
- Very high levels of employment, and very poor access to employment opportunities.

Of particular concern is the high levels of related homelessness and substance abuse amongst young people and people with mental health or psychiatric conditions. The image of the homeless person with substance abuse problems being an elderly 'wino' is sadly out of date.[623]

The VHS Report estimates that '...approximately 18,000 individuals, including some 2,900 children will be homeless in Victoria on any given night' (VHS Report 2001, p. 13). Furthermore, research conducted by Hanover Welfare Services in Melbourne has estimated that approximately 25% of the adult homeless population have major issues related to alcohol use. It also states that homeless people are 7.5 times more likely to be heroin dependent compared to the general population (Horn 1999).

These are alarming statistics. They reflect the reality that substance abuse, including alcohol addiction, can be 'both a major cause and a consequence of homelessness' (VHS Report 2001, p. 58). Amongst people with mental health problems alcohol can be used as a form of self medication.[624]

The following factors have been identified by the Homelessness Strategy as being of critical importance in addressing the links between homelessness, alcohol and drug use:

- Many providers of homeless assistance acknowledge that their facilities and traditional models of operating and staffing are not able to cope with the demands that increasing drug use has made on their services;
- Particular difficulties have been reported for youth refuges, adult crisis supported accommodation and some family violence services. These services do not always have the resources or skills base to support residential clients who are active drug users in a manner consistent with their duty of care to other residents and responsibilities to staff under Occupational Health and Safety legislation;

623 This is not to underestimate the 'hidden population' of elderly people with serious alcohol problems. These are a client group that if not 'on the streets' are often overlooked. See National Clearinghouse for Alcohol Information, *Alcohol and the Elderly,* May 1982.

624 See Mental Health section in this chapter. The South Australian CHAST programme referred to in a later section in this chapter on mental illness is certainly one of the more integrated and worthwhile initiatives that the Committee has become aware of in its attempts to link service provision for the homeless, the drug dependent, the mentally ill, youth and Indigenous people.

- The fact that most residential post drug treatment options are shared housing options that require total abstinence;
- The total abstinence model does not recognise the reality that some people with substance abuse issues will take many attempts to get clean, and that eviction from housing will further destabilise them, rather than assist [recovery];
- Options such as transitional accommodation linked to drug treatment services have difficulty responding in a timely way; and
- Funds have been made available through the Community Support Fund for a trial to strengthen the capacity of the major inner city crisis accommodation services, to assist their drug using clients and to test more responsive approaches to pathways out of homelessness and drug use.[625]

The people with whom the Committee has met who work in the welfare, homelessness and drug and alcohol sectors are all agreed that responsive and flexible support and accommodation need to be provided for people with dual problems of homelessness and substance abuse. Service provision must recognise the reality of the dual nature of these problems. Otherwise one experiences the problems associated with homeless people deliberately becoming intoxicated in order to access a bed for the night at sobering-up centres This had been the problem for many years in the sobering-up centre and proclaimed places in Sydney. Proclaimed places were being used for purposes for which they were not intended.

Major Brunt of the Salvation Army Bridge Programme (Drug and Alcohol Services) in Melbourne has explained to the Committee the problems associated in working with people who may be both homeless and substance dependent. Such people in his view tend to 'fall through the cracks':

> The issue, particularly as it affects homeless people, is also intensifying. Our homeless centres, especially as they now operate, contain probably around 20 per cent of people whose primary problem is alcohol related. Of course the homeless persons centres are changing dramatically in the Melbourne central business district. At present the drug of choice is heroin at the three major crisis centres. That has changed the way things happen. But at the same time the police and others are talking about where to put people who are homeless and alcohol affected at that point of time. There seems to be almost nowhere in this state to place those people – they do exist – and certainly we are particularly concerned about the ones who cannot look after themselves.
>
> I mentioned in my opening remarks that our major concern is the need for sobering-up facilities. Our experience has taught us that rather than being set up and managed largely alongside accommodation services, as is the case with the proclaimed places in New South Wales, such centres should be part of drug and alcohol treatment services with clear links to detoxification and

625 *Building Solutions for Individuals and Families Who Experience Homelessness,* Working Report of the Victorian Homelessness Strategy, Ministerial Advisory Committee, April 2001, p. 58.

> rehabilitation where necessary. That is not to say that a large percentage of people would go that way, but we need to ensure those doors are open.
>
> The problem that we had with the proclaimed places that we operated in Sydney was that they became almost up-market skid-row houses – that was how they were described. The people using the homeless persons facilities could get themselves intoxicated, find themselves better accommodation and ensure they were looked after better in the proclaimed places than they were in the hostels themselves. That revolving-door process became a nightmare for staff and management – but where it is clearly linked to detoxification facilities there is a need for it.[626]

To a certain extent the problems experienced in New South Wales have been overcome by the use of 'blended services' and the operation of 'The Protocol'. These initiatives have been discussed in the case study on New South Wales earlier in this Report. To reiterate briefly, however, 'blended services' signifies a system whereby one building may contain a proclaimed place or sobering-up centre with a certain amount of beds for persons civilly detained under the New South Wales legislation. The other beds will be usually part of a hostel for homeless people with or without substance abuse problems. The Protocol[627] has been developed as a holistic case management approach to administering and providing services to homeless persons with addictions to alcohol and/or other drugs. The Protocol assumes that people who are taken into civil detention under the Intoxicated Persons Act are homeless or at risk of homelessness. The Protocol envisages a division of responsibility between Police, Health and Community Services Departments with formal liaison and referral procedures put in place between these agencies.[628]

The Salvation Army recognises the complexity of the inter-linkages between homelessness, poverty and substance abuse. It believes three broad types of service provision need to be established. First, services for the homeless without substance abuse problems, or not in need of services such as sobering-up centres need to be established. Second, sobering-up centres need to be linked to, although not necessarily part of, detoxification and other treatment facilities. Third, accommodation services for the substance dependent homeless need to be provided. The Salvation Army is currently establishing such a service in collaboration with Hanover Welfare Services and Ozanam House run by the Society of St Vincent de Paul.

One of the concerns of the VHS Report was the fact that most residential post-drug treatment options are shared housing options that require total abstinence. They argue that in many cases this is counter-productive, hindering rather than assisting any chance of 'recovery', particularly for the itinerant and habitual alcoholic. One agency that does not require its clients to be 'clean' or alcohol free is the Wintringham Centre.

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626 Major David Brunt, Salvation Army Bridge Programme, Evidence before the Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 8 November 2000.

627 Formally known as *Protocol between Department of Community Services, New South Wales Police Service and NSW Health for Provision of Services to Homeless People who are Affected or Addicted to Alcohol and/or Other Drugs*.

628 See Chapter 19 for a detailed discussion of the Protocol.

The Committee has already referred to the impressive work of Wintringham.[629] Wintringham operates a range of aged-care independent living hostels for elderly homeless and at-risk men and women. The organisation also provides:

> ...an extensive outreach and community support network where support and personal care services are delivered into the boarding houses and hotels and flats that many of our elderly clients live in. In addition we also employ street workers who assist homeless elderly people who are sleeping rough or who are economic, physical or chemical prisoners of some of the more ruthless landlords that still exist in depressingly large numbers (Lippmann 2000, p. 18).

It is Wintringham's philosophy that comfortable housing in dignified surroundings must be provided to [elderly] people with alcohol addictions or other substance abuse problems. Moreover, the clients of Wintringham are not prohibited from drinking in or at the premises. Whilst Wintringham staff will certainly facilitate people into ongoing treatment options, this is not necessarily the aim of the agency. The Wintringham rationale is simple – to provide a pleasant and non-punitive place for the homeless person with alcohol related problems who would otherwise be on the street or in hostel type accommodation where abstinence is expected. The aim is not 'recovery' per se. This approach is somewhat aberrant in the fields of aged care and homelessness:

> It upsets a lot in the aged care industry, our attitude on alcohol. It does upset them. They think that we're irresponsible but as far as I'm concerned, I want to be able to call the shots on my own life when I get to that age and these guys should be able to too.[630]

For Wintringham the key rationale and aim of their practice is to provide the most 'down and out' of Melbourne's elderly with some quality of life before they die:

> ...now obviously you can't build enough Wintringhams to cover every public drunkenness issue, and we do have, even here, people who are very drunk and very abusive and violent, but there is no question that their behaviour changes and they feel better about themselves. As I say, we had a 4th birthday party here yesterday, we had a woman who came to me and was telling me about her sister who lives here, what she was like, she was lousy, she lived on the streets, she was just destroyed, mentally, everything, all through the alcohol. She still drinks here, but she drinks so little, the brain damage is still there, that will never pass, but she gets her hair done, she's pleased with herself, she writes us notes, she's become, she's rejoined the human race I guess.[631]

The Chief Executive Officer of Wintringham, Bryan Lippmann, believes that public drunkenness offences by their very nature punish the elderly and homeless. If you are

629 See also Chapter 19.

630 Mr Bryan Lippmann, Chief Executive Officer, Wintringham, in conversation with the Committee, 25 July 2000.

631 Mr Bryan Lippmann, Chief Executive Officer, Wintringham, 25 July 2000.

homeless, itinerant and alcoholic you have no choice but to drink and on occasion be drunk in public. As such, Wintringham supports the decriminalisation of public drunkenness.

The Salvation Army as an organisation also supports the decriminalisation of public drunkenness offences. One of the reasons it does so is due to the disproportionate effect it believes such offences have on the poor, homeless and disenfranchised members of society:

> We believe a large number of our clients are people who are marginalised and victimised, or feel victimised in lots of ways, and public drunkenness is another way in which they feel they are put down.
>
> Sometimes many of our clients are totally out of control anyway, and with the use of alcohol it really is difficult. That might be a minority of people, but they are highly visible in the inner city. We used to call them the skid-row people, but they are still there. Society needs to protect them.[632]

This is also the view of other Victorian agencies working with homeless people and their peak body, the Victorian Council to Homeless Persons (hereinafter the Council). Whilst the Council and its constituent agencies in principle support decriminalisation, it has grave concerns about the ability of an already over-stretched sector to cope with any further demands upon it, particularly in rural Victoria.

The Council does not believe that the current system in New South Wales as outlined in the Committee's Discussion Paper and this Report can be simply adopted in Victoria. The reason for this is that Victoria no longer has the night shelter type of homeless accommodation to cope with large numbers of intoxicated persons:

> In rural and regional areas [consultation] clearly indicates that we do not have crisis beds…So, again the system of prescribed places with prescribed beds and some form of sobering up centre attached to the SAAP system will just not be feasible.[633]

Similarly, the Council and member agencies are concerned that they do not have the training or expertise to sufficiently deal with intoxicated persons.

The Council also urges the Committee to be clear about what its objectives are. Because there are such long waiting lists for alcohol and drug treatment services:

> [a]ll the sobering up centre will be doing will be, in effect, providing the person with a relatively safe bed for the night. If that is your objective and the objective of the legislation, then that would be met by the provision of a safe bed. But we would probably prefer you to be looking at, as an objective for legislative intervention, a clearer link with 'rehab'.[634]

632 Major David Brunt, Salvation Army Bridge Programme, Evidence before the Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 8 November 2000.

633 Ms Susan Edwards, Policy Officer, Council to Homeless Persons (Victoria) Evidence before the Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 13 November 2000.

634 Ms Susan Edwards, Policy Officer, Council to Homeless Persons (Victoria), 13 November 2000.

The problems associated with the links between homelessness and substance abuse are clearly complex and not capable of easy answers. It is not the brief of this Committee to consider in wide ranging terms the issues of either homelessness or drug addiction/abuse per se. Nonetheless, in certain groups in society the manifestation of public drunkenness will by necessity be a consequential effect of homelessness, poverty, unemployment or psychiatric conditions. For these reasons the Committee does agree with the conclusions of the VHF Report. In particular it concurs with the finding that a comprehensive strategy to combat alcohol and drug abuse and homelessness needs to address the causes and not just the symptoms or by-products of these conditions. The VHS Report concludes that:

> A homeless service system is needed that:
>
> - Is adequately resourced and skilled to effectively respond to the needs of people who are homeless with drug dependence, including those with complex needs;
> - Provides responsive and flexible support and accommodation in the right service delivery culture and in a non-discriminatory manner;
> - Works collaboratively with alcohol and drug treatment services and other relevant services, such as mental health, to ensure a coordinated response to the needs of this client group;
>
> An alcohol and drug treatment service system is needed that:
>
> - Can provide people who are homeless with prompt access to assessment and treatment service in an appropriate service delivery culture;
> - Is skilled and confident in working with people who are homeless;
> - Is knowledgeable of other services, particularly the homeless service system, so that they can make appropriate referrals and allow for appropriate discharge; and
> - Delivers services in a way that recognises that treatment is only one part of a total solution (VHS Report, p. 58).

The Drugs and Crime Prevention Committee in general supports these broad aims and goals.

Young People

It is only in the last ten to fifteen years that extensive research has been conducted on the incidence, patterns and 'culture' of drinking by young people in Australia.[635]

635 There are a variety of ways in which the definition of 'young people' or 'youth' vary depending on geographical, economic, political and social-cultural, and legal factors. For a discussion of these variations, see VicHealth 2001, p. 3. The Committee adopts the definition of the Australian Bureau of Statistics (ABS). The ABS defines young people as individuals aged between 12 and 25 years. The legal definition of child in Victoria is to be found in section 3 of the *Children's and Young Person's Act* as follows:

a) in the case of a person who is alleged to have committed an offence, a person who at the time of the alleged commission of the offence was under the age of 17 years but of or above the age of 10 years but does not include any person who is of or above the age of 18 years at the time of being brought before the Court; and

b) in any other case, a person who is under the age of 17 years or, if a protection order continues in force in respect of him or her, a person who is under the age of 18 years;

Research on intoxication and drunkenness amongst young people has been, until relatively recently, even rarer. Professor Margaret Hamilton, Director of the Turning Point Alcohol and Drug Centre, argues that we certainly need to know more.

> The questions that we need to ask [of young people] include: who drinks, when do they drink, with whom do they drink, where do they obtain their alcohol, why do they drink, how much do they drink and how frequently? (Hamilton 1985, p. 64).

Although Professor Hamilton asked these questions fifteen years ago, they are still relevant. They are particularly pertinent to explaining why young people may become drunk in public places.

More recent research shows that alcohol plays a significant role in adolescent culture. Field studies conducted by Taylor and Carroll across Australia in 1998-1999 reported the following findings.[636]

- Only 15 per cent of 15-17 year old males and 11 per cent of females reported that they had never had an alcoholic drink;[637]
- More than half (53%) of 15-17 year olds reported that they had consumed more than 10 drinks in their life. There was no difference between boys and girls on this measure;
- In terms of consumption on the most recent drinking occasion prior to the interview, 42 per cent of males, compared with 34 per cent of females, consumed the equivalent of five or more drinks and 32 per cent of males, compared to 24 per cent of females, consumed seven or more drinks;
- Ninety-four per cent of 18-24 year olds reported they had consumed alcohol; and
- Among 18-24 year old males, 51 per cent had consumed 5 or more standard drinks at the last drinking occasion and 30 per cent had consumed 10 or more drinks. Of females, 36 per cent had drunk 5 or more drinks and 15 per cent had drunk 10 or more drinks on their last drinking occasion.

Extrapolating from these findings, Taylor and Carroll make some pertinent observations in the context of this Inquiry.

First, while teenage girls appear to be drinking generally as frequently as boys, heavy consumption is still more common among boys. This accords with the findings of Hamilton in 1985. In her field study of youth in the Melbourne suburb of Frankston, she did not find any significant difference in young women's drinking patterns from young men other than a tendency for young men to drink more heavily on occasion (Hamilton 1985).

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636 Field interviews were conducted in Melbourne, Sydney, Newcastle, Ballarat. Interviews were held among teenagers aged 15-17 years, young adults aged 18-24 years, parents of 12-17 year olds, teachers and youth workers. For a discussion of the methodology of the project, see Taylor and Carroll 2001, p. 16.

637 Research commissioned by *Dolly Magazine* was conducted by Quantum Market Research to explore inter alia, the nature, incidence and pattern of alcohol consumption among Australian teenagers. Quantum interviewed 1000 boys between boys and girls 10-17. The survey found that underage drinking was done by 90 per cent of the research sample, with one in five teenagers drinking on a weekly basis (Quantum Harris 2000, cited in *Dolly Magazine*/AMR 2000).

Second, teenagers in particular, have a tendency to 'binge drink', 'aiming to get drunk and to do so quickly'. This is considered the norm among teenagers and young adults. (Taylor & Carroll 2001, p. 18);

Third, respondents aged between 18 and 24 years claimed to be more responsible and controlled drinkers. However, Taylor and Carroll's findings show this is not borne out in their reported behaviour;

Fourth, although parents reported concern about young people drinking, in general they: '...were more concerned about the possibility of their children using illicit drugs than they were about them drinking alcohol' (2001, p. 20). They reported that this was in part because alcohol was something they had experience of, whereas illicit drugs was something many of them were not familiar with;[638]

Fifth, many young people who drink excessively also report having used other drugs '...potentially placing them in situations in which they are more vulnerable to negative consequences' (2001, p. 26).

Sixth, environmental changes had taken place in the previous fifteen years that have facilitated an increase in young people's drinking. These include:

> ...the greater range of alcoholic drinks now available, the increased number of outlets for alcoholic beverage sales, and the greater ease with which more cash for drinking can be accessed from automatic teller machines or EFTPOS facilities (2001, p. 18).

Seventh, the environments in which young people drink, such as pubs and nightclubs, '...were seen to encourage the experience of violent and aggressive acts, particularly as they were often drinking in close proximity to intoxicated strangers' (2001, p. 21).

Finally, Taylor and Carroll report that in fact 'negative alcohol related experiences are common among young people and a significant proportion have witnessed or experienced alcohol related violence and aggression' (2001, p. 3).

Given the last two points in particular, it is apposite to discuss here the general issue of young people and alcohol related violence.

Young People and Alcohol Related Violence

The issues pertaining to alcohol related violence were canvassed in Chapter 11. Many of the research findings and general observations in this section are applicable to the particular experiences of young people. In addition, there have now been a number of research studies that have concentrated on alcohol and violence among young people. There are two recent publications that are of particular note. One is a collection of research studies on young people, violence and alcohol, commissioned and published by the Australian Institute of Criminology and edited by Paul Williams – *Alcohol, Young Persons and Violence* (cited as AIC 2001). The second is a research study conducted by the Victorian Community Council Against Violence, concentrating on alcohol related violence among rural youth – *Rural Young People and Alcohol Related Violence* (cited as

638 Interestingly, in a research study conducted by the Victorian Community Council Against Violence, a key observation was that *parents* are the key suppliers of alcohol to underage young people, at least in rural communities. (VCCAV 2000, p. 40).

VCCAV 2000). A detailed discussion of these studies is beyond the scope of this Report. Nonetheless, some general conclusions and observations from the studies warrant repeating.

First, public drunkenness and the harms associated with it and violence – including assault and rape, injury, and accident – amongst young people is common and is increasing.

Second, violence is much more likely in a context where alcohol is being consumed and the risk is greater the more alcohol is consumed (VCCAV 2000, p. 10, and the authors cited therein).

Third, young people consume alcohol often to a point of intoxication because of the 'symbolic nature of drinking having adult status' (De Crespigny in AIC 2001, p. 37).

Fourth, drinking alcohol for young people is in itself seen as a form of recreation (VCCAV, p. 10).

Fifth, alcohol related violence is more likely in the context of male group drinking and the related 'achievement of masculine identity' (VCCAV 2000, p. 11). This 'rites of passage' drinking behaviour may 'exacerbate the propensity for committing violence or being a victim of violence' (Lincoln & Homel in AIC 2001, p. 49).

Sixth, the key factors significant in alcohol related violence, particularly in public places, are being male, single and young (Makkai in AIC 2001, p. 85).

Seventh, groups of males between 18 and 25 years of age 'were more likely to become involved in injuries relating to alcohol consumption' (Brinkman et al. in AIC 2001, p. 74; see also VCCAV 2000).

Eighth, overall, the level of alcohol related violence is only marginally higher among young people in rural communities than for urban young people (VCCAV 2001, p. 30; Williams in AIC 2001, p. 113). Age is seen as much more the important variable. Williams states: '...while rural youth have inflated risks of being a victim or perpetrator compared to older rural Australians, they share similar risks with metropolitan youth (vis a vis older metropolitan Australians)' (2001, p. 141).

Nonetheless, it is thought that despite the small quantitative difference in reported violence between rural and urban youth, special attention needs to be paid to the particular context of drinking in rural communities. In particular, attention needs to be paid to the fact that limited educational, professional and social opportunities in rural communities contribute to a culture of excessive drinking:

> The lack of alternative social venues encourages young people to engage early with pub culture in rural towns and contributes to the perpetuation of binge drinking as a social event (Wyn et al. 1998, cited in VCCAV 2000, p. 38).

Finally, the same type of recommendations with regard to the responsible serving of alcohol, licensed venue amenity, training of security staff, safety audits and accords that have been discussed in the context of adult drinking and licensed venues are equally applicable in the context of young people. In addition, it is seen as crucial that specific strategies are targeted to the needs of young people. Of particular importance

is the provision of alternative venues (alcohol-free) and activities for young people (Lincoln & Homel in AIC 2001, p. 57).

Young People and Public Drunkenness Offences

The Youth Affairs Council of Victoria (YACVic) believes that the criminalisation of public drunkenness disproportionately impacts on young people in the Victorian community. It draws attention to the statistics published on public drunkenness to support its claim:

Of those in police custody for public drunkenness:

- 79% are aged between 15–34 years;
- 19% are aged between 15–19 years;
- 24% are aged between 20–24 years.[639]

This is of particular concern, given that people between the years of 12 and 25 account for only 20% of Victoria's population.[640] In its submission to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, the YACVic states that:

> The high number of young people apprehended for public drunkenness relates to the greater likelihood of these groups being seen to be drunk in the street. Young people and those without stable housing are more likely to drink in public areas while adults tend to drink in licensed establishments.
>
> The current public drunkenness laws only serve to introduce more young people into the criminal justice system for what may be simply experimental behaviour or a manifestation of a more serious health issue. In contrast, decriminalisation fosters a harm-minimisation approach. This approach does not stigmatise adolescent experimentation and assists young people exhibiting problematic drinking behaviour by linking them into services offering longer-term support.[641]

These views are shared by other government and non-government agencies working with children and young people. The Defence for Children International – Australian Section (DCI-A) is also opposed to public drunkenness being an offence:

> DCI-A asks the Committee to give specific consideration to the particular needs of under 18 year olds. We strongly support the decriminalisation of public drunkenness in conjunction with the enhanced provision of appropriate health and welfare services for people with substance abuse problems. We submit that such services need to deal with both the immediate health circumstances of the young person who has come to notice and to have the capacity to effectively articulate with services that can subsequently address the sources of serious misuse of alcohol and other drugs.

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639 Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness Discussion Paper 2000, p. 21.

640 According to 1996 census data reproduced in VicHealth 2001, p. 3.

641 Submission of Youth Affairs Council of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, May 2001, p. 2.

> It is our submission that a punitive approach to the problem of public drunkenness is inconsistent with the principle enunciated in Article 3(1) of Convention on the Rights of the Child (CROC) that the best interests of the child should be a primary consideration. Similarly, it is inconsistent with the provision in Article 37(b) that arrest, detention or imprisonment should only be a measure of last resort.
>
> An approach based on the protection and health enhancement of young people rather than their punishment is consistent with and supportive of the CROC provisions. It also accords with an appreciation of adolescent experimentation with alcohol and other drugs in a community which promotes substance use, and also with contemporary approaches to substance abuse based on a harm minimisation model.[642]

The Department of Human Services (Juvenile Justice Section) has sent a Submission to this Inquiry addressing the issues pertaining to public drunkenness and Koorie young people. It also supports the decriminalisation of public drunkenness. It states:

> Young people are an obvious target for those sections of the community who seek easy answers to complex problems, common symptoms of which might be minor public misconduct. The criminalisation of such behaviour effectively delegates to police the task of removing the symptoms. It does nothing to address the underlying causes, and in many cases only exacerbates the problem.
>
> Fundamentally, 'public drunkenness' laws can be used by policing authorities as a general public order response against any community minority causing a perceived concern to the local interests.[643]

Certainly, there are significant concerns with regard to police contact with Indigenous youth in Victoria. Any move towards decriminalisation should look at alternative ways of dealing with Koorie youths who are drunk and possibly or potentially violent:

> Feedback suggests that the incidence of aggressive responses to Koorie young people to intervention would be significantly reduced when it is undertaken by non-police personnel (even when it is initiated by police). This effect is almost certainly enhanced when the intervening party is an indigenous person(s). The Salvation Army's Mission Beat service in NSW is a model worthy of consideration in this regard, especially in the metropolitan areas.
>
> Whatever the model adopted, there will still be a small but significant incidence of cases where aggressive or violent behaviour is associated with drunkenness, particularly at the time at which intervention is initiated. It is important that non-police personnel responding to a case of public drunkenness have access to prompt and appropriate support in these

642 Submission of the Defence of Children International (Australia) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. May 2001, pp. 1-2.

643 Juvenile Justice Section, Department of Human Services, Submission to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, February 2001, p. 3.

644 Juvenile Justice Section, Department of Human Services, February 2001, p. 4.

> circumstances. It is also important that police are empowered and motivated to provide support and where necessary intervention.[644]

Most youth agencies believe that public drunkenness, alcohol (and other drug use)[645] and associated harms among young people cannot be viewed simply as a problem of law and order. For many young people alcohol misuse:

> ...can be a response to diverse social impacts (such as unemployment, poverty) and also to painful personal circumstances (such as a history of family violence or the presence of disabilities).[646]

As with adults, one factor that is inextricably linked with young people's misuse of alcohol and other drugs is homelessness. Whether this is a relationship of cause or effect is unclear. What is apparent is that the Youth Homelessness Strategy has found that the levels of youth homelessness are alarmingly high.[647] These problems are exacerbated by the fact that young people with substance abuse problems are often excluded from accommodation services.

Youth agencies argue that the decriminalisation of public drunkenness is not enough. Legislation needs to be accompanied by:

> [s]ervices that address the needs and issues which underlie substance abuse (homelessness, mental health problems, family welfare). The development of a framework which promotes clear principles and roles, and encourages service partnership and capacity building will maximise opportunities for relevant responses to intoxicated individuals.[648]

One of the key services being advocated is the establishment of juvenile sobering-up centres.

Sobering-Up Centres for Juveniles

Youth bodies and agencies are emphatically of the belief that specialist sobering-up centres need to be established that cater for the needs of young people:

> YACVic supports the call for an increased use of sobering-up centres in Victoria. The primary benefit of sobering-up centres is that it keeps young people out of police cells. Police custody should only be used as a last resort if no responsible person is available to look after the young person or if there are no sobering-up centres nearby. In this case, detention should occur for the minimum time necessary.

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645 The combination of alcohol and other drugs is particularly problematic for Koorie youth. A phenomenon that seems to be increasing in Victoria is the inhalation of volatile substances such as paint or petrol (chroming). This is of great concern to Indigenous communities. See the submission of the Juvenile Justice Section, Department of Human Services, to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, February 2001, p. 4.

646 Submission of the Defence of Children International (Australia) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, May 2001, p. 2.

647 Fourteen per cent of secondary school students in Victoria have been classified as 'at risk' of becoming homeless, see Chamberlain and McKenzie 1997.

648 Juvenile Justice Section, Department of Human Services, Submission to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. February 2001, p. 6.

> Considering the high number of young people detained for public drunkenness offences, it is important to tailor service provision to meet the specific needs of young people. Sobering-up centres need to offer a safe and user-friendly space for young people and if appropriate, provide links to other agencies that provide ongoing support. Centre staff should be trained to deal with youth specific issues.
>
> Adult drinkers, particularly habitual drinkers, have different needs to young people. YACVic recommends that centres be established to cater for young people up to the age of 21. YACVic believes that 21 is a suitable cut-off as this age is used to distinguish between youth and adult drug and alcohol services. Further, as the legal drinking age in Victoria is 18, the centres can provide for young people who are beginning to drink and those showing signs of more problematic drinking. If youth specific centres are not available, space should be dedicated to young people within the generalised centres.[649]

DCI-A supports such initiatives:

> DCI-A supports the increased provision of appropriate services such as sobering-up shelters (which should separate under 18 year olds from adults where practicable) until a responsible adult that is acceptable to the young person can collect the young person... those shelters should be resourced to provide young people with appropriate and accessible referrals and should be auspiced by health not police services.[650]

Sobering-up centres or 'drying out quiet spaces' that are attached to broader youth counselling, accommodation, drug and alcohol and advocacy networks such as those of 'On Track' in Perth[651] can provide intensive support to those young people requiring linkages to other services. Specific supports may need to be given to particular groups of young Victorians. For young Indigenous Victorians:

> [s]ervices which are provided by Koori staff, and preferably by local Koori community organisations, are the most likely to be able to provide the individualised response most appropriate to young people. Such personnel and organisations are most likely to gain credibility with the support of community members.[652]

And as mentioned earlier, whilst the levels of consumption of alcohol by young people in rural Victoria may not be much different from young people in Melbourne, their needs are not necessarily the same:

> YACVic is aware that most social activities in rural and regional towns revolve around the consumption of alcohol. The lack of alcohol-free recreation for

649 Submission of Youth Affairs Council of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, May 2001, pp. 2-3.

650 Submission of the Defence of Children International (Australia) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. May 2001, p. 4.

651 See Chapter 19.

652 Juvenile Justice Section, Department of Human Services, Submission to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. February 2001, p. 6.

> young people needs to be considered. In addition, when establishing sobering-up centres particular attention must be given to appropriate service provision in rural areas. This would reflect the Government's commitment that rural communities must have access to quality services.[653] Currently lack of services in the country can often result in young people being taken into custody as there are few other options.[654]

The major concerns of those who work with young people in Victoria is that public drunkenness offences can be one of the first ways in which young people come into contact with the criminal justice system. It is but 'a short step from the criminalisation of the behaviour to the criminalisation of the young person who exhibits that behaviour'.[655] Decriminalising public drunkenness is viewed as one small way of keeping Victoria's juveniles out of the criminal justice loop.

Women and Public Drunkenness

A book on the problematic drinking patterns of women has a chapter entitled 'Ladies don't get drunk'. This title reflects the fact that until relatively recently in academic literature on alcoholism, the problem drinking and public drunkenness of women hardly rated a mention.[656] Sargent states this is not because most of the people who drink to excess, get drunk or have drinking problems are male, rather:

> ...that nearly all theories have related solely to men's drinking patterns. In the few papers which attempt to analyse the drinking behaviour and the attitudes of women, it has usually been tacitly assumed that women's reasons for drinking and the causes of their problems were just the same as men's (Sargent 1988, p. 116).

Sargent and other theorists argue that the reasons why women drink, their drinking patterns, the problems associated with drinking and the treatment modalities needed for female problem drinkers or alcoholics are all different than those of men. For example, women are far less violent than men when drunk, as we discussed in the previous section. They are also less likely to be charged with alcohol related offences, including public drunkenness. The statistics presented in Chapter 9, for example, show that:

> The vast majority of prisoners held in police custody in the 62 police stations were males (90.0%, and only 9.1% were female (1.0% not specified). Whilst the overwhelming number of males held in police custody was between the ages of 20-22 years the ages of women ranged from 15 to 29 years.[657]

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653 Department of Human Services, Victoria, *Stronger Citizens, Stronger Families, Stronger Communities: Partnerships in Community Care*, Community Care Division, Department of Human Services, Victoria, Melbourne, December 2000, p. 32.

654 Submission of Youth Affairs Council of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, May 2001, p. 4.

655 Submission of the Defence of Children International (Australia) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. May 2001, p. 4.

656 The name of this book is suitably titled *The Invisible Alcoholics* (Sargent 1988).

657 Department of Justice Victoria, Criminal Justice Statistics and Research 1998, Analysis of Persons Held in Custody, January – June 1997, unpublished Report, Melbourne.

Furthermore, whilst women may be drinking nearly as frequently as men, although not as heavily, their drinking patterns are decidedly different. Pioneering research by Margaret Sargent on women's drinking looked at women's drinking patterns by observing the behaviour of both working-class and middle-class females in all female drinking groups in Australian bars and hotels. Whilst differences could be observed between the two groups in terms of the type of drinks chosen and the type of venue in which they drank, there were also some definite similarities that tend to explain why women may not be associated with public drunkenness to the same degree as men.

First, the amount of alcohol drunk by the women in the groups was decided predominantly by the individual rather than the group.

Second, and related to the above point, unlike male drinking groups there was little evidence of the 'shout'.

Third, the amount drunk did not appear to be associated with the person's status in the group.

Sargent states that because of these factors women's drinking does not have the potential to get 'out of hand':

> Shouting behaviour seems unlikely to become for women the competitive exhibition of drinking prowess which it often seems to be for men, and it is doubtful that it will become necessary for a woman to achieve acceptance and equality with her peers by drinking (Sargent 1988, p. 121).[658]

This is very different from the male 'rites of passage' drinking behaviour that is referred to in the previous section on youth.

Recent research by De Crespigny, whilst not disagreeing with Sargent's analysis of drinking patterns, states that in recent years a definite young women's 'pub culture' has emerged and that this is a developing phenomenon.

De Crespigny's field research, like Sargent's, was based on observing the patterns of young women drinking in groups in hotels and pubs – in this case in suburban Adelaide. De Crespigny states:

> Young women's pub culture was ...evident in the way they gathered in female groups, excluded male peers, and drank and socialised together regularly in what they considered to be their 'local pub'. They did this whether or not they had a boyfriend or socialised with men at other times and in other places, such as nightclubs. In other words, the pub was an important meeting place for these young women to engage in 'women only' business. Until quite recently there have been barriers to women being accepted in, and therefore going to, pubs to socialise (De Crespigny 2001, p. 38).

658 Fifteen years later, extensive survey research by Hennessy and Williams (2001) has found that in the case of Indigenous women these patterns may not hold true or not to the same extent. Their research found that: '[Indigenous] females of all ages appear to be adopting formerly 'male type' drinking patterns and the 'growing out' of alcohol consumption after youth for both males and females seems to be declining. Disturbingly, younger females are more likely than any other age group or gender to consume at hazardous or harmful level' (2001, p. 157).

Whilst the women in De Crespigny's studies consumed alcohol far in excess of the prescribed safe levels for women they did so purposefully to get 'tipsy' rather than drunk. In mixed company (males and females) or in public areas such as streets or outside hotels this heightened their vulnerability. This research bears out previous findings that public drunkenness, in the context of women's drinking, is not so much about women being the perpetrator or offender as much as the victim. In other words, women are at more risk when 'tipsy' or drunk of being physically or sexually abused, injured or humiliated than at risk of being charged with public drunkenness offences.[659]

Women themselves, according to De Crespigny, are aware of their own vulnerability in these situations. As such, women in De Crespigny's survey used their friendships with other women as having instrumental benefits, in addition to emotional and affective benefits:

> Young women revealed that as well as being confidantes and social partners, girlfriend's maximised each other's autonomy, provided advice, helped in decision making, enhanced their drinking experiences, and tried to identify and minimise risks to each other's physical safety. They relied on one another in practical matters such as transport and staying at each other's houses when too intoxicated to go home. Female friendship was 'the safety net' from which young women could more safely avoid or reject difficult males, or engage with people whom they wanted to interact with but would not do so alone (De Crespigny 2001, p. 38).

This behaviour is very different from that of males drinking in groups. Whereas males often may tend to 'binge drink', 'pub crawl' and be oblivious to the risks of being picked up for public drunkenness, women are generally far more circumspect about the places in which they drink. Furthermore, women tend to stay at the one venue for most of the night unless there is a special reason not to do so (a pre-wedding 'night on the town' is a common example):

> In selecting pubs, young women reported that they wanted an environment that their friends and peers attended, one that offered fun, particular music or bands, friendly staff, good women's facilities, freedom from sexual harassment and safety from predatory or violent males. Young women actively avoided pubs that they believed did not offer these conditions, in particular seeking co-attendance by peers and safety from harassment and violence (2001, p. 39).

This accords with the views of City Safety Officer, Anne Malloch from the City of Melbourne. When the Committee met with her and other officers last year she stressed the need for effective strategies by licensees and social planners to address the impact on women of intoxicated and violent behaviour. One such strategy that some licensees, and particularly Forum members, have put in place is a ban on inducements

659 Marian Sandmaier argues that 'women rarely encounter problems with the law in connection with their drinking'. As such, problem drinking surveys with questions such as 'have you ever been arrested in connection with your drinking? are of little use to women and reflect a male-oriented treatment and prevention modality (M. Sandmaier, *The Invisible Alcoholics: Women and Alcohol Abuse in America*, McGraw-Hill, New York, 1980, p. 73)

that encourage irresponsible drinking, such as free or reduced price entry for women and 'two for the price of one drink offers'.

Such strategies are part of an effort to promote a sense of safety and security in licensed premises. Anne Malloch believes that women have an instinctive feel for those venues that are safe and those that are not:

> 18 to 25 year olds wouldn't be particularly interested in reading that a nightclub is safe in a brochure or what have you, so therefore I'm going to go to that nightclub. ...[but] your implicit message is through the way that every particular venue is managed. That sort of underscores I suppose the fact that you go to a venue where there are people like yourself, that the music presented is presented to your taste. The décor or the ambience that's inside suits you. Especially young women will be aware this is a premises where I feel safe, or this is a premises where I don't feel safe.[660]

Given that some pub settings, the streets and the transport services between them can be unsafe, it is crucial that:

> More effective strategies by licensees and security staff, underpinned by partnerships among legislators, service providers and community members, are required to better identify and respond to, and thus prevent and reduce, the harms associated with violence that currently impact on young women and others who attend licensed premises (De Crespigny 2001, p. 31).[661]

Sobering-Up Centres for Women

The discussion of women and public drunkenness thus far has been premised on the fact that women do not get arrested for public drunkenness and therefore are not put in police cells or require sobering-up centres. This of course is not true. It is correct to state that women do not get arrested or placed in custody as frequently or in anywhere near the numbers as men. Nonetheless, there will be times when this happens and therefore the debates as to whether diversionary programmes are preferable to police custody are as equally valid to women as they are to men.

The Drugs and Crime Prevention Committee has received a submission from Women's Health Victoria (WHV), a state-wide health information and advocacy service for Victorian women. WHV argues strongly that not only are such facilities required, they must be appropriate to the gender specific needs of women. WHV state with regard to public drunkenness:

> Our interest lies in the impact of the law, and related issues, to the health and well-being of women when they themselves are drunk in public or when their

660 Ms Anne Malloch, City of Melbourne, in conversation with the Committee, 30 October 2000.

661 One example of such a partnership strategy is the Licensed Premises – Young People's Rape Prevention Project. This project is conducted jointly by Yarrow Place Rape and Sexual Assault Service and the City of Adelaide: 'This project has combined safety audits of licensed premises, training for senior hotel and security staff, and problem-solving crime prevention in an effort to reduce the risk of rape and sexual assault for young people who attend licensed premises' (discussed in De Crespigny 2001, p. .44).

662 This information is taken from Public Health Association of Australia (1999) *Policy Statements 1999*, Curtin ACT.

> safety is compromised by drunk behaviour of others in public. This latter aspect is of particular concern to us given that alcohol plays a significant part in 'date rape' and contributes to almost half of assaults on women.[662] We believe that public drunkenness cannot be viewed in isolation from wider societal issues, including private drunkenness, abuse and misuse of other mind-altering substances, and the inter-relationship between alcohol/drug use and violent behaviour.[663]

WHV believes that sobering-up centres need to be established for women exclusively. They should also be integrated with services for drug and alcohol problems, detoxification and treatment options or at least be able to give women referral options to such programmes:

> If Victoria were to establish sobering-up centres it would be essential that these ...were gender sensitive and...accessible to all women. Evidence from research with homeless people and use of shelters and other forms of accommodation shows that many women are unwilling to use such facilities because they do not cater to their needs as women, including providing a safe space for them without fear of harassment and/or sexual assault.[664]

Another consideration that needs to be taken into account with regard to sobering-up centres for women is provision for the children of these women. This is particularly relevant to women who wish to go on to do detoxification and treatment programmes. Previous mention has been made of the problems Indigenous women, in particular, have in using sobering-up centres and detoxification programmes when they do not have access to child care. This problem is especially acute if they are single parents. The following quote is worth repeating in this context:

> But where [funding] it becomes incredibly critical is, if I use the Winja Ulupna[665] the women's house, is virtually six beds for you know the Aboriginal community from part of South Australia, New South Wales or Victoria. And if you accept that women often have more difficulties or more bags to carry as far as child protection being involved, domestic violence and whatever other exploitation they've had through their partners etc. The men don't tend to carry that stuff. They do but not as a whole...
>
> See at the moment if you're an Aboriginal woman and you go through the sobering up centre and you're lucky enough to get into de-tox and you're lucky enough to crack it for a bed at Winjya it's a bit like a tattslotto [win]. If you've got the issue with child protection and the kids are off in foster care while you're doing a recovery and not much is happening in between, so when a person finishes in recovery, she's discharged, someone-else is into that bed before it even cools down but nothing's been done at that end – whatever her parenting issues might be or her relationship issues and those sorts of

663 Submission of Women's Health Victoria, to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, October 2000, p. 1.

664 Submission of Women's Health Victoria, October 2000, p.2.

665 The only rehabilitation centre exclusively for Indigenous women in Australia.

666 Galiamble SUP.

> things, and again this is where you've got to address those sorts of things if you really want to stop that revolving door spinning so fast.[666]

The service referred to in the above quote, Winja Ulupna, is the only sobering-up centre/detoxification-rehabilitation programme catering specifically for Aboriginal women in Australia.[667] It is a truly admirable service that appears to operate on an extremely limited budget.[668] Not only does Winja Ulupna accept referrals from Victoria, women are referred from as far as Queensland and the Northern Territory.

The Acting Manager of Winja Ulupna, Ms Carolyn Quin believes that the most important functions of this sobering-up centre is to:

- 'keep women out of the cells'; and
- 'to work towards getting women sober enough to get their children back'. Ms Quin comments that the majority of the women presenting at Winja Ulupna have had their children taken into the care of the Department of Human Services.

Ms Quin believes there is an 'absolute need' for a Night or Community Patrol in Victoria to drive around the streets and bring intoxicated persons back to the centre. The patrol or patrols should be gender and culturally sensitive, operating in a similar way to the Julalikari Council's women's patrol in Tennant Creek.[669] She also believes there should be a Community Justice Panel (CJP) in Melbourne. This should be preferably staffed with paid workers in order that sobering-up centre staff 'can get on with the work they are supposed to do'. Currently they act as pseudo CJP members, which increases the burden on an already over-worked staff.

At Winja Ulupna, women are linked into the detoxification and treatment programmes on site. The latter is a structured but culturally appropriate programme that contains inter alia, therapy and counselling workshops, Alcoholics Anonymous and Narcotics Anonymous groups, parenting skills, self-esteem and anger management, in addition to practical skills such as sewing, leatherwork, and cooking classes. All programmes are run or at least managed by Koorie staff, many of whom have previously had substance use addictions.

Ms Quin states further that the profile of clients coming to Winja Ulupna has changed over the last ten years, as has the age profile of the clients. Ten years ago the women were mostly 'pure alcoholics'. Now that description would apply to at most 25% of the women presenting at the agency.[670] Moreover, whereas once:

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667 The Indigenous sobering-up centre at Northcote also accepts women. But this can be problematic, particularly if there are no female staff on duty when women are taken to the Centre. In such cases often female volunteers may have to be called in to assist.

668 When Committee staff met with the Acting Manager of Winja Ulupna, Ms Carolyn Quin, they were informed that the service could not afford a computer and thus had to type their submission on an old typewriter. Carolyn Quin in conversation with Committee staff, 31 January 2001.

669 See Chapter 19. Women's Health Victoria also 'strongly endorses' the establishment of a women's night patrol to work with drunk women and women affected by their partner's drunkenness. Submission of women's health victoria, to the drugs and crime prevention committee, inquiry into public drunkenness, October 2000 p. 2.

670 Ms Quin states there is 'a real and growing problem with 'benzos' (tranquillisers) and particularly heroin'.

> Ninety per-cent of women presenting were over 30, since its dropped dramatically, we only take them at 18, but girls as young as 14 are showing up and there are few places for Koorie kids to go.[671]

Unlike other drug and alcohol programmes there is 'no pecking order of addiction' at Winja Ulupna. According to its manager:

> Women have special needs. The doors are always open at Winja Ulupna. We are all women and we are all family here.[672]

Public Drunkenness and Mental Health

As has been apparent from the discussion so far, the issue of public drunkenness and alcohol misuse can be as complicated by the additional factors of psychiatric disturbance and mental illness as it is by poly-drug use. The National Expert Advisory Committee on Alcohol highlights the problematic association between alcohol misuse and psychiatric disorder:

> The combination of mental illness with alcohol and other drug misuse is frequently reported in epidemiological studies. A review of thirteen studies by Teeson et al reported that each of these studies found the rate of alcohol misuse or dependence to be higher among community mental health groups than among the general populations. The prevalence of alcohol misuse or dependence in the community mental health groups ranged between 18.1 and 25.3% compared with 11.8% from a general population household sample (NEACA 2000a, p. 7).

Results of a survey conducted by the Australian Bureau of Statistics' National Survey of Mental Health and Wellbeing (1997) show a high degree of co-morbidity in substance use disorders (including alcohol) and mental health disorders. The survey also found that people living with a psychotic illness were four times more likely to abuse alcohol than the general population. 'Lifetime diagnoses of alcohol use disorders were found in 30% of the survey sample'. The Mental Health Legal Centre, a Victorian community legal centre that legally assists people with psychiatric illnesses, claims that the figures are even higher. They state: 'Between 40-60% of people with a serious mental illness also experience alcohol and drug use'.[673]

In a recent comprehensive analysis by Dr Maree Teeson, published by the National Centre for Drug and Alcohol Research, the dangers of underestimating and not understanding the phenomenon of co-morbidity of alcohol use and mental illness are starkly presented. Dr Teeson states that co-morbidity 'is the rule rather than the exception'. Furthermore, international research suggests that the prevention of co-morbid mental or alcohol disorders can prevent escalation in the costs of social services in the long term:

671 Carolyn Quin, in conversation with Committee staff 31 January 2001.

672 Carolyn Quin, in conversation with Committee staff 31 January 2001.

673 Submission of the Mental Health Legal Centre Inc. to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness. 6 November 2000.

> Persons with co-morbid mental disorders often have a poorer treatment response and a worse course of illness over time. They are more impaired, suffer greater social disability and generate larger social costs. This is probably in part because co-morbid disorders are not diagnosed and treated and in part because persons with more than one mental disorder are more difficult to treat. Persons who have co-morbid substance use and mental disorders have poorer outcomes than those who have a single disorder. This has been well demonstrated in schizophrenia but is also the case in depression and anxiety. For example, the treatments of alcohol dependence and depression both tend to be less effective when conducted in the presence of the other disorder than when the co-morbidity is not present.
>
> Co-morbidity has important implications for treatment. For example, in persons for whom alcohol dependence is a cause of depression, treatment of alcohol dependence may alleviate or eliminate depressive symptoms. Conversely, if alcohol dependence arises from self-medication of depression then the treatment of depression may reduce symptoms of alcohol dependence.
>
> Having one disorder may worsen the symptoms and course of the other. For example, depressive symptoms may increase alcohol consumption and alcohol related harm in persons who are vulnerable to developing alcohol disorders. It may also impair compliance with treatment of alcohol dependence.
>
> Co-morbidity is of particular concern for young adults aged 15-24 years. The recent Australian burden of disease and injury study found that nine out of the ten leading causes of burden in young males and eight out of ten leading causes in young females were substance use disorders or mental disorders. Thus, apart from the burden resulting from road traffic accidents (and asthma in females), the disease burden in this group is the result of alcohol dependence, suicide, bipolar affective disorder, heroin dependence, schizophrenia, depression, social phobia, borderline personality disorder, generalised anxiety disorder and eating disorders. Co-morbidity of these disorders is high and likely to result in significant disease burden (Teeson 2000, p. 4).

The Alcohol and Other Drugs Council of Australia (ADCA) released 'Drug Policy 2000' in June 2000. It addresses dual disorders and mental health and substance use co-morbidity as a key priority:

> ADCA believes that the Federal Government must develop, in consultation with State and Territory Governments, a strategic national approach to co-morbidity. This should include:
>
> - The development of innovative pilot programs to trial the effectiveness of different integrated service delivery models;
> - Professional development and training of mental health and alcohol and other drug workers;
> - Education for mainstream health professionals, particularly general practitioners and allied health workers; and

- Commission research into the treatment of people with co-morbidity (ADCA 2000, p. 3).

In the specific context of Indigenous health, similar recommendations have been made by the Review of the Aboriginal and Torres Strait Islander Substance Misuse Programme (DHAC 1999). In particular, the Review has urged the Office for Aboriginal and Torres Strait Islander Health (OATSIH) to develop a national framework for the Aboriginal and Torres Strait Islander substance misuse programme that will be developed in collaboration with key partners that have cross-over activity with the substance misuse programme, such as the Supported Accomodation Assistance Programme (SAAP), Aboriginal Hostels Limited, ATSIC and especially the Aboriginal Mental Health Programme. Again, the importance of partnerships and collaborative efforts is seen as paramount (Hennessy & Williams 2001, p. 159).

ADCA states that problems pertaining to substance use and mental illness are found to be common in all Australian communities both big and small. Public drunkenness and the manifestation of alcohol related behaviour is a key aspect of this phenomenon:

> Visit any country hospital or speak to any community nurse and you will discover that co-morbidity looms large in their day to day work. In small communities these problems impact on the life of the township and cause frustrating problems between health services, community services, police and ambulance services (ADCA 2000, p. 3).

Certainly, the issue of co-morbidity has been recognised by all the doctors and medical staff with whom the Committee has met. The comments of Dr Dent of St Vincent's Hospital with regard to the high number of people with personality disorders and psychiatric illnesses have been previously mentioned in Chapter 12. His call for an Acute Behavioural Centre – a middle way between the psychiatric hospital and emergency department – bears further discussion in the context of this section on mental health. In a draft proposal for such a centre Dr Dent states:

> For some years there has been a gap in service delivery for acutely disturbed people. For whatever reason be it due to alcohol or drug intoxication or withdrawal, to acute psychosis, mental illness, physical illness such as meningitis or head injury, people present with acute behavioural disturbance. For some years the emergency department has been often a first point of contact for people with acute behavioural disturbance. The second point of contact has been a Crisis Assessment Team[674] (CAT) and a third point of contact has been police services.
>
> These patients are often difficult to manage and, if they are brought to emergency departments in the care of police or CAT teams, may require physical restraint, sedation and during that process disturb the running of a department, can cause injury and disturbance to the staff and to other

674 Ironically, there have been occasions as outlined in coronial reports where the death of an apparently intoxicated person has been caused at least in part by the alleged reluctance of a CAT team to attend 'mere drunks' until sufficiently sober. See for example, *Foster* Case No 1886/97, State Coroner's Office Victoria.

> patients. Furthermore, there are many occasions when police feel uncomfortable about detaining a person who has been involved in abnormal behaviour in police cells for fear of lack of observation and perhaps a death in custody. Many people with alcoholic and drug related illnesses end up being detained in cells for want of another location.
>
> Recent surveys have shown a significant amount of potential injury to staff in various hospitals across Melbourne. Much of this verbal or physical abuse comes from people presenting with acute behavioural disturbance.[675]

The centre, as proposed by Dr Dent, would be different from a sobering-up centre in as much as it would be attached to or at least close to a hospital and would consist of the following services:

- 24-hour nursing staff with mixed psychiatric and emergency/critical care training;
- 24-hour access to emergency physicians and psychiatrists;
- general medical services including radiology and pathology;
- toxicological and drug and alcohol withdrawal services; and
- access to a secure environment including prison and arrest if appropriate.

Dr Dent outlines the function of the unit as follows:

> It is proposed that any person [such as] a doctor in the community, police in the community, who has to deal with a person who is showing abnormal behaviour in any form will be able to be referred to this particular unit.
>
> These people would be transported to this acute behavioural centre where initial rapid assessment would occur making both the patient safe and the environment around the patient safe. After initial medical assessment, appropriate investigations and treatment would be instituted. It would be envisaged that the maximum length of stay in such a unit would be 24 hours and preferably only 12. After initial assessment and treatment, which might require lengthy investigation in some circumstances, the patient would be referred and discharged from the unit to one of several possibilities.[676]

Such possibilities may include a hospital, medical facility, psychiatric facility, a detoxification or alcohol/drug dependence unit, the police or correctional system or a discharge to the person's home.

Dr Ogden of the Victoria Police Custodial Medicine Unit agrees that neither sobering-up centres nor police stations are appropriate places for people exhibiting psychosis or acute behavioural disturbance:

> The group the police get tend to be either people who have an antisocial personality or they're almost invariably young men who just become obnoxious when they've become disinhibited and take out their frustrations either on other people or on things and the community requires them to be

675 *Draft Proposal for an Acute Behavioural Centre*, Paper presented to the Drugs and Crime Prevention Committee by Dr Andrew Dent, St Vincent's Hospital, Melbourne, p. 1.

676 *Draft Proposal for an Acute Behavioural Centre*, p. 3.

> controlled somehow and nobody actually really wants to do the controlling. They are inappropriate in a hospital. They're impossible to control or very difficult to control in a public hospital. They become disruptive, they damage equipment. Hospitals don't tend to have safe places. They're full of sharp objects and things that can be weapons but there are risks having them in police stations.[677]

Of course, the problem is partly one of recognising when a person is in fact exhibiting signs of mental illness instead of or in addition to alcohol misuse. In the context of policing, the Victoria Police Operating Procedures Manual has quite specific instructions for members who deal with psychiatrically ill persons. These requirements have become more stringent since criticism has been levelled in recent years with regard to the disproportionate number of police shootings that have resulted in the death or injury of people found to have been suffering from mental illness. The operating procedures exhort members to contact CAT teams or Community Mental Health Centres in the case of people requiring urgent assistance and the Custodial Nursing or Medical Service in cases where the apparently mentally ill prisoner is already in custody.[678] This is in addition to the procedures with regard to the transport of mentally ill people by police officers to psychiatric facilities pursuant to the *Mental Health Act 1986*. While important, such procedures do not, however, give much guidance to police as to the distinction between symptoms that are alcohol or drug related, those that are associated with a mental illness or those that are a mixture of both.[679]

Mental illness is viewed as a major complicating factor for police, ambulance officers and sobering-up centre workers in dealing with persons presenting with alcohol or mixed drug toxicity symptoms. The problem is similar to the situation whereby alcohol use may mask more serious physical illness. In this case the fact that the patient may have been drinking masks the fact that he or she may in fact be in need of psychiatric treatment or care. Conversely, a psychiatric facility may not readily admit into care a person who is perceived as 'merely' having an alcohol or drug problem.[680]

That such a person can 'fall through the cracks' is one of the reasons specialist teams such as the Victorian Department of Human Services fund specialist treatment teams such as Summitt (Substance Use Mental Illness Treatment Team) to assist people with serious mental illness and drug use problems. The health problems associated with co-morbidity of alcohol use and mental illness are also exacerbated by social and

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677 Dr Edward Ogden, Senior Medical Officer, Custodial Medicine Unit, Victoria Police in conversation with the Committee, 27 March 2001.

678 See Victoria Police, Operating Procedures Manual, Chapter 12. 6. 1ff.

679 Training with regard to mentally ill prisoners follows similar lines to those pertaining to intoxicated prisoners. An emphasis is placed on the duty of care obligations for those prisoners known to be or suspected of being mentally ill. As with intoxicated prisoners, members are instructed to check mentally ill people in their custody every half-hour and to seek medical assistance or advice whenever police have concerns with regard to the welfare or health of those in their care. The Custody Welfare Training package discussed above divides its discussion of mentally ill prisoners into areas such as Watch-house Obligations, Custody and Risk of Suicide.

680 This is exacerbated by the fact that alcoholism or drug addiction per se is not recognised as a mental illness under the *Mental Health Act 1986* (Vic).

structural problems pertaining to homelessness, unemployment and poverty often associated with people suffering from psychiatric conditions. These problems have arguably been made worse by the closure of psychiatric facilities and the move towards deinstitutionalisation without appropriate services being put in place. As Graycar states:

> Prison numbers have increased sharply in Australia in the 1990s, and one line of argument is that changes to our mental health system, and in particular the move to deinstitutionalisation, have put out onto the streets many who would otherwise not be at risk of minor offending and victimisation (Graycar 2001, p. 13).

The Mental Health Legal Centre, in its submission to this Inquiry, supports the decriminalisation of public drunkenness. In doing so, the Centre stresses the need for appropriate measures to be put in place that divert people with mental illness *and* alcohol or drug use/misuse away from the police and criminal justice systems:

> People who experience mental (dis) order and experience alcohol related issues, for a variety of reasons, come into contact with the police and the legal system. The Centre's position on this issue is that the police and the legislature should adopt a harm minimisation model.
>
> Alcohol usage for people with mental illness is often an attempt to self medicate. The Centre sees this issue as clearly being a health issue and not a criminal justice issue. The Centre thus believes that people with mental (dis) order should be diverted from the justice system. An example of harm minimisation/diversion programme could be an extension of the Summit programme.[681]

One such initiative that could merit close attention is the CHAST (City Homeless Assessment and Support Team) located in Adelaide. This programme is a joint outreach initiative between Mental Health Services South Australia (MHSSA) and the Drug and Alcohol Services Council of South Australia (DASC). Established in 1995, CHAST provides professional mental health and drug/alcohol expertise to agencies that offer services to homeless and other disadvantaged people who live in or frequent inner city Adelaide. It is staffed by mental health and drug workers who have been seconded to CHAST by their respective organisations or employed directly.

The programme is guided by three main objectives:

- to co-work with Inner City Homeless Agencies staff in more effectively managing clients with complex problems;
- to improve access for this client group to mainstream mental health, drug and alcohol and other relevant government services; and
- to assist mainstream health services to meet the needs of homeless clients and the needs of Inner City Homeless Agencies more effectively.[682]

681 Submission of the Mental Health Legal Centre Inc. to the Drugs and Crime Prevention Committee Inquiry into Public Drunkenness. 6 November 2000.

682 Written material with regard to CHAST supplied by David Watts, DASC

Two key programme areas in the area of public drunkenness that are covered by CHAST are the Aboriginal Outreach Programme and the Acute Care to Community Services Linkage.

The Aboriginal Outreach Programme provides direct support to Aboriginal communities and individuals within the inner city and parklands area and also works in partnership with other inner city service providers in a joint case management capacity. It targets many of the problems, including drinking in public areas, which was discussed in the South Australian Case Study in this Report.

The Acute Care to Community Services Linkage Programme targets acute care facilities, including mainstream hospitals, psychiatric wards, de-tox clinics and sobering-up centres within Adelaide to ensure that those clients that are homeless are linked into appropriate community supports following discharge. CHAST outreach workers will continue to work with the client until a mainstream placement can be found. This programme targets those who are homeless with high and complex needs, often those who cannot live in unsupported accommodation because of their mental illness or alcohol dependency. Clients are those over 18 years and predominantly those aged between 25 to 30.[683]

Funding for the programmes is shared jointly between a range of South Australian State departments, including Human Services, Aboriginal Services and the Drug and Alcohol Services Council (DASC), in addition to some funding from inner Adelaide Community Mental Health Services.

CHAST teams are interdisciplinary and typically consist of a Drug and Alcohol Worker, Aboriginal Outreach Worker and Mental Health Worker, depending on the group being targeted.

Evaluations of the programme have been positive. Indeed, the CHAST programme was identified as a best practice model for the National SAAP Evaluation (1998) into working with clients with complex needs.

Positive changes as a result of the programme have been sustained on an Individual, Family and Community level (Watts & Olivieri 2001, p. 4). Of particular note in the context of this Inquiry is the fact that at 'the community level, the programme "keeps a lid on things" by ensuring less disruption in public places' (Watts & Olivieri 2001, p. 4).

This programme does seem to have, as DASC itself has commented, 'potential to be replicated within the Victorian service system' (Watts & Olivieri 2001, p. 5). Watts and Olivieri caution, however, 'that given the differences in population size and service system structure within Victoria, the programme would need to operate on a regional [basis] or through satellite points' (p. 5).

Whatever system may be adopted to deal with the problems of drunkenness and or homelessness and mental illness, what can certainly be stated without hesitation is that the evidence clearly suggests that it is totally inappropriate for a person with a mental illness or at least presenting with symptoms of a mental illness to be admitted to a sobering-up centre.

683 Although DASC documentation reveals that the age of the target group is becoming younger each year.

PART J:
Decriminalisation of Public Drunkenness:
Canvassing the Options

25. Decriminalisation of Public Drunkenness: The Arguments For and Against

The first part of this chapter examines the arguments for and against the decriminalisation of public drunkenness from a theoretical perspective. It also looks at the conclusions that have been taken from a review of the relevant literature. The second part of the chapter discusses the arguments in support of and in opposition to the decriminalisation of public drunkenness that have been presented to the Drugs and Crime Prevention Committee by individuals, groups and key Victorian organisations.[684]

Theoretical Positions on Public Drunkenness and its Decriminalisation

Arguments for Decriminalisation of Public Drunkenness

- Behaviour associated with drunkenness is best dealt with as a medical/social problem. Drunkenness, particularly chronic drunkenness, according to the supporters of the medical model, should be dealt with as an 'illness' rather than criminal or 'bad' behaviour.
- Consequently, the use of diversionary services and programmes such as sobering-up centres are viewed as more appropriate interventions. Ideally such services should provide the opportunity, where appropriate, for follow up by way of treatment, therapy and rehabilitation programmes.

684 This information has been received by the Committee in the following ways:
- Formal written submissions
- Evidence given at public hearings
- Informal presentations given to the Committee
- Committee visits to community agencies.

- Supporters of decriminalisation are divided as to whether placement in such services should involve coercion and to what degree this should be applied. Most jurisdictions that have decriminalised the offence of public drunkenness have put in place systems whereby police may apprehend, detain and place intoxicated persons in sobering-up centres or their equivalent.
- Supporters of decriminalisation claim that any problems associated with decriminalisation in practice relate largely to inadequately funded service facilities such as sobering-up and treatment centres.
- Retaining the offence of public drunkenness results in a discriminatory enforcement bias. Those most likely to be arrested for the offence come from lower socioeconomic groups. Furthermore, a disproportionate number of arrests for drunkenness offences involve Aboriginal people (Law Reform Commission of Victoria 1989; Royal Commission into Aboriginal Deaths in Custody 1991a, *Final Report*; Mackay 1996a; Cunneen & McDonald 1996; Gardiner & Mackay 1997).
- The decriminalisation of public drunkenness is a key recommendation of the Royal Commission into Aboriginal Deaths in Custody. Given the comprehensiveness of the Commission's research, investigations and recommendations, governments should have very good reasons before refusing to implement any of these recommendations.
- Other groups that are disproportionately penalised for being drunk in public include young people and the homeless. People without their own place of abode, or even people with inadequate housing, are especially more likely to be *seen* publicly drunk. Young people without access to pubs and private clubs may also be more in the public view than men and women from the middle classes who are more likely to drink in private or more discreet venues.
- Enforcing the crime of public drunkenness involves a misallocation of police, court and correctional resources.[685] One can see, for example, substantial reductions in court time in jurisdictions that have decriminalised the offence.
- A related issue is that police are not to any comprehensive extent trained in health issues, particularly pertaining to drug use. An assertion often made is that police officers are not social workers, nor health professionals. Nor should they be expected to take on these roles.
- Researchers such as Professor Van Groningen, having completed comprehensive studies of the criminological literature, claim that:

  > [t]here is no evidence that the offence and the penalties that it attracts achieve a significant deterrent, rehabilitative, or retributive effect. On the contrary, there is some evidence to support the notion that enforcement reinforces the behaviour (Van Groningen 1989).[686]

685 Support for this argument can be made by reference to the statistical analysis presented earlier. In particular the Cell Study (Figure 5) indicates the, arguably excessive, amount of police custodial time taken up with processing persons arrested for intoxication related offences.

686 Professor Van Groningen was the researcher appointed to the original LRCV Inquiry into Public Drunkenness in 1988-1989. His research and his input into the current Inquiry has been invaluable.

- The antisocial and undesirable behaviour of people intoxicated in public spaces can be dealt with by other criminal offences such as assault or criminal damage where appropriate. Behaviour which is seen to be of 'nuisance value' only can be regulated through appropriate local government by-laws and ordinances;
- Where there is no other specific antisocial or criminal act and no risk to self or others, the criminal law should not be used as a social control mechanism. The criminal law has been and is an ineffective method of dealing with social or health issues. Such a position has its roots in the theories of philosopher John Stuart Mill:

  > The only purpose for which power can be rightfully exercised over any member of a civilised community against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (cited in Morris & Hawkins 1970, p. 4).

- Decriminalisation will result in people who are not engaging in conduct harmful to themselves or others being labelled with or stigmatised by the tag of 'criminal'.

Arguments Against Decriminalisation of Public Drunkenness

- Drunken behaviour in public, whether or not accompanied by other criminal acts, is offensive, unsightly, disruptive and sometimes frightening conduct. Law abiding members of the community have the right to go about their daily business without being subjected to the manifestations of such behaviour.[687]
- Public drunkenness should continue to be policed and arrests made to protect the health, safety and wellbeing of the intoxicated person himself or herself.
- Evidence as to the positive resource benefits of decriminalisation is inconclusive. Whilst some savings may be made on the costs of processing criminal charges through the Magistrates' Courts, this economic benefit may be eclipsed by the costs involved in establishing and running alternative facilities such as sobering-up units. Costs savings may also be negligible if police arrest and charge a person with a substituted criminal offence (see next paragraph).
- It has been argued that public drunkenness has been used as a 'soft option' by police. As the Law Reform Commission of Victoria stated in its 1989 report:

  > If the offence is removed, the officer may still arrest the person, but for another, more complex offence. Assault or wilful damage charges may be laid where a charge of being drunk and disorderly would previously have been laid. In that event, the costs of policing may increase. Alternatively, the liberalisation of the law may produce more detentions because previously the police may not have arrested a person in a marginal case. Where a less complex, more humane

87 In a recent meeting with the Committee, Professor Van Groningen indicated that women in particular are disconcerted by the presence of drunk persons in parks, streets, doorways and other public places. Referring to the LRCV Inquiry, he commented that many women's groups made submissions along the following lines:

> I know they can't do any danger to me, they can't harm me, I realise that they're probably not in any way a threat to me, but I still very strongly feel that I don't want to see them sleeping in doorways [such people want] procedures to get these people 'off the streets', 'off the park benches'…and in to wherever, and they are not particularly concerned about whether it is a police cell or a sobering up unit (Van Groningen 2000, transcript, p. 5).

> alternative is available, they may find it more attractive to apprehend and detain a person who is drunk. For these reasons, it is not possible to make a reliable estimate of the likely savings in police involvement in this area (LRCV 1989, pp. 16 –17).

- As a corollary to the above point, it has been put forward that in practice some police have utilised the offence of being publicly drunk as an alternative to more serious charges that could have been laid. The advantage for the police in such circumstances is that it results in the immediate removal of intoxicated people, from areas of public domain. This is especially useful if such persons are potentially disruptive or uncontrollable. In effect, the charge of being drunk in a public place, one of the least serious of public disorder offences, results in the timely removal of the person from the scene.[688]
- Professor Van Groningen has argued that in Australian States where public drunkenness has been decriminalised, there has been

  > [a]n increase rather than a decrease in people being detained [by police], reduced police accountability, and [has] removed from these persons rights they previously had (their day in court to contest the charges etc) (Van Groningen 1988, p. 36).[689]

- Interstate comparisons with those jurisdictions that have decriminalised public drunkenness indicate that high levels of funding and resource allocation are needed for a non-criminal system that effectively addresses the problem of public drunkenness and alcohol related harms. Sobering-up centres, Night Patrols, treatment facilities and associated programmes are expensive to establish and maintain. In those areas where such facilities are not available or inadequately funded, intoxicated persons are still being detained in police cells. This is particularly true of rural and remote areas.

Finally, although not arguments for retaining decriminalisation per se, the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) has raised two concerns with regard to some practices that have emerged in areas where public drunkenness has been decriminalised.

First, the *Final Report* of the Royal Commission was critical of the police practice of serving warrants on people who had been apprehended for public drunkenness for other criminal matters. Commissioner Johnston quoted in support the following comments by the Northern Territory Aboriginal Issues Unit:

> In practice, unfortunately, a protective custody detention often turns into an arrest. This happens because the police use the opportunity of having a person in protective custody to carry out checks to see if they have outstanding

688 See the discussion with regard to police attitudes and the use of police discretion in Part E.

689 One needs to be cautious in relying on this conclusion. Van Groningen's finding is based on data now over 12 years old. Further research and updated data will need to be examined before such a conclusion can be conclusively made.

> warrants for arrests. If there are any outstanding warrants, the police serve these upon the detainees as they are released from protective custody (RCIADIC 1991, p. 132).

Commissioner Johnston himself was to remark:

> Given the very high rate of use of protective custodies against Aboriginal people [in the Northern Territory] …the clearing of the warrant books in this way possibly impacts more severely on Aboriginal offenders than on non-Aboriginal offenders who may have warrants outstanding. If so, then its contribution to the overall incarceration rate of Aboriginal people should be considered in any review of the use of protective custody legislation in the Northern Territory and elsewhere…I think there is a good argument in support of the proposition that warrant searches should not be conducted on persons who have been detained under protective custody legislation (RCIADIC 1991a, *Final Report* vol. 3, p. 24).[690]

Lawyers from the Northern Australian Aboriginal Legal Service (NAALS), in conversation with the Committee, stated that this was still a fairly regular practice in the 'Top End':

> To a certain extent I guess the problem in the Territory is that the decriminalisation of public drunkenness is a bit of window dressing because other measures are in place that mask the problem. They also certainly mean that our clients find themselves in custody because of being picked up for drunkenness, or alternatively, being charged with offences that derive from being apprehended because of drunkenness…[o]ften the experience in Katherine was that people would be picked up on a section 128 charge and it would be found that warrants had been issued for them. That is how people end up in the cells on most mornings at the Katherine courthouse. A person could have been picked up on a section 128 charge and then the police would discover that perhaps four warrants had been issued for him. [Section 128] is on its face a benign tool, but it is quite a sharp weapon for ensuring that Aboriginal people remain in custody.[691]

The second area of concern for the Commission (and other commentators) in jurisdictions which have decriminalised public drunkenness offences was the possibility of 'recriminalising' public drinking through other measures. This was seen as possible through two means:

- the use of alternative (summary) charges such as disorderly behaviour, obscene language, and other 'street offences';[692] and

690 This has been safeguarded against in some jurisdictions, see discussion of legislative provisions in Western Australia and the Northern Territory.

691 Ms Julie Condon, Solicitor, NAALS, in conversation with the Committee. August 3, 2000.

692 For a discussion of how Aboriginal people in Victoria are over-represented in the criminal justice system with regard to the summary offence of obscene language, see Chapter 10. See also Taylor 1995; Mackay and Munro 1996.

- the use of local government or municipal laws to prohibit public drinking in public space, with or without giving the police the power to enforce these regulations.

Both of these issues are discussed in further detail in other chapters of this Report and do not require further consideration at this point.

The views of Victorians on the Decriminalisation of Public Drunkenness[693]

Clearly, the two most polarised positions are going to be of those who either totally oppose decriminalisation or those who completely support it. In between these extremes there are many shades of grey. Many of the views presented thus far have been discussed in various chapters throughout this Report. The views of Victoria Police and the City of Melbourne will not be outlined as they have been exhaustively examined by the Committee in earlier chapters.

Summary

Those individuals and organisations that support decriminalisation are associated primarily with drug and alcohol agencies, welfare agencies and community legal centres. Such agencies view public drunkenness as a public health problem that is best dealt with through harm minimisation approaches. Nearly all agencies that support decriminalisation, however, acknowledge that the issue is complex and that decriminalisation of itself will not work unless substantial resources are put into facilities such as sobering-up centres. There are exceptions to this view that will be discussed below. For example, the Aboriginal Legal Service believes that, as in Western Australia, we should not wait until such time as facilities are put in place before passing decriminalisation legislation.

Those opposing decriminalisation are predominantly concerned with issues and problems pertaining to public order and/or duty of care concerns. These are certainly at the forefront of the concerns held by individual police officers and Victoria Police as an agency. As with those who support decriminalisation, supporters of the status quo also acknowledge issues pertaining to the 'other side' of the debate. As such, agencies such as Victoria Police and Crown Casino put forward alternative proposals and safeguards should decriminalisation become a reality.

The Liquor 'Industry' as represented by bodies such as Liquor Licensing Victoria, the Australian Hotels Association and the Liquor Stores Association do not seem to have put forward set views as to decriminalisation per se. Their concerns pertain more generally to the control and regulation of the Liquor Industry.

693 The views presented here are selected as being representative of a range of community interests. Unfortunately space constraints do not permit the reproduction of all submissions or evidence received by the Committee. A full list of Submissions and Witnesses can be found in Appendices 1 and 2.

Opposing Decriminalisation

Victoria Police

As stated, the views of Victoria Police have been addressed throughout this Report and are therefore not repeated in this section except to state that they generally are opposed to the decriminalisation of public drunkenness offences.

Ambulance Officers

The Ambulance Officers from the Metropolitan Ambulance Service with whom the Committee met, were generally opposed to the decriminalisation of public drunkenness offences. As discussed in Chapter 12 of this Report, they view these offences as being useful adjuncts to their daily work, particularly when they are dealing with 'drunks' who are violent or aggressive.

Crown Casino

Crown Casino is opposed to any prospective decriminalisation of public drunkenness offences. Their main concerns are as follows:

That if sections 13 and 14 of the *Summary Offences Act* 1966 were repealed it would have great difficulty in ejecting drunken persons from their premises or calling for police assistance. Currently Crown Casino states that arrest and detention is used only as a measure of last resort after a drunken patron has refused to leave premises after being repeatedly asked to.

That the types of drunken persons most often seeking entry to Crown Casino, or persons already drunk on the premises, are those who have already been celebrating a social event or been to a sporting event rather than homeless or Indigenous people.

Moreover, Crown Casino endorses the views of the Victoria Police in stating that section 13 currently does not require police to put the person in a police cell but also gives them the option of taking the person home, to hospital or releasing the person into the care of a third party.

If section 13 was repealed Crown Casino would:

> [u]rge the Committee to recommend any reform of the current law to include an offence for drunken behaviour which is frightening, disruptive, offensive or aggressive and which threatens injury to person or property.[694]

The concerns Crown has with regard to Duty of Care and the civil liability of licensees has been sufficiently addressed in Chapter 7.

Other Opponents of Decriminalisation

The views of other agencies and individuals that support the status quo are for the most part based on social and or religious concerns about the place of alcohol in society and the need to protect both those who drink to excess and those affected by the behaviour of those who are drunk. Such views are best exemplified by agencies such as the Women's Christian Temperance Union (WCTU). The WCTU, as with the police, the Casino and other opponents of decriminalisation, claim that the current

694 Crown Submission November 2000, p. 4.

system works well because police are under no obligation to arrest and if they do, are under no obligation to place a person in police cell custody. In other words, the WCTU believes that it is in the intoxicated person's best interest and welfare to preserve the status quo. This is particularly the case given the paucity of sobering-up centres and alcohol resources, especially in country Victoria.

The key message emanating from the submission of the WCTU and similar agencies is that prevention programmes that educate people in relation to alcohol related harms should be the number one priority of the government: 'The fence at the top of the cliff is better than the ambulance at the bottom'.[695] As such, emphasis should be placed on extending Turning the Tide programmes rather than promoting decriminalisation.

Finally, local government authorities have not overwhelmed the Committee with either responses to its Discussion Paper or submissions to the Inquiry.[696] Those councils which did make a submission, however, generally seem to support the status quo for two basic reasons.

- The current laws complement local government by-laws or local laws in keeping public order in their municipality.
- The current laws are the only effective way in which police can remove, manage or move people on. Through their alcohol induced behaviour such people, whilst not necessarily aggressive or violent, are either disturbing other members of the community or simply asleep in shop doorways or footpaths. These are arguments that clearly go to the 'amenity' of the municipality.

The views of the City of Melbourne have been addressed extensively throughout the Report and therefore are not repeated here.[697]

Supporting Decriminalisation

Those who support decriminalisation come from a variety of organisations For convenience, they can be divided into four groups:

- Community Legal Centres and Law Reform Bodies;
- Welfare and Charitable Groups;
- Drug and Alcohol Agencies; and
- Indigenous Organisations.

The views presented here are selected as being representative of a range of community interests. Unfortunately space constraints do not permit the reproduction of all submissions or evidence received by the Committee.[698]

It should be stated from the outset that, almost without exception, agencies that support decriminalisation do so with qualifications and reservations. Notably, these agencies and organisations believe the following.

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698 Submission of the Women's Christian Temperance Union to the Drugs and Crime Prevention Committee, p. 2.

696 Refer to Appendix 1 for list of submissions sent by local governments.

697 See Chapter 14 re policing the streets, Chapter 16 re local government regulation and Chapter 18 re accords and partnerships.

698 A full list of Submissions and Witnesses can be found in Appendices 1 and 2.

- Decriminalisation of and by itself is not appropriate. It is a necessary but not sufficient condition of dealing with problems associated with alcohol abuse and public drunkenness.
- As such, extensive resources must be placed into facilities such as rehabilitation and sobering-up centres.
- Many agencies believe that issues such as public drunkenness cannot be viewed in isolation from wider underlying and structural problems in society, such as homelessness, health care and unemployment. This point of view is particularly prevalent amongst Indigenous agencies.
- Most agencies that support decriminalisation still believe police should have appropriate powers of apprehension or otherwise be able to deal with problems of public disorder.

Legal Bodies

(*Community Legal Centres, Department of Justice, Melbourne Custody Centre, Criminal Bar Association, Victorian Bar Council, Law Institute of Victoria, Defence of Children International*)

As can be expected, the approach of bodies such as community legal centres to the issue of public drunkenness is predominantly a civil libertarian one. Their views are outlined below.

- The state has no business in penalising 'victimless crimes'.
- If the intoxicated person displays behaviour that is violent, aggressive or dangerous, there are other means by which he or she can be dealt with by the police and the legal system. Persons who are a danger or at risk to themselves are best dealt with through the health and welfare agencies.
- Public drunkenness offences and their enforcement, as with many other summary offences, discriminate against marginalised groups in society. In particular, Indigenous people, the homeless and young people are disproportionately targeted by police or are arrested for these offences.
- Community Legal Centres, in particular, are also keen to see that the 'Alcohol Industry' takes a far greater share of responsibility for the deleterious effects of alcohol consumption, particularly amongst young people. This could even extend as far as making some financial contribution to the establishment of sobering-up centres and the like.
- If the Committee was not to recommend decriminalisation the consensus of the Victorian Federation of Community Legal Centres and the Victorian Aboriginal Legal Service (VALS) is that:
  - Police must be properly trained in issues pertaining to alcohol abuse and other drugs;
  - The subjective discretion of police officers to determine whether a person is drunk be replaced with some form of objective test measuring the type and level of intoxication;

- That at least sections 14 and 16 of the *Summary Offences Act* 1966 be repealed because they are sections which 'have the effective power of enabling people to be imprisoned for drunkenness related offences. In our view these provisions are fairly historic and seldom used';[699]
- If section 13 was to remain, it should not be used in circumstances where a person is simply affected by alcohol: 'there should be some definition which ties it down to some sort of danger to oneself or others or something of that nature';[700]
- That if section 13 is retained the only penalty involved should be a short period of deprivation of liberty as is currently the method in practice.

Although peripheral to the area of the Committee's Inquiry, the legal centres have also strongly recommended that licensing police be far more vigilant and regular in their inspections of licensed premises.

VALS has also mentioned that, as far as Indigenous sobering-up centres are concerned, they do not believe police resources, either in time or materials, will be any more stretched than is currently the case. It is sobering-up centre staff who currently collect intoxicated clients from police stations rather than police undertaking the transport themselves.

Finally, whilst recognising there would be enormous economic demands on government if sobering-up centres were to be established, VALS has urged the Committee not to use this as a reason not to change the law by repealing sections 13, 14 and 16. This was the approach taken by the Western Australian government in 1989.

The Mental Health Legal Centre, a Victorian community legal centre advocating the rights of psychiatrically ill clients, agrees with the general position of the Federation of Community Legal Centres but argues that their constituents often suffer from the dual effects of alcohol abuse and mental illness. Therefore the legislature should adopt a harm minimisation model to prevent people with mental disorders coming into contact with the criminal justice system.[701]

Melbourne Custody Centre (MCC)

Representatives of the MCC with whom the Committee met support the decriminalisation of public drunkenness.[702] It is unclear whether in relating this to the Committee these officials were speaking as individuals or endorsing a policy of Australian Correctional Management. Their reasons given in conversation with the Committee are as follows.

699 Victorian Aboriginal Legal Service, Evidence to the Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 13 November 2000.

700 Victorian Aboriginal Legal Service, 13 November 2000.

701 Submission of the Mental Health Legal Centre, to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, November 2000.

702 It is unclear whether in relating this to the Committee, these officials were speaking as individuals or endorsing a policy of Australian Correctional Management.

- Duty of Care Issues: Police drop clients here because there is 24-hour nursing care. This absolves them from their own duty of care liabilities. 'But they should not be here in the first place'.
- Difficulties with the bail process make it difficult to bail Indigenous clients to sobering-up centres. This is also the view of Indigenous community workers. A bail justice could usefully be on stand by at the custody centre.
- 'Drunks' are disruptive and unruly. They kick the doors and stir up other prisoners. 'Our aim is to keep the lid on...'.
- A senior officer at the MCC believes that the system in New South Wales works well. This is from his perspective as a former senior police officer in that State: 'After initial protests, life went on as usual...'.[703]

Department of Justice

In its submission to the Inquiry the Victorian Department of Justice (DOJ) supports the decriminalisation of public drunkenness along the lines suggested by the Report of the Victorian Law Reform Commission (VLRC) in 1989–1990. It recognises the rationales of those who support the maintenance of the status quo, particularly with regard to the management of public order. Nonetheless, it cites with approval the views of Professor Goode in the Adelaide Law Review as follows:

> - The offence [of public drunkenness] bears upon the least affluent members of a given society and has an inherent class bias.
> - The offence and its penalties achieve no significant deterrent or rehabilitative effect, on the contrary...the offence reinforces the behaviour.
> - The enforcement of the offence results in a misallocation of...resources;
> - The criminal law should not be used in cases where the behaviour poses no threat of harm to others.
> - The inebriate will almost invariably be liable to arrest and prosecution for an appropriate specific offence where he or she poses any kind of real social danger.[704]

In particular the DOJ has stated:

> - Sections 13 and 14 of the *Summary Offences Act* 1966 should be repealed.
> - Power should remain with police to apprehend and detain persons found intoxicated in a public place *but only* in circumstances where the person is a danger to him or herself or others and not merely because the behaviour is unsightly, noisy or annoying. In other words, the DOJ supports the former Law Reform Commission of Victoria's view that, *'a*

703 Comments taken from conversation with Kevin Birtles, Manager, and other officers of the Melbourne Custody Centre during Committee tour of MCC, 30 October 2000.

704 Quoted in the Submission of the Department of Justice (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, p. 8.

reasonable belief that a person is intoxicated should not of itself, be sufficient to warrant police intervention... .

- The definition of intoxicated should be restricted to seriously affected by alcohol only until further consideration is given to the implications of including other (hard) drugs.
- The need for police (statutory) immunity needs to be considered against the 'paramount need to retain accountability mechanisms'.
- The following options should be exercised by the police starting with consideration of the least restrictive option:
  - release the person;
  - release the person into the custody of someone willing and able to take responsibility;
  - take the person home;
  - take the person to a designated sobering-up centre; or
  - take the person to a police lockup with appropriate safeguards.

The DOJ bases its conclusions in part on its own figures produced for Criminal Justice Statistics and Research Unit Police Cell Study.[705] In particular it states that almost half of prisoners in police cells (44.2%) were 'drunks'. The fact that prisoners held for being drunk as well as for other charges were classified as 'non drunks' underestimates the number of drunks actually held in police custody. The DOJ also specifically draws the Committee's attention to the fact that 6.3% of the prisoners analysed in the study were categorised as Aboriginal or Torres Strait Islander.

> The high number of drunk prisoners recorded as Aboriginal must be viewed [with concern] in relation to their extremely small community representation (0.5%).[706]

Legal Profession Bodies

The peak Victorian legal bodies support the decriminalisation of public drunkenness. These organisations include the Law Institute of Victoria, the Victorian Bar Council and the Criminal Bar Association. The following views from the Victorian Bar Council and the Criminal Bar Association respectively, are representative of the views of the legal profession:

> The crime of public drunkenness should be abolished. That was the recommendation of the Victorian Law Reform Commission. It was also the view of the Royal Commission into Aboriginal Deaths in Custody.
>
> There is no good purpose to be served by making criminal, conduct which in itself has no criminal element attached to it. The police and the Courts would be relieved if drunkenness was no longer an offence.[707]

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705 See Chapter 9.

706 Submission of the Department of Justice (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, August 2000, p. 10.

707 Submission of the Victorian Bar Council to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2000, p. 2.

> Arguments against decriminalization, which rely on resource benefits, the use of the current legislation by police to avoid charging persons with more serious offences or a "soft option" can not be supported as the basis for criminalizing the conduct. The behaviour associated with public drunkenness is only appropriately dealt with as a health and social problem.
>
> The use of diversionary services such as Sobering Up Centres are more appropriate interventions. In addition to the decriminalization of public drunkenness being a key recommendation of the Royal Commission into Aboriginal Deaths in Custody, young people and the homeless are groups that are disproportionately penalized for being drunk in public. The enforcement of [the] crime of public drunkenness involves a misallocation of police, court and correctional resources.[708]

Drug and Alcohol Agencies

(*Turning Point, Salvation Army, Australian Drug Foundation, Drug Arm – Victoria*)

The clear view of the drug and alcohol agencies that have met with or sent submissions to the Committee is that public drunkenness must be seen as a public health and not a criminal law issue. As such, harm minimisation approaches are the ones most favoured.

Professor Margaret Hamilton, Director of the Turning Point Alcohol and Drug Centre, believes decriminalisation in other States has led to better care for people under the influence of alcohol and other drugs. She sounds a cautionary note to the Committee, however, that it needs to be very clear as to what its brief is and what is the purpose of its recommendations. In particular, she exhorts the Committee to separate the process of sobering up and sobering-up centres from detoxification and other forms of long-term rehabilitation and treatment. Sobering-up centres may be useful first points in linking or referring clients to ongoing treatment if they desire, but they serve a distinct and different purpose.

According to Professor Hamilton, sobering-up centres should be viewed solely as an option for people who are intoxicated and have no means of getting safely home, or otherwise need a short-term facility to recover from the effects of intoxication. It is possible, in her view, that sobering-up centres may be able to be attached to, and run by (yet separate from), agencies that currently are involved with drug and alcohol programmes and/or homeless services.

Professor Hamilton does not rule out the use of police cells as a last resort to place intoxicated people. She believes, however, that the best options are to find a family member or friend who can take the responsibility for the person and if that is not possible, to place the person in a sobering-up centre or equivalent service. Police cells should only be used when all other means are exhausted.

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708 Submission of the Criminal Bar Association to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2000, p. 2.

Salvation Army

The Salvation Army in Victoria is a supporter of decriminalisation. It is responsible for administering and running sobering-up centres in most States of Australia. Its major concern is that sufficient sobering-up centres are established in Melbourne and country Victoria to effectively deal with the problem of public drunkenness. The 'Army, through its spokesperson Major David Brunt, takes a somewhat different approach to Professor Hamilton. He sees closer links between sobering-up centres and treatment facilities as important. He does, however, criticise the New South Wales model whereby proclaimed places were for the most part used as accommodation services:

> Our experience has taught us that rather than being set up and managed largely alongside accommodation services, as in the case with the proclaimed places in New South Wales, such centres should be part of drug and alcohol treatment services with clear links to detoxification and rehabilitation where necessary...The problem that we had with the proclaimed places…was that they became almost up market skid row houses…The people using the homeless persons facilities could get themselves intoxicated, find themselves better accommodation and ensure they were looked after better in the proclaimed places than they were in the hostels themselves. That revolving door process became a nightmare for staff and management – but where it is clearly linked to detoxification facilities there is a need for it.[709]

Other Drug Agencies

The Committee restricts itself to commenting on the views of the Australian Drug Foundation (ADF) as their views are fairly representative of smaller alcohol and drug agencies.

The ADF supports the decriminalisation of public drunkenness. They state:

> The existing law in Victoria is archaic and out of step with community beliefs and mores, dating back to a time when society viewed people who became intoxicated as being of weak character and morally deficient.[710]

In summary, they believe short-term strategies, such as sobering-up centres, need to be introduced alongside long-term prevention and reduction strategies to minimise the effect of alcohol related problems.

The following are the main points of the ADF's submission.

- Young men make up the bulk of arrests for public drunkenness (and not stereotypical 'winos').
- Prevention and education strategies, therefore, should be directed primarily at this group.
- The main thrust of reform should concern liquor licensing and the liquor industry:

709 Major David Brunt, Salvation Army of Victoria. Evidence before the Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 8 November 2000.

710 Submission of the Australian Drug Foundation to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, November 2000, p. 1.

> The ADF believes the way the liquor licensing law relating to intoxication is written (cf Liquor Control Reform Act) is problematic and is contributing to this problem. As it stands the Act does not prohibit licensees to serve a person to intoxication. And once intoxicated, the Act actually encourages licensees to remove them from the premises, thus contributing to the number of intoxicated people on the streets. Given that the person will probably have to be obviously very drunk...before being asked to leave the licensed premises, the degree of intoxication will be such as to attract police attention and arrest...The ADF proposes that the Committee investigate the option of adapting the Liquor Control Act to prohibit the licensees serving patrons to intoxication. The lack of criteria defining intoxication must [also] be addressed if such a law is to be meaningful.[711]

Ngwala Willumbong and other Aboriginal Drug and Alcohol Agencies

Aboriginal agencies on balance support the decriminalisation of public drunkenness. They are most concerned, as with most agencies working in this field, that they are properly funded to 'do the job properly' and that the services should be based on holistic models. The reservations of Indigenous drug and alcohol and associated agencies have been thoroughly canvassed in Chapters 22 and 23.

Council for Homeless People

The Council for Homelessness and its constituent agencies *in principle* support decriminalisation, yet have grave concerns about the ability of an already over-stretched sector to cope with any further demands upon it, particularly in country Victoria. These views have been outlined in the section pertaining to homelessness in Chapter 24.

Victorian Community Council Against Violence

The Victorian Community Council Against Violence (VCCAV) does not support a criminal response to being drunk in a public place in circumstances where there is '*no disorderly, disruptive or obnoxious behaviour*'(VCCAV 2000, Submission to the Committee p. 2). In cases where the intoxicated behaviour can be traced to addiction or problems with alcohol, the health system is the best place to resolve it. Such 'drunkenness' is 'not addressed by arrest and entry into the criminal justice system' (p. 2).

The VCCAV is particularly concerned that a large number of people found drunk in a public place have mental health issues, compounded by being homeless.[712] A criminal justice response, they argue, is inappropriate in circumstances where the drunkenness is not accompanied by violent or disorderly behaviour.

Although not specifically stated as such, the tenor of the VCCAV submission is that the Council supports the retention of sections 14 and 16 of the Summary Offences Act to deal with cases of drunkenness accompanied by riotous, disorderly or violent behaviour. In cases of drunken public behaviour without violence or disorderliness,

711 Australian Drug Foundation 2000, Submission, p. 2.

712 The VCCAV do not supply empirical or other evidence substantiating this claim in their submission.

alternatives to section 13 and existing approaches need to be found. The VCCAV sums up its position as follows:

> The response to the issue of public drunkenness needs to link service, program and education infrastructure that can address the factors that contribute to, and result from, public drunkenness. Effective infrastructure includes appropriately resourced sobering up centres, accords, protocols between police and relevant community sector services, licensee training, licensing, responsible server programmes, night patrols and public education.[713]

Youth Agencies

Most agencies that work with Victorian young people support the decriminalisation of public drunkenness offences. Their views have been canvassed in Chapter 24, in the section pertaining to youth.

Other Issues Relevant to the Inquiry raised by Agencies

Submissions and evidence have been received from a variety of agencies that have not addressed directly the question as to whether public drunkenness offences should be decriminalised but nonetheless have discussed issues that are important to the Inquiry.

Liquor Licensing Victoria

Brian Kearney, the Director of Liquor Licensing Victoria (LLV), has sent the Committee a submission that concentrates primarily on the regulatory regime with regard to the supply and control and availability of liquor under the *Liquor Control Reform Act 1998*. The submission of LLV makes the following points.

- There has been a significant increase in the number of licensed premises in Victoria and a resultant increase in the availability of alcohol.
- Nonetheless, research relied upon by LLV reveals:
  > [t]hat the 'accepted wisdom' by many that increased alcohol availability necessarily leads to increased consumption does not hold true'.[714]
- The LLV submission discusses the way in which LLV and Victoria Police, working together, target licence conditions to address community and police concerns regarding particular licensed premises/events and activities.
- LLV also discusses licensing accords and whilst generally applauding those operating in Melbourne and Victoria does not consider that they require legislative backing. The submission comments:
  > Forums and accords are not a substitute for appropriate enforcement of liquor laws, but rather provide the potential for community based pro active problem solving and a commitment to self regulation...To impose legislative backing to forums and accords has the potential to stifle their creativity and local flavour. However, Victoria Police, Liquor Licensing Victoria and liquor industry associations should actively encourage new forums and accords to an

713 Submission of the Victorian Community Council Against Violence to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, December 2000, p. 2.

714 Submission of Liquor Licensing Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. November 2000, p. 2.

> appropriate extent to facilitate the achievement of their objectives. A simple 'how to' guide providing advice on establishing and maintaining a local forum and accord would be a valuable resource.[715]

- The LLV strongly supports the use and enforcement of local government by-laws as a way of ameliorating problems associated with public drunkenness and alcohol misuse. In the words of Brian Kearney:

> Such by-laws and their enforcement by Victoria Police and Council/Shire by-laws officers have, in my view, been the most successful initiative in bringing public occasions such as New Years Eve celebrations under control and orienting such celebrations to a family friendly model.[716]

- The LLV also supports the 'risk based approach' to the licensing of sporting, social, music and large events, whereby relevant liquor licenses are targeted with pragmatic and enforceable conditions to minimise drunkenness and antisocial behaviour.

Liquor Stores Association

The submission of the LSA is predominantly concerned with the:

- rapid proliferation of new operators allowed under the Liquor Control Reform Act and the consequent destabilisation of the market place with the attendant increase of 'harm';
- possibility that prohibitions on places where liquor may be sold will be relaxed to include convenience stores, milk bars etc – venues attractive to under age persons; and
- lack of comprehensive data on the causal links between outlet numbers or densities, liquor consumption and social harm:

> Nonetheless, sufficient overseas information is available to suggest that an increase in outlet availability occasioned by the removal of a needs based clause is contrary to the concept of harm minimisation...The links between liquor consumption, liquor abuse and social harm are less well quantified but available data suggests a positive correlation between them.[717]

Australian Hotels Association

Mr Alan Giles, the Chief Executive Officer of the Australian Hotels Association, in his evidence before the Committee supported the decriminalisation of public drunkenness.[718] He did not, however, give extensive reasons as to why and how decriminalisation should happen. Nor was this the major thrust of his presentation. Predominantly, his evidence concerns the need, in his view, to de-regulate the hotel and liquor industry. He does make the interesting point, however, that the law should

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715 Liquor Licensing Victoria 2000, Submission, p. 8.

716 Liquor Licensing Victoria 2000, Submission, p. 9.

717 Submission of the Liquor Stores Association of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. May 2000, pp. 7-8.

718 Evidence to the Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 13 November 2000.

be changed to allow an intoxicated person to remain on licensed premises, enabling hoteliers to extend 'patron care'. Mr Giles explained patron care as follows:

> The best sobering-up centre is probably the hotel itself. I can see where you have perhaps some Indigenous problem that might exist in certain areas, but, generally speaking, in 99 per cent of cases the over-consumer is among his friends or people who are likely to be able to care for him. Putting him into some sort of a van and carting him off to some place somewhere just does not seem to make sense. It is an expense. What you are doing then is branding them. If there is a sufficient duty of care for the licensee and if he is permitted to retain an intoxicated person on his premises, the duty of care then can be properly extended. He can take control of that person and say, 'You sit down over here and here's some coffee', or 'Where do you live?', or 'I'll get some family friends or somebody to look after you'. But demonising them as some sort of a sinner who must be put into the sin-bin, I do not think that is the way we need to handle things these days.[719]

Other representatives of the hotel and licensing industry with whom the Committee met on the night tour of Melbourne or received evidence from, believe that such a concept is impractical.

Conclusion

The evidence outlined in this chapter is testament to the variety of strongly and legitimately held views disparate sectors of the Victorian community have with regard to the decriminalisation of public drunkenness. Each argument, each observation, has its merits. The recommendations of the Committee will not please all of the stakeholders that have been part of this Inquiry. Nonetheless, it hopes its approach has been a truly consultative one. It believes this to be the case.

719 Public Hearings of the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, 13 November 2000.

26. Public Order Offences: Alternative Approaches to Public Drunkenness

The Committee has discussed extensively the concerns of Victoria Police and other agencies that the ability of the police to control public order will be compromised if public drunkenness offences are decriminalised. In brief, the reasons Victoria Police feel disquiet about the possibility of repealing the relevant sections of the *Summary Offences Act 1966* are as follows.

- They are options that can be used to prevent the escalation of further violence.
- Section 13 is the least punitive offence that a person can be charged with.
- There are no long-term or severe consequences for the person charged with a section 13 offence (no criminal history, very rarely any sanction other than discharge and conviction).
- They are useful charges to have 'on stand by' or as a 'fall back option' in the case of large event management such as New Year's Eve or the Phillip Island Grand Prix.

According to Victoria Police therefore, if sections 13 and 14 were to be repealed some effective replacement allowing police to deal with people who are disruptive, violent or potentially so, or generally a threat to public order, may need to be put in place. Other commentators have argued that there is no need for a separate public disorder offence. They claim that both the common law and other offences under the Summary Offences and Crimes Acts adequately compensate for the removal of public drunkenness offences.[720]

The next section discusses the possible legal alternatives that may be open to the Committee if public drunkenness offences are decriminalised. It commences the discussion by contextualising the common law and statutory options presently in existence in Victoria. It includes a discussion of whether a general public order offence is warranted and canvasses the arguments opposed to the creation of a general public order offence.

The Law – Common Law

The Office of Constable

Police organisations can be distinguished from most other organised civic bodies in that the powers of a police officer as a constable are inherent in the office rather than delegated to him or her by superior authority. As Lord Hailsham has stated: 'in essence

720 These views are expressed later in this chapter.

a police force is neither more nor less than a number of individual constables, whose status derives from the common law, organised together in the interests of efficiency' (Hailsham 1981, cited in Dixonn 1997, p. 76).

The office of constable has been enshrined in most Australian legislation dealing with the regulation of the police force.[721] The rationale for this approach was to protect the independence of the police force from political influence. Yet whilst police forces may have been attributed the powers and status of the common law constable, they were themselves creatures of statute. This sets up a troublesome dichotomy:

> From a statutory perspective it is not accurate to state that the police, either individually or as an organisation, are completely 'independent'. For example, Section 5 of the *Police Regulation Act* states that the Governor in Council (part of the Executive) can issue 'directions' to the Chief Commissioner and make regulations with regard to the superintendence of the 'Force'. Yet Section 11 reaffirms the independence of the office of Constable at common law which is vested in all officers sworn under the Act. As police officers are sworn in to the service they exercise their roles under statute independently of a separate contract of employment. They are not therefore public servants in the normal sense that this term is understood. There seems to be an irreconcilable contradiction in these provisions (Johnston 1997, p. 128).

As such, whilst the officer still enjoys his or her common law status as a constable, he or she is subject to the statutory provisions concerning command structures, with ultimate authority within the structure resting with the Chief Commissioner.

The common law office of the constable therefore has important implications for the use of discretion exercised by police officers in controlling public order and preventing a breach of the peace.

Breach of the Peace/Causing Disturbance

Generally, many of the offences found under statutes such as the *Summary Offences Act 1966* are also common nuisances at common law:

> Every person is guilty of a misdemeanour at common law (known as a common nuisance) who does an act not warranted by law, or omits to discharge a legal duty if the effect of the act or the omission is to endanger the life, health, property, morals or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all His Majesty's subjects.[722]

At common law any *person* could arrest without warrant anyone committing a breach of the peace in his or her presence; or whom he or she reasonably believes will commit such a breach in the immediate future; or where a breach of the peace has been committed and it is reasonably believed that a renewal of it is threatened. Sloan (1996) defines a breach of the peace as follows:

> There is a breach of the peace whenever harm is done or is likely to be done to a person, or in his presence to his property, or a person is in fear of being so

721 In Victoria – Section 11 of the *Police Regulation Act* 1958.

722 I *Hawk PC,* c 75, cited in *Paul's Summary and Traffic Offences*, 1999, p. 619.

> harmed through an assault, an affray, a riot, unlawful assembly or some other disturbance (Sloan 1996, p. 39).[723]

For a citizen or officer to effect arrest for breach of the peace there must be:

- a reasonable cause to suspect a breach of the peace; and
- a reasonable expectation of it continuing.[724]

Halsbury states further that:

> A police officer has a continuing duty to prevent disturbances in public or breaches of the peace, whether or not he or she is in uniform, and regardless of whether the relevant incident occurs within the officer's ordinary working hours.[725]

In the case of *Albert v Lavin* the House of Lords upheld the principle that a police officer has not only a common law *right* but also a *duty* to prevent a breach of the peace. Lord Diplock was to state in this case:

> [e]very citizen whose presence a breach of the peace is being, or reasonably appears to be about to be, committed has the right to take reasonable steps to make the person who is breaking or threatening to break the peace refrain from doing so; and those reasonable steps in appropriate cases will include detaining him against his will.[726]

This position has been somewhat superseded by a codification of arrest powers in the *Crimes Act 1958*.[727]

Other Common Law Offences

Rout and Riot

If three or more persons gather in unlawful assembly for the purpose of committing or preparing to commit a crime of violence or carry out any purpose in an unlawful manner and they have begun to move towards the achievement of their object, in however small a way, they will be guilty of the common law offence of rout.

Waller and Williams states the 'essence of this offence is that it has a tendency to create a breach of the peace'(Waller & Williams 2001, p. 607).

If the assembly has begun to execute the common purpose and 'in doing so displayed such violence as to alarm at least one person of reasonable firmness and courage', its members, if such intent can be shown, are guilty of the common law crime of riot.

The problem with the use of offences such as rout and riot is that one needs to show that it was the intent of the participants to use force to achieve that common purpose. In many cases where the police may want to quell public disturbance or potential of

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723 K. Sloan, *Police Law Primer*, 5th edn, Butterworths, London, 1996. As for a discussion of affray, riot etc., see discussion later in this chapter.

724 For cases discussing breach of the peace, see *Wright*; *Ex parte Klar* (1971) 1 SASR 103; *Mann v Yannacos* (1977) 16 SASR 54; *Besst v Semple* (1985) 38 SASR 511; *Nicholson v Avon* [1991] 1 VR 212; *Edwards v Raabe & Anor; Moore v Raabe & Anor* [2000] VSC 471.

725 Halsbury's Laws of Australia, 1990, Service 80, p. 585.

726 *Albert v Lavin* [1981] 3 All E.R. 878 at 880 per Diplock L.

727 See later in this chapter.

same, violence occurs almost spontaneously or at least without a premeditated common purpose.

Affray

As Waller and Williams (2001, p. 87) state, the gist of the offence of affray is that a person has participated in a violent breach of the peace thus *causing terror to others.*

The constituent elements of the offence were discussed in the English case of *R v Taylor*.

- The offence will ordinarily consist of participation in actual fighting.
- Brandishing an offensive weapon, however, is sufficient to constitute the offence.
- It may occur in a private or public place.
- It may be committed by one person alone.
- The accused's conduct must be *calculated* to terrify a person of *reasonable firmness*. Waller and Williams interpret this as meaning that it is not sufficient that it merely *might* so terrify.
- As a corollary, however, it is not necessary that persons present at the time were *actually* terrified.

Despite the essence of the offence being the effect of the violent act on innocent third parties, Waller and Williams makes the following point:

> Nor in the case of affrays taking place in a public place is it necessary that a bystander be present or likely to be present. It is sufficient if the unlawful fighting, violence or display of force was such that a bystander of reasonable firmness and courage, if present, might reasonably be expected to be terrified (Waller & Williams 2001, p. 87).[728]

The problem for the police charging with affray is that there are potential problems of proof in determining the intent of the participants, whether a person was terrified, whether a person can be said to be of reasonable firmness.

Statutory Provisions

Section 457 of the Crimes Act (Vic) has in effect superseded the powers of common law arrest without warrant. In effect, the common law breach of the peace arrest powers have been supplanted by provisions found in Sec 458 (1)(a)(iii) of the Crimes Act. Thus whilst the common law offence of breach of the peace/disturbance of the peace remains, the means by which arrest is effected with regard to the offence has been put on a statutory footing. Now a person whether a private citizen or police officer may apprehend without warrant and bring before a magistrate any person –

> (a) He finds committing an offence...where he believes on reasonable grounds that the apprehension of the person is necessary...
>
> (iii) To preserve public order.[729]

728 See on this point, *Attorney General's Reference No 3 of 1983* – [1985] 2 WLR 253.

729 See also *Magistrate's Court Act 1989* (Vic), section 126A.

At common law the duty to prevent breaches of the peace and to protect life and property implied a power to enter private premises and arrest wrongdoers. That power remains, notwithstanding that the Crimes Act has abolished the common law powers of arrest.[730]

Mr Justice Marks of the Supreme Court of Victoria made the following remarks with regard to police powers and breaches of the peace in the case of *Nicholson v Avon*:

> The common law duties and powers of police to prevent breaches of the peace are not necessarily touched by the relevant provisions of the *Crimes Act* 1958. These provisions might certainly have abolished all common law powers of arrest. Arrest however is one thing; prevention of a breach or threatened breach of the peace is another.[731]

Notwithstanding these remarks, the advantage of the use of section 13 is that it gives police a pre-existing statutory right to arrest and detain (lodge in safe custody) until such time as that person has ceased to be drunk. Unless a statutory provision specifically and unequivocally expresses the contrary, the person arrested or apprehended may only be kept in police custody in quite strictly delineated circumstances.

- In the case of indictable offences and indictable offences triable summarily a person may be kept in custody only for a *reasonable* time before being released on bail or taken to a bail justice or Magistrate's Court. Guidelines as to what counts as a reasonable time are to be found in section 464A (4) of the *Crimes Act*.
- In using the provisions of section 458 of the *Crimes Act* a citizen or member of the police force who is relying on that section to apprehend a person without warrant to preserve public order must also ensure that person's presentation before a bail justice or magistrate as soon as practicable.
- In cases of offences of summary conviction only (most offences under the Summary Offences Act) where that person is taken into (police) custody he or she may be held in such custody only so long as:
  - any reason for the original apprehension continues (eg. in the context of section 13, the drunkenness) and;
  - if it appears to the arrestor that before a person is charged with an offence the reason for that person's apprehension no longer exists the detained person must be released from custody [Sec 458 (3)].

720 *Nicholson v Avon* [1991] 1 VR 212. This case was discussed in the recently decided case of *Edwards v Raabe & Anor; Moore v Raabe & Anor* [2000] VSC 471.

721 *Nicholson v Avon* at p. 223.

Thus any new or alternative public order offence that may be proposed should be quite clear as to what powers of apprehension, detention (if any) and release should be attached to it.[732]

The use of existing laws/charges[733]

If the public drunkenness offences were abolished a question arises as to what existing charges could the police use to quell public disturbance without the need for new laws to be introduced. The following are some possibilities:

Assaults (*Summary Offences Act 1966* /*Crimes Act 1958*)

For relatively minor assaults, the provisions with regard to common assault under the Summary Offences Act 1966 could be used.[734] For particular assaults on police or obstructing police officers, the provisions of section 52 of the Summary Offences Act 1966 could be used. For cases concerning serious assaults or violence, the provisions concerning injuries to the person of the *Crimes Act 1958* could be applicable.[735] Many of these offences contain within the provision, penalties for *threatening* the relevant offence.

Obscene, Threatening and Indecent Behaviour (*Section 17 – Summary Offences Act 1966*)

It is possible that police could use this charge in relevant public order situations whether or not the offender is intoxicated. Of particular note is section 17(1)(c) and (d):

> Any person who in or near a public place or within the view or hearing of any person being or passing therein or thereon –
>
> (c) uses profane indecent or obscene language or *threatening, abusive* or insulting words; or

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732 It should be noted that the Criminal Bar Association is opposed to the use of breach of the peace as an alternative mechanism for policing public disorder. In its submission to the Drugs and Crime Prevention Committee, it stated:

> The Law Commission of England has twice considered the use of the term "breach of the peace", firstly in its report on offences relating to public order in 1983 and in its subsequent report on Binding Over in 1993.
>
> In both cases, the Commission were strongly critical of the concept of "breach of the peace" either as an element in any new criminal offences or as a criterion for determining whether a person should be bound over.
>
> There is real doubt about what constitutes a breach of the peace. Whilst the authorities make it quite clear that the touchstone of breach of the peace is violence and not merely disturbance, they do not assist in determining the category of events which constitute apprehended breaches of the peace.
>
> There is a longstanding debate about the ambit of breach of the peace. Does it extend not only to those who cause the breaches of the peace but also to those who do an act, which to their knowledge but without intending it, tempts others to breach the peace, and thus occasions a breach of the peace? Recent Victorian decisions include this latter category within the ambit of the law. The creation of a statutory offence of this ambit is unjustifiable. Sufficient provisions exist in the Summary Offences Act 1966 and other legislation relating to threatening words, offensive behaviour, and the like which cover the field, providing appropriate sanctions to deter offences against public order.
>
> Submission of the Criminal Bar Association of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 5.

733 Where relevant, the applicable offence is set out in Appendix 10.

734 Section 23 – Common Assault; Section 24 – Aggravated Assault.

735 Part 1, Division 1, Sub Division 4.

(d) behaves in a *riotous* indecent offensive or insulting manner

shall be guilty of an offence.

The above provisions are italicised as it seems these are feasible alternatives to use in circumstances where a person's behaviour may have the potential to get out of control, particularly in a crowd situation. The use of the term riotous in particular gives the police some leeway in this regard.[736]

Offences tending to personal injury or damage to property (Section 7 – Summary Offences Act 1966)

There are a variety of offences, many of them somewhat arcane, which could be used under this section to prevent public order disturbances. Section 7(g) of the *Summary Offences Act* 1966 is one example:

> Any person who –
>
> Throws or discharges a stone, arrow or other missile to the injury of or danger to any person or damage to any property – shall be guilty of an offence.

Trespass/Wilful destruction and damage (Section 9 – Summary Offences Act 1966)

Under section 9(g) of the same Act, it is an offence for any person:

> without lawful excuse [to] enter any place (whether private or public) in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace.

The stipulation in using some of these *Summary Offences Act* sections is that they are tailored to a specific action that needs to be performed by the offender (eg. throwing a stone) rather than a general and all purpose provision that allows the police to deal with general public order disturbances or the potential for same.

Alternative Methods of Policing Public Order – Other Jurisdictions

United Kingdom

As well as statutory codifications of riot, rout and affray the following are public order offences under the British *Public Order Act 1986*.

Section 2 – Violent Disorder

> Where three or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using or threatening unlawful violence is guilty of violent disorder.

This offence could be characterised as a type of riot provision, although there need not be a common purpose of the persons present. It is immaterial whether the persons threaten violence simultaneously and, as with affray, no person of reasonable firmness need actually be present.

736 Cf section 16 *Summary Offences Act* 1966 – 'drunk and riotous behaviour'.

Section 4 – Fear or provocation of violence

This section makes it an offence to use towards another person:

> ...threatening, abusive or insulting words or behaviour, or distributing or displaying to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

A police officer may arrest without warrant on reasonable suspicion.

Section 4A – Intentional harassment alarm or distress

It is an offence if a person with intent causes:

> a person harassment, alarm or distress, using threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress (Our italics).

A police officer may arrest without warrant on reasonable suspicion.

Section 5 – Harassment, alarm or distress

> Using threatening abusive or insulting words or behaviour, or *disorderly behaviour,* or displaying any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. (Our italics).

A constable may arrest a person without warrant if he engages in offensive conduct and, after being warned to stop, engages in further offensive conduct.

It would seem that whilst section 4A and section 5 are similar in content, the key difference lies in the requisite intent element. Section 4A actually requires that the behaviour is done with the intention of causing harassment. Whereas under section 5 the behaviour once performed only has to be likely to cause such harassment or distress.

There is also a variety of other public order offences that are tailored to special or large events in England. For example, under the *Criminal Justice and Public Order Act 1994* the police have powers to remove persons attending or preparing for large open air parties known as 'raves'.

The United Kingdom also has separate legislation dealing with violence and disorder at sporting fixtures. For example, under the *Sporting Events (Control of Alcohol) Act 1985*, police can penalise people carrying alcohol or being drunk on public transport and in private vehicles whilst travelling to and from sporting fixtures. Similarly, police have wide powers to maintain public order and prevent disorder and disturbance under the *Football (Offences) Act 1991*.

The Australian States

In the criminal code States – Queensland, Tasmania and Western Australia – specific provisions allow a police officer to effect an arrest without warrant where he or she believes there to be a breach of the peace or potential breach of the peace. The other States rely on common law powers or specifically tailored statutory offences dealing with public order.

New South Wales

Summary Offences Act 1988

In addition to the usual offences of assault and offences to the person, New South Wales has also the following provisions.

Section 4 – Offensive conduct

(1) A person must not conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or a school.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

(2) A person does not conduct himself or herself in an offensive manner as referred to in subsection (1) merely by using offensive language.

(3) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

Section 11A – Violent disorder

(1) If 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using or threatening unlawful violence is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

(2) It is immaterial whether or not the 3 or more persons use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) An offence under subsection (1) may be committed in private as well as in public places.

(5) A person is guilty of an offence under subsection (1) only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.

(6) Subsection (5) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.

(7) In this section: violence means any violent conduct, so that:

(a) it includes violent conduct towards property as well as violent conduct towards persons, and

(b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

The New South Wales legislature has also provided police with a general power of 'moving on' in appropriate circumstances as follows:

Section 28F – Power to give reasonable directions in public places

(1) A police officer may give a direction to a person in a public place if the police officer has reasonable grounds to believe that the person's behaviour or presence in the place (referred to in this section as relevant conduct):

(a) is obstructing another person or persons or traffic, or

(b) constitutes harassment or intimidation of another person or persons, or

(c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness.

(2) The other person or persons referred to in subsection (1) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.

(3) Such a direction must be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction, harassment, intimidation or fear.

(4) A police officer may give a direction under subsection (1) only if before giving the direction the police officer:

(a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and

(b) provides his or her name and place of duty, and

(c) informs the person of the reason for the direction, and

(d) warns the person that failure to comply with the direction may be an offence.

(5) If a police officer has complied with subsection (4) in giving a direction to a person and the person initially refuses to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.

(6) A person must not, without reasonable excuse (proof of which lies on the person), fail or refuse to comply with a direction given in accordance with subsection (5).

Maximum penalty: 2 penalty units.

(7) A person is not guilty of an offence under subsection (6) unless it is established that the person persisted, after the direction concerned was made, to engage in the relevant conduct.

(8) For the purposes of subsection (1) (c), no person of reasonable firmness need actually be, or be likely to be, present at the scene.

The following section of the *Liquor* Act 1982 allows measures to be taken to prevent potential disorder around licensed premises.

Section 105 – Breach of the peace

Where, upon application by any person, a licensee is directed by a Magistrate or licensing magistrate to close his or her licensed premises because, in the opinion of the magistrate, there is, or is likely to be, a breach of the peace in the neighbourhood of the licensed premises, the licensee shall close the premises from a time specified by the magistrate when giving the direction until a later time, whether on the same or a different day, so specified.

Maximum penalty: 10 penalty units or imprisonment for 6 months or both.

Queensland

The following provisions are relevant to the keeping of public order in public places in Queensland.

Criminal Code 1893

Section 260 – Preventing a breach of the peace

(1) It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give the person into the custody of a police officer.

(2) It is lawful for a police officer who witnesses a breach of the peace, and for any person lawfully assisting the police officer, to arrest any person whom the officer or person finds committing it, or whom the officer or person believes, on reasonable grounds, to be about to join in or renew the breach of the peace.

(3) It is lawful for a police officer to receive into custody and detain in custody any person given into the police officer's charge as having been a party to a breach of the peace by a person whom the police officer believes, on reasonable grounds, to have witnessed the breach of the peace

Police Powers and Responsibilities Act 1997

Section 89 – Dealing with breach of the peace

(1) This section applies if a police officer reasonably suspects –

(a) a breach of the peace is happening or has happened; or

(b) there is an imminent likelihood of a breach of the peace; or

(c) there is a threatened breach of the peace.

(2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct constituting the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

Examples –

1. The police officer may detain a person until the need for the detention no longer exists.
2. A person who pushes in to the front of a queue may be directed to go to the end of the queue.
3. Property that may be used in or for breaching the peace may be seized to prevent the danger.

Note also the following section that allows a private citizen to make a complaint with regard to breaches of the peace or potential breaches of the peace.

Peace and Good Behaviour Act 1982

Section 4 – Complaint in respect of breach of the peace

(1) Upon complaint made before a justice of the peace that a person has threatened –

(a) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant; or

(b) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant; or

(c) to destroy or damage any property of the complainant; or

(d) to procure any other person to destroy or damage any property of the complainant;

and that the complainant is in fear of the person complained against (the "defendant"), the justice, if the matter of the complaint is substantiated to the justice's satisfaction and the justice is satisfied that it is reasonable in the circumstances for the complainant to be in fear of the defendant, may issue –

(i) a summons directed to the defendant requiring the defendant to appear at a certain time and place before a Magistrate's Court; or

(ii) a warrant to apprehend the defendant and to cause the defendant to be brought before a Magistrate's Court

to answer the complaint and to be further dealt with according to law.

(2) A person (the "complainant") may make a complaint to a justice that someone else is engaging in conduct that is adversely affecting, or likely to adversely affect, the complainant's enjoyment of the complainant's property.

(3) If the justice before whom the complaint mentioned in subsection (2) is made considers that the matter would be better resolved by mediation than by proceedings before a Magistrate's Court, the justice may, with the complainant's consent, order the complainant to submit the matter to mediation under the *Dispute Resolution Centres Act 1990*.

There are also provisions under the Queensland *Liquor Act* which make it an offence to create a disturbance on licensed premises whether or not that person is drunk and disorderly.

Western Australia

The following provision, although arcane in many respects, can and is used to police disorderly conduct and public disorder in Western Australia.

Police Act 1892

Section 43 – Power of apprehending offenders for disorderly conduct

(1) Any officer or constable of the Police Force, without any warrant other than this act, at any hour of the day or night may apprehend any person whom he may find conducting himself in a disorderly manner, or using profane, indecent, or obscene language, or who shall use any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace, in any street, public vehicle, or passenger boat; and also any person who shall ride or drive on or through any street so negligently, carelessly, or furiously that the safety of any person may thereby be endangered; and also any person who shall cruelly or wantonly beat, ill-treat, overdrive, overload, abuse or torture any living thing, or cause the same to be done, and also any person who shall convey or carry any living thing in any street, in such a manner or position as to cause unnecessary pain or suffering, and all persons whom he shall have just cause to suspect of having committed or being about to commit any offence, or of any evil designs, and all persons whom he shall find or who shall have been lying or loitering in any street, yard, or other place, and not giving a satisfactory account of themselves, and shall detain any person so apprehended in custody, until he can be brought before a Justice, to be dealt with for such offence.

The following section enables private citizens to intervene to prevent a breach of the peace.

Criminal Code

Section. 237 – Preventing a breach of the peace

> It is lawful for any person who witnesses a breach of the peace to interfere to prevent the continuance or renewal of it, and to use such force as is reasonably necessary for such prevention and is reasonably proportioned to the danger to be apprehended from such continuance or renewal, and to detain any person who is committing or who is about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer.

Tasmania

Police Offences Act 1935

Section 13 – Public annoyance

(1) A person shall not, in a public place –

(a) behave in a violent, riotous, offensive, or indecent manner;

(b) disturb the public peace;

(c) engage in disorderly conduct;

(d) jostle, insult, or annoy any person;

(e) commit any nuisance; or

(f) throw, let off, or set fire to any firework.

(2) A person shall not recklessly throw or discharge a missile to the danger or damage of another person or to the danger or damage of the property of another person.

(3AA) A person who contravenes a provision of subsection (1), (2), (2A), (2B), (2C) or (3) is guilty of an offence and is liable on summary conviction to –

(a) a penalty not exceeding 3 penalty units or to imprisonment for a term not exceeding 3 months, in the case of an offence under subsection (1) or (3); or

(b) a penalty not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, in the case of an offence under subsection (2).

The case of *Neave v Ryan*[737] discussed the meaning of the term disturbance of the 'public peace' under an earlier version of the Tasmanian *Police Offences Act.* Burbury J found that the 'public peace' should be interpreted as being equivalent to disturbance of public order rather than disturbance of peace and order. It is submitted that a similar interpretation would apply to the current act.

737 [1958] Tas S.R. 8 per Burbury, C.J.

Criminal Code 1924

Section 27 – Arrest without warrant

(1) It is lawful for a police officer to arrest without warrant any person whom he finds committing a crime.

(6) It is lawful for any person to arrest without warrant any person whom he sees committing a breach of the peace or whom he believes on reasonable grounds to be about to commit or renew a breach of the peace.

Northern Territory

Summary Offences Act 1996

Section 46 – Offensive Conduct etc.

Every person who is guilty –

(a) of any riotous, offensive, *disorderly* or indecent behaviour, or of fighting, or using obscene language, in or within the hearing or view of any person in any road, street, thoroughfare or public place;

(b) of disturbing the *public peace*;

(c) of any riotous, offensive, disorderly or indecent behaviour in any police station;

(d) of offensive behaviour in or about a dwelling house, dressing-room, training-shed or clubhouse;

(e) of unreasonably causing substantial annoyance to another person; or

(f) of unreasonably disrupting the privacy of another person,

shall be guilty of an offence.

Penalty: $2,000 or imprisonment for 6 months, or both.

In the case of *Williams v Pinnuck,*[738] an Aboriginal woman was charged under S47(b) of the Northern Territory Summary Offences Act. She had been loudly haranguing other women at a campsite. The court found that the mere making of noise in a public place, even though some interference with the comfort of others is caused, is not a disturbance of the public peace.

South Australia

Summary Offences Act 1953

Section 7 – Disorderly or offensive conduct or language

(1) A person who, in a public place or a police station –

(a) behaves in a disorderly or offensive manner; or

(b) fights with another person; or

(c) uses offensive language,

is guilty of an offence.

Maximum penalty: $1 250 or imprisonment for 3 months.

738 (1983) 68 F.L.R 303 per Muirhead, A.C.J (Sup Crt)

(2) A person who disturbs the public peace is guilty of an offence.

Maximum penalty: $1 250 or imprisonment for 3 months.

(3) In this section –

"**disorderly**" includes riotous;

"**offensive**" includes threatening, abusive or insulting;

"**public place**" includes, in addition to the places mentioned in section 4 –

(a) a ship or vessel (not being a naval ship or vessel) in a harbor, port, dock or river;

(b) premises or a part of premises in respect of which a licence or permit is in force under the *Liquor Licensing Act 1985*.

The following offence puts the responsibility on licensees and shopkeepers to prevent drunk and disorderly conduct.

Section 20 – Permitting drunkenness and disorderly conduct

(1) A person who keeps premises where provisions or refreshments are sold or consumed and who knowingly permits drunkenness or disorderly conduct to take place on those premises is guilty of an offence.

Maximum penalty: $750.

(2) In this section –

"**premises**" includes a shop, restaurant or other premises to which the public are admitted.

The outline of the law presented shows that there are certainly existing offences available to deal with disorder, whether alcohol related or otherwise, that police can utilise.

It would seem from a review of the law and literature that the following options for recommendation are open to the Committee:

- Use of common law powers to prevent the breach of the peace;
- Use of existing summary and indictable offences;
- Use of existing offences in addition to common law powers to 'plug in the gaps';
- Recommendation of a new general offence or offences to deal with public disorder or the threat of same;
- Recommendation of new specific offences that cover discrete situations (eg. a football or sporting events offence as in the United Kingdom); or
- Tailor an offence based on those in other jurisdictions.

Advantages and Disadvantages

It is clear that if the drunkenness offences were repealed the police would not be left without means of policing public disorder. If there were the potential for violent disturbances or actual violence there are a number of serious and not so serious criminal charges that could be used under the *Crimes Act 1958* and the *Summary Offences Act 1966*.

In cases where the behaviour is relatively benign or harmless (hi-jinks, 'over exuberant' behaviour etc.) police can use their discretion to disperse groups etc. The problem with using some of the Summary offences is that they are tailored to meet specific circumstances, like throwing stones etc. Section 17 of the *Summary Offences Act 1966* certainly has the potential to be used to quell disorder but, according to some quarters, there are problems with replacing one form of public disorder offence with another. Certainly, Indigenous groups have stated that section 17 can be, and in fact is, used selectively and discriminatorily against their people.[739]

Clearly, police may fall back on their common law powers in this area. Experience suggests, however, that whilst police will acknowledge these are handy 'tools' to have in reserve, they would prefer to have the certainty of their powers codified in statutory form.

An open-ended public disorder offence clearly would be attractive for police. It avoids the need to tailor the charge to particular actions or behaviour or a 'piecemeal' approach to policing public order. The advantage of such an offence is that it can be utilised in cases where the person is intoxicated or sober. There are dangers, however, in that the offence could be so wide and vague as to give police potentially almost open-ended powers to deal with what could be relatively benign behaviour. Several of Victoria's peak legal bodies have argued strongly against the creation of such an offence in their submissions to the Drugs and Crime Prevention Committee.

The Criminal Bar Association of Victoria is vehemently opposed to the creation of a general public disorder offence or the use of breach of the peace provisions. In its submission to the Committee it states:

> The creation of a statutory offence of this ambit is unjustifiable. Sufficient provisions exist in the Summary Offences Act 1966 and other legislation relating to threatening words, offensive behaviour, and the like which cover the field, providing appropriate sanctions to deter offences against public order.
>
> The need to make criminal law more certain and more readily ascertainable is a well recognised principle.[740] Legal rules imposing criminal sanctions should be stated with the maximum clarity that the imperfect medium of language can attain. The creation of a new criminal offence that includes the concept of "breach of the peace" falls well short of such clarity.
>
> In practical terms, we also have concerns about the potential for misuse of such a power. Conduct that amounts to a "breach of the peace" can be otherwise entirely lawful. It depends upon an assessment that the conduct is likely to lead to misconduct by a third person. The role of police would necessarily be one that would require partisanship in disputes. The election of who to charge would necessarily be a subjective and ill defined one.

739 See Chapters 13, 22 and 23.

740 Law Commission Report. Law Com. No 222, *Binding Over*, 1993 p. 32.

> There is no need for an "umbrella" public order offence to be created as a result of the change of the detention power from a criminal to a civil power.[741]

These views are echoed by Defence for Children International – Australia (DCI-A) and the Youth Affairs Council of Victoria. (YACVic). Their respective submissions state:

> DCI-A supports the abolition of the offence of public drunkenness. We oppose the creation of any new offence against public order or the like and note that there are already in existence numerous offence categories which we submit are adequate to ensure that behaviour which should attract criminal sanctions does so.[742]

> YACVic supports the decriminalisation of public drunkenness. While acknowledging that alcohol misuse is of concern to the community, YACVic does not believe that criminal sanctions are an appropriate intervention for what is essentially a medical and social problem. For this reason YACVic also opposes the creation of a new public order offence. There already exist many other offence categories that can be used to cater for more serious offences.[743]

The Victorian Law Institute (Criminal Law Section) has stated that:

> Where an assault or threatening behaviour is involved [in an alcohol related incident], then the person [can] be charged with a more serious offence under this [*Summary Offences Act* 1966] or the *Crimes Act* 1958.[744]

The Victorian Bar Council takes a slightly different approach. It is also opposed to the concept of a general or open-ended public disorder offence as being uncertain, broad, vague and ill defined. A compromise suggestion by the Victorian Bar Council is that if a disorder type offence is required, the Committee should utilise the recommendation of the former Law Reform Commission of Victoria (LRCV) in its Review of the Summary Offences Act 1966.

In this report published in 1992, the Commission suggested a compromise solution in order to solve the possible problem of leaving the police without 'tools' to quell public disorder, if (as they recommended) public drunkenness offences were decriminalised. New offences of 'threatening language' and 'offensive or threatening conduct' with their own arrest powers were recommended to replace the current offensive behaviour sections in the *Summary Offences Act 1966*.

The Commission stated that the offence of offensive language should be repealed pursuant to the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and in line with modern mores. The Commission proposed offences of 'threatening language' and 'threatening conduct'.[745]

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741 Submission of the Criminal Bar Association of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 5.

742 Defence for Children International – Australia, Submission to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, May 2001, p. 4.

743 For example 'behave in an offensive manner', 'use indecent language in a public place' and 'loiter with intent to commit an indictable offence'. Submission of Youth Affairs Council of Victoria to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, May 2001, p. 1.

744 Submission of the Law Institute of Victoria (Criminal Law Section) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 2.

The Commission stated further that whilst an offence of offensive or threatening conduct:

> may have the potential for misuse. This is an issue for police guidelines or training. Conduct may be offensive without being threatening, and be such that police should have the power to intervene' (LRCV 1992, p. 34).

The Commission gives the example of someone urinating in a public doorway as an example of offensive conduct that could be subject to a charge under this section.

After recommending the abolition of public drunkenness offences, the Victorian Bar Council in its recent submission concludes:

> There is room however, for the retention of a 'public order' type of offence to cover what is now covered by a number of sections of the Act. The Law Reform Commission recommended the creation of two new offences: offensive or threatening conduct and threatening language. The provisions concerning public drunkenness (sections 13, 14 and 15) would be repealed. The offence of while drunk behaving in a riotous or disorderly manner should also be repealed, and the offences of obscene, indecent, threatening language and behaviour (section 17) replaced by the suggested new offences. These offences, it is submitted, would cover conduct and language that ought to be criminal.[746]

It should be noted that this compromise position is not supported by the Criminal Bar Association nor other legal associations. Such bodies are opposed to the use of a public order offence and believe existing provisions of the Summary Offences Act are sufficient to deal with public order. They also believe it to be bad law and illogical to replace one form of sanction against public disturbances with another where the disorder is relatively minor. All legal bodies agree, however, that if a public order offence was to be created it must be clearly and tightly drafted so that 'the purpose and scope of the offence are clear'.[747]

The combination of a comprehensive civil detention model/Act with the existing summary and indictable criminal law offences in cases where offenders are violent, or potentially so, would seem to give police the options they need to control public order. If an added safeguard is needed, a suitable compromise may be the proposal by the former Law Reform Commission as explained by the Victorian Bar Council in its submission to this Committee.

A person who is drunk either by himself or herself or in combination with others can be apprehended by police for being drunk and disorderly pursuant to the civil detention models currently existing in Australia. If it is not appropriate to arrange for that person to attend a sobering-up centre or be released into the custody of a responsible person or family member, there is facility in all Australian jurisdictions for

745 Threatening language is listed in section 17 of the *Summary Offences Act 1966* in addition to rather than substitute for the offence of offensive language.

746 Submission of the Victorian Bar Council, to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, pp. 2-3.

747 Submission of the Victorian Bar Council, April 2001, p. 1.

that person to be placed in a police cell. However regrettably, there are going to be situations when this is unavoidable.

Nonetheless, the civil detention model quite apart from the philosophical arguments in its favour has these main benefits.

- Police are not put to the task of having to tailor a charge to suit the circumstances.
- Police do not have to let the person go once the behaviour has ceased, without more specific charges, as is the case under section 458 of the Crimes Act. Under most civil detention models the person is taken into custody for his or her own protection until such time as he or she has ceased to be intoxicated or unless released into the care of a responsible person, or sobering-up centre;
- Police do not have to take the person before the bail justice or magistrate with the attendant paperwork this may require.
- Most importantly, the offender does not end up with a criminal record or conviction or the stigma associated with this.

There are some drawbacks, however, to this position.

- There may be no sobering-up centres to take the intoxicated person to or the police use their 'discretion' not to take them there.
- Police may spend considerable time transporting to a sobering-up centre.

With regard to the first point, to a certain extent this possibility can be safeguarded by writing into legislation and policy, including police standing orders, that police cells are to be used as the last possible alternative. As stated, there are always going to be some circumstances where cells will be used. These, however, can be minimised with appropriate resources and legislative safeguards.

With regard to the second point, a system of sobering-up centre workers collecting intoxicated persons from police stations may to a certain extent minimise this problem. This is already done in Victoria in relation to Indigenous intoxicated persons. This can be problematic, however, when Indigenous sobering-up centre workers are kept waiting for long periods of time until a person is bailed into their care.

The one possible area in which a general disorder offence could be said to be beneficial is in the particular area of policing large (sporting) events at a venue such as the Melbourne Cricket Ground. The problems associated with policing these events were discussed in Chapter 14.

Whilst a civil detention model based on disorderly conduct could be applied at the MCG, it would presumably be a waste of time and police resources to transport the patron from the ground to the sobering-up centre. This would be required if you were using a civil detention model that privileges disposition to a sobering-up centre over a police cell. This would also result in taking police away from their duties that they are paid to perform at the MCG. The following are some possible propositions to circumvent this problem.

- If the legislation is couched in terms that the disposition to a sobering-up centre is the first option to be considered *where practicable*, it could plausibly be argued

that in the context of the MCG it would not be so practicable. Thus the person could be kept in the MCG cells until such time as a friend, relative or responsible person can transport the person home.

- Police may in many cases be able to deliver the person to the care of a responsible and sober person on the proviso that that person takes the person home. In the case of juveniles, police could ensure that the parent's parent or guardian is contacted. This is already police practice in these circumstances.
- Special legislative provisions be proclaimed that makes the MCG or similar venues a special case.
- A modified version of a sobering-up centre/drying out shelter could be established at the ground. This could possibly be staffed by St John's Ambulance.
- In cases where the person is more than just 'rowdy', the person could still be charged with assault, or another summary offence and lodged in the MCG cells or transported to the Custody Centre.
- Minor offences that may or may not be associated with drunkenness can be dealt with through police exercising their power pursuant to Melbourne Cricket Club regulations, including eviction. Of course caution would need to be exercised that a police officer was not evicting someone so drunk that his or her safety or health or the safety and health of others was jeopardised.

The Committee has found addressing the competing positions outlined in this section one of the most difficult tasks in the Inquiry. After reviewing the relevant law and policy and reflecting on the submissions of all interested parties to this debate, on balance the Committee does not believe a separate and general public disorder offence should be introduced *if* the government adopts a strong civil detention model allowing for the apprehension and detention of intoxicated persons in appropriate circumstances.[748]

This Report has shown that addressing the problems of public drunkenness and alcohol related harms is about balancing competing interests and responsibilities. These include the responsibilities of:

- law enforcement agencies;
- local government and regulatory authorities;
- service providers;
- the Alcohol Industry; and
- not least of all, the responsibility of the individual to be accountable for his or her own actions and behaviour.

748 The next chapter discusses what the elements of such a model should include.

PART K:
Which Way Forward?

27. Decriminalisation of Public Drunkenness: Which Way Forward?

The Drugs and Crime Prevention Committee is of the view that the offences pertaining to public drunkenness should be repealed. Public Drunkenness should be acknowledged primarily as a health issue not a policing or criminal justice issue. It would be negligent, however, to suggest that the offence of being drunk in a public place should be decriminalised without recommending alternative methods to deal with people who are drunk in public and a danger to themselves or others.

The Committee believes the following matters are pre-requisite to the decriminalisation of public drunkenness offences:

- A recommendation to repeal the relevant sections of the *Summary Offences Act 1966* (Sections 13, 14, 16);
- Recommendations proposing alternative methods of dealing with public drunkenness. Such recommendations could form the basis of a comprehensive new act dealing with public intoxication;
- Substantial numbers of sobering-up centres and associated services need to be established *before* decriminalisation takes effect;
- Consideration should be given where ever possible to sobering-up centres established for Indigenous people forming part of a holistic 'treatment service' or healing centre;
- Appropriate protocols need to be established between Victoria Police, and the government departments or agencies responsible for funding and administering sobering-up centres;[749]

749 Copies of the New South Wales and Tennant Creek Protocols can be found in Appendices 8 and 9.

- Comprehensive guidelines should be published to assist staff in the running of sobering-up centres, similar to those produced by the Queensland Department of Health;[750]
- Police members should be given detailed and ongoing training and education with regard to any proposed legislation concerning public intoxication and the issues pertaining to public drunkenness generally. Such training should be culturally specific to the interests of Indigenous people where appropriate. Ideally it should take place prior to the legislation taking effect;
- A thorough costing analysis be undertaken with regard to the establishment of sobering-up centres and associated services prior to decriminalisation;
- Funding for sobering-up centres should be provided by one central authority and ideally allocated on a triennial basis;
- A monitoring body should be established to oversee the implementation of the Committee's recommendations.

The Committee has examined the various systems and models of civil detention in place in the other States and Territories of Australia. It is fortunate to be able to draw from the best of these in making recommendations for Victoria.

After much reflection the Committee has also decided that a separate public order offence is not required if a strong civil detention model is adopted. A comprehensive civil detention public intoxication act, used in combination with the existing summary and indictable criminal law offences in cases where offenders are violent, or potentially so, would seem on balance to give the police the options they need to control public order.

The Committee posed many questions in considering the content of suitable public intoxication legislation. These included:

- Should powers of apprehension and detention be open-ended or circumscribed and qualified? (For example, would they apply only in circumstances where the health or safety of the intoxicated person was jeopardised or for the protection of the public?)
- Should the apprehension have to be made on 'reasonable grounds'?
- Should the act give powers of apprehension to authorised persons other than police officers?
- Should sobering-up centres be given the power to detain against the intoxicated person's will?
- Should night patrols be established in Victoria? If they are recommended should night patrol officers be granted powers of apprehension or should they only act at the direction of the police and with the consent of the intoxicated person?
- Should police or authorised officers be able to apprehend intoxicated persons trespassing on private property?

750 Copies of Guidelines for Police and sobering-up centre staff originally drafted by the former Law Reform Commission of Victoria could serve as a useful model. They are found in Appendices 7a and 7b.

- Should intoxicated persons be allowed to be questioned in custody for other suspected offences?
- How should intoxication be defined? Should it include drugs other than alcohol? Should it cover situations of *apparent* intoxication?
- Should the subjective discretion of police officers to determine whether a person is drunk be replaced with some form of objective test measuring the type and level of intoxication?
- Should any new legislation cover children and juveniles specifically?
- How long a period of detention should an intoxicated person be subject to? Should there be a finite time limit set as in some jurisdictions? Should a person be able to be detained after he or she is no longer intoxicated if it is thought to be in that person's best interests?
- Should there be a 'domestic violence clause' similar to that found in the Queensland legislation prohibiting the release of a person back to the family home if it is thought that the intoxicated person may be violent to spouses or family members?
- Should the intoxicated person have a right of redress or review before a Magistrate's Court?
- Should an intoxicated person be able to seek a certificate stating he or she was not intoxicated at the time in question (for insurance or legal purposes etc)?
- Should police and other officers be given a blanket immunity against liability if acting in good faith?

The breadth of these questions give some indication of the complexity of the Committee's task. Other more general questions and issues it has had to consider included:

- Should a protocol system or model be recommended similar to NSW? (ie. Where police, community services and health departments work in close cooperation with each other but each with defined responsibilities, see Discussion Paper);
- How should sobering-up centres best be set up? Attached to hospitals, community health centres, independently, attached to existing welfare services such as the Salvation Army, Aboriginal healing places?
- How should transport of the intoxicated person be put into effect? Should police be expected to transport people to sobering-up centres? Conversely should sobering-up centre staff collect from police custody? Should a mixture of both systems operate? Will this problem be alleviated if a patrol system is established?
- What role should local government play if public drunkenness is decriminalised? Is there potential for 'back door criminalisation' through the use of municipal regulation?
- Should the supply side of alcohol related issues be looked at? (ie. The alcohol industry, regulation and de-regulation etc?)

Apprehension

It could be argued that in Victoria selected people associated with sobering-up centres for Aborigines should have a power of apprehension where no criminal offence is involved. It is arguable that it is preferable for agencies run by Aborigines to deal with intoxicated Aborigines, ie: 'keep police out of the loop'. The former Law Reform Commission of Victoria states that emergency situations could arise where it is desirable to give an apprehension power to personnel attached to sobering-up centres for Aborigines. The Committee can understand how such a system may be beneficial. On balance, however, given the sensitivity associated with 'citizen's arrest', it believes the power of forcible apprehension should only be exercised by the police. Apprehension should take place only in circumstances where a police officer based on his or her experience and reading of the situation has a reasonable belief that it is necessary to apprehend the intoxicated person because, he or she is:

- disorderly; and or
- the health or safety of the intoxicated person is jeopardised; and or
- the safety and protection of members of the public (individually or collectively) is at risk from the behaviour of the intoxicated person.

Furthermore, it has been stressed to the Committee by people working in the field of drug and alcohol services that in cases where Night or Community Patrols operate, intoxicated persons overwhelmingly and voluntarily cooperate with the patrol officer about being taken home or to a sobering-up centre, especially when it is pointed out that the alternative may be police custody. This is particularly true of Indigenous people.

The Committee supports the establishment of culturally appropriate and gender specific community patrols. They should not, however, be given powers of forcible apprehension.

Whilst most apprehensions of intoxicated persons will take place in public places,[751] the Committee agrees that police should be allowed to enter private property without warrant to apprehend an intoxicated person who is trespassing on that property. This would particularly be the case where unwanted 'gatecrashers' have entered private property without permission.

Detention

The Committee is of the view that wherever possible an intoxicated person should be released into the care of a responsible person such as a family member or friend who is able and willing to care for that person, unless there are reasonable grounds to suspect the intoxicated person may inflict (domestic) violence upon another person. If this is not possible to release the intoxicated person into the care of a responsible person then that person should be put in the care of an appropriate sobering-up centre. Only as a last resort should intoxicated persons be detained in police cells. This stipulation should be specifically mentioned in the relevant legislation and also in Police Operating Procedures.

751 As defined by Section 3 of the *Summary Offences Act 1966*.

One of the questions that the Committee has had most difficulty with is whether an intoxicated person should be able to be detained in a sobering-up centre against their will. There are good arguments both for and against such a proposal.

On the one hand, to allow sobering-up centres to detain a person against their will is to give that staff person special powers above and beyond every other citizen. Sobering-up centre staff do not have the highly specialised training of other civilians who authorise civil commitment, such as psychiatrists. To allow sobering-up centres to detain people against their will puts an onerous burden on them. The legal power to detain may jeopardise the relationship between staff and client at the sobering-up centre.

Conversely, there have been several arguments posited as to why forcible detention is appropriate. Many of these were posited by the former Law Reform Commission of Victoria (LRCV). The LRCV supported giving sobering-up centre staff lawful authorisation to detain people brought there by police. They stated there are several reasons why this if preferable:

- For the reasons given in the Commission's first Report, society is entitled to detain people who are intoxicated and represent a danger to themselves or others. If the true object of sobering up centres is to detain intoxicated people while they constitute a threat to themselves or to others, it is preferable to state the legal powers of sobering up staff clearly rather than to rely on disingenuous notions of voluntariness;
- Without lawful authorisation to detain, the sobering up centre or its staff could be sued for damages for unlawful imprisonment. The sobering up centre could rely on the consent of the person to remain at the centre. However, given the level of the person's intoxication, the fact of apprehension by the police, various forms of 'persuasion' by staff not to leave, and so on, both the intention of the staff and the validity of the person's consent would be very doubtful. A plaintiff could well argue that he or she believed there was no option to leave. Doubts about civil liability may inhibit agencies and personnel from participating in the scheme. If there were to be a successful suit once the scheme was operating, it might cause agencies and personnel to withdraw;
- The co-operation of the police could be jeopardised if they believed that people taken to a sobering up centre could simply walk out the door the moment the police left. It would be labelled as a 'revolving door' scheme. This would result in more people being detained in police cells than necessary. The contention that police could simple be called back to the centre if necessary is unrealistic in most cases, given scarce police resources. If the police did have to return, they could fairly complain about a waste of resources;
- It would be damaging to the scheme if a person did leave and subsequently injured himself or herself or someone else (LRCV 1990).

The LRCV argued further that there was no evidence that New South Wales sobering-up centre staff felt the ability to forcibly detain compromised the client/staff relationship. Whilst this may have been true eleven years ago, it should be noted that the New South Wales parliament subsequently changed its legislation to repeal the right of sobering-up centres or proclaimed places personnel to detain an intoxicated person against their will. The following comments are taken from the Drugs and Crime Prevention Committee Discussion Paper (October 2000):

> The new legislation has removed the power of civilian agencies in charge of proclaimed places to detain a person delivered into their care against their will. Most of the Committee's respondents state that this merely clarifies what *was* in fact the practice of these organisations. In other words, despite having the power to do so, few, if any, shelters or proclaimed places would seek to detain a person who had indicated they were leaving prior to sobering up. Agencies would differ as to the appropriate procedure to follow if a person did in fact leave. Some agencies would inform the police of the absconder's departure, other agencies would not. Often agencies informed the police, because they were concerned about the agency's duty of care liabilities should the absconder have an accident or in some other way be at risk whilst still intoxicated (p. 59).

It should also be stated that the majority of the sobering-up centre staff with whom the Committee met were opposed to having powers to forcibly detain. This is particularly true of Indigenous organisations.

The Law Reform Commission puts forward strong arguments supporting forcible detention. The Committee is particularly concerned that an intoxicated person may injure themselves or another if they leave the centre before they are completely sober.

There are some safeguards to prevent this happening.

First, police must be trusted to make appropriate judgements as to whether a person should be taken to a sobering-up centre or collected by a sobering-up centre staff member or kept in a police cell. Comprehensive and detailed protocols and operating procedures should be drawn up to assist the police in making these decisions. The Committee believes that the police should not release the person into the custody of a responsible person, or take that person home, in cases where they have reasonable grounds to believe that the intoxicated person may inflict (domestic) violence upon another person. Specific provision should be inserted in any proposed legislation to that effect. Moreover, the relevant legislation dealing with intoxicated persons should make it clear that there is nothing to prevent a person being kept in a police cell during the first part of his or her period of intoxication. The person could then be transferred to a sobering-up centre at a later stage if it was thought appropriate.

Second, if sobering-up centre staff thought it was totally inappropriate for a person to leave because they may be jeopardising their own safety or that of the others, they could utilise the 'citizens arrest' powers in the Crimes Act to prevent the person leaving the centre until such time as the police arrived.[752]

752 Section 458(1)(iv) *Crimes Act 1958* (Vic).

Third, the relevant legislation should have strong provisions indemnifying sobering-up centres for acting in good faith. Depending on the specificity of such a provision, this could safeguard sobering-up centres from suits against false imprisonment or negligence.

The Committee believes on balance that sobering-up centre staff should not become 'de facto gaolers'. As such, it believes they should not be given powers to forcibly detain intoxicated persons other than through the use of citizen's powers under the Crimes Act in emergency circumstances.

Definition of Intoxication

The Committee believes that the definition of intoxication should be extended to include the words *apparently intoxicated by alcohol or another drug or combination of drugs.* This recognises the reality of poly-drug use and, as this Report has often noted, the fact that it is increasingly difficult to separate alcohol misuse from the misuse of other drugs. The term 'drug' should be extended to include volatile substances and inhalants. This recognises that the phenomenon known as 'chroming' is of growing concern. The use of the term, apparently, gives added protection to police officers who whilst acting in good faith have mistakenly believed someone to be intoxicated and subsequently apprehended them when they may in fact have been suffering from a condition which may mimic the symptoms of intoxication.

Police should still use their subjective judgement to decide whether a person is intoxicated. In other words, an objective test to determine intoxication should not be required, although police may use objective mechanisms such as breathalysers to assist them in the exercise of their discretion. It is hoped that the training of police members in issues pertaining to intoxication will also assist officers in this context.

Children and Adolescents

The Committee believes that specific provisions must apply for the apprehension, detention and release of children under any proposed legislation. The key consideration at all times must be that decisions are made with the interests and welfare of the child being paramount.

Period of Detention

The Committee does not believe any finite time limit should be placed on the length of the intoxicated person's detention in a police cell or sobering-up centre. The Committee has heard of some extreme cases in other States and Territories in which some people have been released back into the community still highly intoxicated, notwithstanding that they had been detained for the requisite period of hours. The Committee believes that a person should be detained until he or she ceases to be intoxicated. Appropriate guidelines will need to be drawn up that give police or sobering-up centre staff guidance as to how to properly use their discretion in these cases.

Review

The Committee believes that in appropriate circumstances an intoxicated person should be able to have his or her detention reviewed by a magistrate or other legal officer. On the basis of the experience of other States and Territories it is envisaged that this procedure would be rarely utilised.

Safeguards

The Committee believes there must be protections put in place that safeguards both the rights of the intoxicated person, the sobering-up centre staff and police officers. Therefore:

- The Committee believes that under no circumstances should police be able to interview an intoxicated person being detained in a police cell in connection with other suspected offences when that person has only been apprehended for being intoxicated;
- Police, sobering-up centre and other relevant staff should be given indemnities against civil suit in respect of anything done or omitted to be done by that person in good faith in the execution of his or her duties under the [proposed] legislation;
- Intoxicated persons should be able to apply to a magistrate for a certificate stating that she or he was not in fact intoxicated at the time of his or her apprehension and detention. This is the practice in other States. The rationale for such a measure is that a person may be penalised by the terms of his or insurance policy if it was thought that she or he had been consuming alcohol in breach of that policy. Such a certificate may also be necessary in cases where a person has a no consumption of alcohol condition as part of a suspended sentence or other criminal sentencing disposition. The mere application for and granting of a certificate of exemption should not be taken of itself as signifying that the original apprehension and detention was unlawful.

Cost Implications of Sobering-Up Centres

The Committee is well aware that the decriminalisation of public drunkenness offences and the establishment of sobering-up centres, community patrols and associated services comes at a cost – literally. One of the disappointing aspects of this Inquiry is that there has been virtually no cost-benefit analyses done on the decriminalisation of public drunkenness in the other States and Territories. Indeed, the Committee has found it difficult to get hard data with regard to the operating costs of sobering-up centres in other parts of the country. In Western Australia the costs of running a sobering-up centre was put at approximately $250,000 per annum[753] and the costs of running a Night Patrol at between $80,000–$100,000 per annum.[754] The Western Australian Drug Abuse Strategy Office (WADASO) has put the costs of admitting an intoxicated person to a sobering-up centre at approximately $143.00 per admission. In South Australia the Night Patrol costs $200,000

753 This figure should be treated with caution. It is based on an average across the eleven sobering-up centres in Western Australia. Some centres, such as that in Perth, will be more expensive to run. Much will depend on the amount of turnover and whether the sobering-up centre is attached to other alcohol and drug services.

754 Only $50,000 of which was contributed to by direct State funding. The remainder was raised from the funds of Indigenous and community organisations, donations and ATSIC.

per annum to operate.[755] In Victoria, the Melbourne Sobering-Up Centre currently operates on a budget of $380,000 per annum. This, however, is not seen to be adequate.[756] The running costs of the (Indigenous) sobering-up centres in Victoria should serve at least in part as a rough guide to what levels of expenditure may be needed for an expanded programme. Other factors that will need to be factored with regard to cost include:

- Will the sobering-up centres be used for other purposes at times where there is little demand for them to be used as sobering-up centres, as is the case in some parts of Western Australia?
- What would be the cost (saving) if sobering-up centres are attached to hospitals, clinics or other medical services?
- Similarly, are there any cost benefits in attaching sobering-up centres to broader community drug and alcohol services, particularly those run by charitable institutions such as the Salvation Army or, where appropriate, Indigenous community agencies?

Clearly, the costs of establishing and operating sobering-up centres and associated services need to be balanced against the public resources expended on managing public drunkenness as a criminal justice issue. The submission of the Victorian ATSIC Councils to this Committee states in this regard:

> The public resources which have been expended on managing the issue of public drunkenness have been spent predominantly on the police and the courts. These costs are not insignificant. Over forty percent of people in police cells are there because of public drunkenness offences. In some locations the figure is over sixty percent. The charge of being drunk in a public place is the third most frequent charge heard in the Magistrate's Courts. It is obvious that one of the driving forces behind the desire of the State Government in reforming public drunkenness laws is to reduce these costs.
>
> Public funds previously spent on keeping the issue under some degree of social control, need to be redirected toward public health solutions, particularly strengthening the network of sobering up centres and increasing detoxication units. Savings made by reducing the workload for police and courts need to be redirected toward programs and services which will actually alleviate the problem.[757]

The Western Australian position as stated by WADASO is that significant savings can be made in decriminalising the public drunkenness offences, most notably through a decrease in hospital admission costs, police time and court administration.[758] Comprehensive figures to justify such an analysis were unfortunately not provided. A

755 Mr Richard Young, Chief Executive Officer, Aboriginal Sobriety Group, in conversation with the Committee, 8 March 2001.

756 Mr Glenn Howard, Director of Ngwala Willumbong, in a conversation with the Committee, 9 October 2000, said he believed that it would cost at least $600,000 to provide an adequate service for the area that the Melbourne Sobering-Up Centre currently serves.

757 Submission of the ATSIC Tumbukka and Binjirru Regional Councils (Victoria) to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness, April 2001, p. 7.

758 Police time would include the time used in making arrests, preparing charge sheets and other documentation, caring for the intoxicated person in a police cell, and presenting evidence at court.

much earlier study done by the New South Wales Bureau of Crime Statistics put the cost of establishing and operating 'intake centres' and patrols as less than the per annum costs of processing 'drunks' through the criminal justice system. Commenting on this, admittedly dated, survey, Sackville states:

> The repeal of [vagrancy] and drunkenness legislation will not of itself produce a direct reduction in state expenditure, since no identifiable segment of the police force or other State service would be rendered redundant. However, the Bureau's figures indicate that the introduction of a system of intake centres in the place of existing criminal sanctions, may release resources at least equal in value to those required to operate the new scheme. Moreover, repeal of the laws...will free members of the police force to perform tasks for which they are better equipped and which are of far greater value to the community (Sackville 1976, p. 51).

It is nonetheless difficult to estimate exactly what are the costs to the police and the courts in the administration of the current system. This is a difficulty not lost upon the Victoria Police itself. The police have not attempted to quantify the time and resources involved in processing an intoxicated person because:

- The time and resources vary considerably because the police response to public drunkenness ranges from sending an intoxicated person home in a taxi, to contacting a friend or relative to pick them up from the station, to lodging them in a police cell until they are sober and can be bailed, to arranging medical attention where necessary. The time and resources also vary greatly by location; police on a Friday night in Melbourne deal with far more intoxicated persons than their counterparts in less populated areas, but police in regional Victoria have greater distances to cover and fewer alternative services available;
- Any attempt to quantify the time and resources involved would need to be a specific project, which the deadline for submitting did not permit; and
- Without sufficient detail on the roles and duties that police would be expected to perform if public drunkenness was decriminalised, it was not possible to undertake even a very basic comparison of the police time and resources that would be required to respond to intoxicated persons.[759]

However the Victoria Police did send the Committee information of a general nature in the form of lists identifying the range of police resources that are generally used:

- Two police members on patrol or responding to a call out;
- A police vehicle to transport the person to either a police station, sobering up centre, home or hospital;

759 Supplementary Information from Victoria Police to the Drugs and Crime Prevention Committee, Inquiry into Public Drunkenness. November 2000, p. 2.

- A police member on the watchhouse, who signs the person into the Attendance Register and then calls a friend or relative to pick the person up or lodges them in a cell;
- A bed in a police cell, which may also require the person being placed in a separate cell, eg. if they are a youth or woman;
- A police member to conduct half-hourly checks on the person;
- A Custodial Medical Officer to advise on and/or visit a person whose condition is a concern (an ambulance would be called immediately where necessary).[760]

The police state further that if public drunkenness was decriminalised, but police still had a role in dealing with intoxicated persons, the personnel listed above would still be needed, though the number of intoxicated persons they had to deal with may lessen:

> However, if police were required to take into custody intoxicated persons who were too drunk, volatile and/or aggressive for a sobering up centre to accept, then the amount of time and resources (eg. medical treatment) required could increase. Moreover, if police lose the ability to take an intoxicated person away from a public place, the person may continue to be disruptive and require repeated police call outs. Likewise, if an intoxicated person commits an offence either in a public place (eg. damage property) or on private property (eg. domestic violence), police would be required to attend and could also have a victim requiring attention.[761]

The Committee believes that given the uncertainty and inconsistency surrounding the issue of costs associated with sobering-up centres, appropriate models need to be thoroughly costed prior to the decriminalisation of public drunkenness. Whatever the findings such a cost analysis reveals, there is little doubt that at least initially the establishment of alternative facilities will be expensive. Nonetheless, the following views of Sackville, although over twenty years old, still ring true today:

> The ultimate effectiveness of intake centres must depend on the ready availability of long-term treatment facilities to which those requiring rehabilitation can be referred. The establishment and maintenance of such facilities will be expensive and will require resources that only Governments, state or federal, can provide. Thus a programme designed to tackle the problems of homelessness and public drunkenness by providing long-term accommodation and medical treatment, together with full rehabilitative services will involve expense going beyond the cost of intake centres. But these services are required whatever the legal position may be...In any event, the first step towards a more humane and rational legal approach of [drunk people] ...if a broad view is taken, may even be more economical than the present system (Sackville 1976, p. 51).

760 Supplementary Information from Victoria Police, November 2000, p. 2.
761 Supplementary Information from Victoria Police, November 2000, p. 3.

Public drunkenness is by no means a problem that only concerns Indigenous Australians. Indeed, a person found drunk in a public place is far more likely to be from a non-Indigenous background. It is hoped that the recommendations of the Committee in this Report will result in equal benefit to *all* Victorians, from all backgrounds and all walks of life.

Nonetheless, public drunkenness offences do have a disproportionate impact upon Indigenous people. Eleven years ago when the Royal Commission into Aboriginal Deaths in Custody published its *Final Report*, a comprehensive process of community consultation took place. The recommendations were discussed, analysed and debated at length across Australia.

Whilst most people solidly endorsed the recommendations, there was some scepticism. One consultation participant said:

> If these reports and recommendations by the Royal Commission gather dust, then someone needs to have their arse kicked and pretty hard.[762]

In 2001, there is now a chance to make a difference, by finally implementing some of the key recommendations of the Royal Commission. We trust this is not a missed opportunity and that this Report, unlike others, does not gather dust.

762 *A Report on the Initial Community Consultations on the Royal Commission into Aboriginal Deaths in Custody: The First Step*, Aboriginal and Torres Strait Islander Commission, 1992, p. 21.

Appendices

Appendix 1 – List of Submissions

Submissions from Organisations

Name	*Position*	*Organisation*
Professor John Van Groningen	School of Public Policy, Centre for Police and Justice Studies	Monash University
Mr Peter Wilkinson	President	Liquor Stores Association of Victoria Inc.
Dr Richard Midford	Senior Research Fellow	National Drug Research Institute
Ms Brooke Sputore	Research Associate	National Drug Research Institute
Mr Dennis Ryan	Principal Consultant – Hospitality	RecruitNet Inc.
Ms Rosemary McClean	Manager, Strategic Planning	Australian Drug Foundation
Mr Bill Stronach	Chief Executive	Australian Drug Foundation
Mr Paul R Hornbuckle	Commander, Chief of Staff	Victoria Police
Mr Robin Inglis	Executive Officer research, Planning and Development	Victorian Aboriginal Legal Service Co-operative Ltd.
Mr Alan Clayton	Deputy Secretary Justice Operations	Department of Justice
Mr Graeme Rule	Executive Director	Drug-Arm Victoria Inc
Ms Marilyn Beaumont	Executive Director	Women's Health Victoria
Mr Simon Kroes	Project Officer Alcohol and Drug Strategy Services Planning	Alcohol & Drug Strategy Stonnington City Council
Mrs M. Anne Bergen	Acting President	Woman's Christian Temperance Union of Victoria, Inc.
Mr David Ring	Policy Worker	Mental Health Legal Centre Inc.
Mr Brian Kearney	Director of Liquor Licensing Victoria	Department of State and Regional Development, Liquor Licensing Victoria
Major David Brunt	Director	Salvation Army
Mr Kevin Scott	Superintendent Policy and Research	Victoria Police
Ms Sally Everitt	Social Planner	Shire of Cardinia

Ms Marg Allan	Manager- Strategic Planning	City of Greater Bendigo
Mr Ian J. Johnson	Chief Executive Officer	Crown
Ms Susila Naidu	Community Development Officer	Moorabool Shire Council
Mr Peter B. Nancarrow	Deputy Commissioner, Policy and Standards	Victoria Police
Professor The Hon Evan Walker AO	Chairperson	Victorian Community Council Against Violence
Ms Michelle Cleggett	Family Services Officer	Shire of Campaspe
Mr Drew Pingo	Senior Inspector Law Enforcement Officer	Victorian Taxi Directorate
Mr Johan Top	Manager Juvenile Justice Section	Department of Human Services
Ms Tina Millar	President	Law Institute Victoria
Mr Carlo Colosimo	Licencee	Lounge – Café Bar Nightclub, Vis – Café Bar and Big Mouth Café Bar
Mr Roy Punshon	Chairman	Criminal Bar Association
Mr Mark Derham	Chairman	The Victorian Bar
Ms Janet Jukes	Executive Officer	Youth Affairs Council of Victoria
Mr Alf Bamblett	Chairperson	Aboriginal Justice Advisory Committee (Victoria)
Mr Danny Sandor	President	Defence for Children International – Australia Section
Mr Allan Knights	Licensee	Imperial Hotel

Joint Submission

Ms Marion Hansen	Commissioner	Aboriginal and Torres Strait Islander Commission – Victoria (ATSIC)
Ms Daphne Yarram	Chairperson	Binjirru Regional Council Victoria
Mr Troy Austin	Chairperson	Tumbukka Regional Council Victoria

Submissions from Individuals

Name

Dr Tricia A. Fox	Senior Lecturer Social Welfare	Monash University
Ms Gloria Caroline Jago	President	Women's Christian Temperance Union (WCTU Drug-free Lifestyle)

Ms Delia Read

Mr Michael Long

Mr Keith Chester

Councillor Ross Douglass, Mildura City Council

Appendix 2 – List of Witnesses

Witnesses Appearing at Public Hearing – 8th November 2000

Name	*Position*	*Organisation*
Professor Margaret Hamilton	Director	Turning Point Alcohol and Drug Centre
Mr Nick Batten	Solicitor North Melbourne Legal Service	Federation of Community Legal Centres
Mr Sam Biondo	Community Development Officer	Fitzroy Legal Service
Mr Gary Sullivan	Principal Solicitor West Heidelberg Legal Service	Representing Federation of Community Legal Centres
Major David Brunt	Director	Salvation Army – Bridge Programme

Witnesses Appearing at Public Hearing – 13th November 2000

Name	*Position*	*Organisation*
Mr Tom Munro	Principal Solicitor	Victorian Aboriginal Legal Service
Mr Robin Inglis	Research and Policy	Victorian Aboriginal Legal Service
Ms Sue Edwards	Policy Officer	Council to Homeless Persons
Ms R. Gordon	Policy Officer	Council to Homeless Persons
Ms D. Tsobiras	Chief Executive Officer	Council to Homeless Persons
Superintendent Adrian Fyfe	Divisional Superintendent	Victoria Police
Inspector Stephen Dennis	Region No. 1, Prahran Police Station	Victoria Police
Superintendent Kevin Scott	Divisional Manager Policy and Research	Victoria Police
Inspector Steve James	Drugs and Alcohol Policy Unit and Corporate Policy Unit	Victoria Police
Ms Eva Perez	Policy Officer Policy and Research	Victoria Police
Mr Alan Giles	Chief Executive Officer	Australian Hotels Association

Appendix 3 – List of Site Visits and Informal Meetings

Meetings – Victoria

Name	*Position*	*Organisation*	*Date*
Mr Neil Comrie	Chief Commissioner	Victoria Police	18 April 2000
Mr Bill Severio	Assistant Chief Commissioner	Victoria Police	18 April 2000
Professor John Van Groningen	Centre for Policing and Justice Studies, School of Public Policy	Monash University	13 June 2000
Professor Marcia Langton	Foundation Professor Australian Indigenous Studies	The University of Melbourne	27 June 2000
Mr Greg Cooper	Manager Clinical Standards	Metropolitan Ambulance Service	13 February 2001
Mr Lindsay Bent	Central Team Manager	Metropolitan Ambulance Service	13 February 2001
Ms Kate Cantwell	Ambulance Paramedic	Metropolitan Ambulance Service	13 February 2001
Mr Drew Pingo	Senior Inspector (Law Enforcement)	Victorian Taxi Directorate	20 February 2001
Mr Graeme Johnstone	Coroner	State Coroner's Office Victoria	20 February 2001
Professor Peter Cameron	President	Australasian College for Emergency Medicine	13 March 2001
Dr Andrew Dent	Director of Emergency Medicine	St Vincent's Hospital	13 March 2001
Mr Arthur Uren	Operations Planning Officer	St John's Ambulance	13 March 2001
Mr Wayne Deeks	Regional Superintendent, Western Region	St John's Ambulance	13 March 2001
Dr Edward Ogden	Senior Medical Officer	Custodial Medicine Unit General Policing Department Victoria Police	27 March 2001

Site Visits – Victoria

Name	*Position*	*Organisation*	*Date*
Victoria Police			
Mr Steve James	Acting Chief Inspector	Drugs and Alcohol Policy Unit – Victoria Police	12 July 2000
Ms Christine Vincent	Research Officer	Drugs and Alcohol Policy Unit – Victoria Police	12 July 2000
Wintringham, Port Melbourne Housing Service			
Mr Bryan Lippmann	Chief Executive Officer	Wintringham, Port Melbourne Housing Service	25 July 2000
Melbourne Magistrate's Court			
Ms Jelena Popovic	Deputy Chief Magistrate	Melbourne Magistrate's Court	25 July 2000
Mr Brian Barrow	Deputy Chief Magistrate	Melbourne Magistrate's Court	25 July 2000
Mr Dan Muling	Deputy Chief Magistrate	Melbourne Magistrate's Court	25 July 2000
Galiamble Men's Recovery Centre and Ngwala Willumbong Co-Operative Ltd.			
Mr John Sheppard	Manager	Galiamble Men's Recovery Centre	9 October 2000
Mr Stephen Hewitt	Senior Welfare Officer	Galiamble Men's Recovery Centre	9 October 2000
Mr Glen Howard	Program Coordinator	Ngwala Willumbong Co-Operative Ltd	9 October 2000
Mr Bob Hamann	Support Accommodation Worker	Ngwala Willumbong Co-Operative Ltd	9 October 2000
Melbourne Custody Centre			
Mr Kevin Birtles	Manager	Melbourne Custody Centre	30 October 2000
City Of Melbourne			
Mr Michael Malouf	Chief Executive Officer	City Of Melbourne	30 October 2000
Ms Heather Scovell	Group Manager Community Services	City Of Melbourne	30 October 2000
Ms Kathy Brackett	Social Development Officer, Community Services	City Of Melbourne	30 October 2000
Ms Anne Malloch	Project Officer City Safety, Community Services	City Of Melbourne	30 October 2000
Mr Brian Anderson	Team Leader City Activity, Development and Statutory Services	City Of Melbourne	30 October 2000
Mr Tony Miauto	Program Development Coordinator, Development and Statutory Services	City Of Melbourne	30 October 2000

Chapel Street Festival

Ms Cheri Le Cornu	Business and Cultural Development Coordinator	Stonnington City Council	5 November 2000
Mr Steve Dennis	Inspector	Prahran Police	5 November 2000
Mr Paul Welshe	State Emergency Coordinator	State Emergency Services	5 November 2000
Mr Claude Ullin	The Mayor	Stonnington City Council	5 November 2000

Night Tour of Melbourne Central Business District

Mr Tony Warren	Superintendent	Victoria Police	8 December 2000
Ms Anne Malloch	Project Officer City Safety, Community Services	City Of Melbourne	8 December 2000
Mr Adam Norris	Manager	Metro Night Club	8 December 2000
Mr Bill Horman	General Manager, Community Affairs	Crown Casino	8 December 2000
Mr Phillip Batty	Executive Manager Food and Beverage	Crown Casino	8 December 2000
Mr Lawrie Merrigan	Manager Responsible Service of Alcohol	Crown Casino	8 December 2000
Mr Allan Knights	Licensee	Imperial Hotel	8 December 2000

Observation of operations at the Melbourne Cricket Club – One Day Match

Mr Tony Warren	Superintendent	Victoria Police	9 March 2001
Mr Peter French	Assistant Secretary	Melbourne Cricket Club	9 March 2001
Representatives of Chubb Security			9 March 2001

Aboriginal Forum of Drug and Alcohol Workers organised by The Victorian Aboriginal Justice Advisory Committee 15 February 2001

Meetings attended by Committee Staff

Victorian Aboriginal Controlled Health Organisations			25 July 2000
Federation of Community Legal Services			21 September 2000
Collingwood/Fitzroy Licensees Forum			22 November 2000
Winja Ulupna Ms Carolyn Quin	Manager	Winja Ulupna	31 January 2001
Melbourne Licensees Accord Forum			14 February 2001

Regional Informal Meetings and Site Visits

Name	*Position*	*Organisation*
Mildura, 13 September 2000		
Meetings		
Mr Tony Biggins	Superintendent	Victoria Police – Mildura
Mr Rod Johns	Inspector	Victoria Police – Mildura
Mr Kim Norman	Senior Sergeant	Victoria Police – Mildura
Mr Kevin Carter	Senior Sergeant	Victoria Police – Mildura
Mr Paul Naylor	Senior Sergeant	Victoria Police – Mildura
Mr Russell Walsh	Senior Sergeant	Victoria Police – Red Cliffs
Mr Tim Edgeworth	Sergeant, Police Prosecutor	Victoria Police – Mildura
Mr Brad Chilton	Senior Constable, Aboriginal Liaison Officer	Victoria Police – Mildura
Mr Ross Douglass	Councillor	Mildura Rural City Council
Mr Ray Campling	Director of Operations	Mildura Rural City Council
Ms Jill Joslyn	School Focused Youth Coordinator	Mildura Rural City Council
Mr Graeme Chirgwin	Registrar	Mildura Magistrate's Court
Site Visit		
Mr Gerald Atkinson	Manager	Bacchus Program – Sobering-Up Centre
Ms Jemmes Handy	Aboriginal Liaison Officer	Bacchus Program – Sobering-Up Centre
Swan Hill, 14 September 2000		
Meetings		
Mr Ken Allan	Chief Inspector	Swan Hill Police Station
Mr John Lyons	Senior Constable	Swan Hill Police Station
Ms Hazel Atkinson	Representative	Wamba Wamba Land Council
Councillor Albert Heslop	Mayor	Swan Hill Rural City Council
Ms Jacque Kelly	Councillor	Swan Hill Rural City Council
Ms May Ward	Councillor	Swan Hill Rural City Council
Ms Leigh Bonney	Councillor	Swan Hill Rural City Council
Mr Bill Maher	Councillor	Swan Hill Rural City Council
Mr John Webb	Chief Executive Officer	Swan Hill Rural City Council
Mr John Benhan	Senior Authorise Officer	Swan Hill Rural City Council
Ms Meg Sandercock	Community Legal Worker	Mallee Family Care
Ms Gill Vaughton	Youth Alcohol and Other Drugs Outreach	Northern District Community Health
Ms Loris Kelly	Nurse from Rural Withdrawal Programme	Northern District Community Health Centre

Site Visit

Mr Rick Bell Ms Ivy Bell	Manager	Wandarrah Sobering Up Centre
Ms Elwyn Witney	Coordinator	Swan Hill District Hospital Alcohol and Other Drug Service
Mr Bruce Baxter	Representative	Community Justice Panel
Mr Robert Johston	Representative	Community Justice Panel
Ms Vicky Bell	Representative	Community Justice Panel

Morwell, 26 April 2001

Site Visit – Bendin House Sobering-Up Centre

Mr Peter Hood	Chairman	Central Gippsland Aboriginal Co-operative (CGAC)
Mr Brendan O'Kane	Chief Executive Officer	Central Gippsland Aboriginal Co-operative (CGAC)
Ms Amelia Bitsis	Executive Officer	Aboriginal Justice Advisory Committee
Mr Willie Pepper	Client Services Officer	Victorian Aboriginal Legal Service (Morwell)
Mr Laurie Marks	Mental Health Youth Worker	Central Gippsland Aboriginal Co-operative (CGAC)
Mr Michael Kenney	Juvenile Justice Worker	Central Gippsland Aboriginal Co-operative (CGAC)
Mr Ringo Hood	Co-ordinator	Bendin House Sobering-Up Centre

Meetings and Site Visits – New South Wales

Sydney and Newcastle, 19 – 21 June 2000

Meetings

Mr Peter McCarthy	Manager	Alcohol and Illicit Drugs Policy – NSW Drug Programs Bureau, NSW Health
Mr Alan Tongs	Senior Policy Analyst	Ministry for Police
Mr Mark McPherson	Coordinator	Drug Programs Coordination Unit, NSW Police
Mr Allan Raison	Senior Policy Analyst	Department of Community Services
Ms Swee Go	Policy Analyst	Department of Community Services
Ms Vicky D'Adam	Principal Policy Officer, Social Policy Branch	Cabinet Office
Ms Toni Milne	Manager, Strategic Policy	Department of Community Services
Ms Marilyn Pitt	Secretary	National Indigenous Substance Misuse Council

Dr Alex Wodak	Director	Alcohol and Drug Service St Vincent's Hospital
Mr Keith Meredith	City Central – Liquor Accord	NSW Police
Mr Craig Sheridan	Rocks Local Area Command	NSW Police
Senior Constable Hugh Kleipas	Rocks Local Area Command	NSW Police
Ms Susie Forrel	Senior Policy Officer, DPCU	NSW Police
Mr Peter Homel	Director	Crime Prevention Attorney General's Department

Site Visits

Ms Meg Milne	Manager	Gorman House Non Medical Detoxification Unit St Vincent's Hospital
Mr Ron Langham	Cluster Manager	Mission Beat – Night Patrol
Ms June Lewis	Executive Director	Haymarket Foundation
Ms Tess Elliot	Assistant Manager	Albion Street Lodge
Peter Parsons	Superintendent, Redfern Local Area Command Commander	Redfern Police
Senior Constable Owens	The Community Safety Officer and Duty Officer	Redfern Police
Ms Naomi Myers	Chief Executive Officer	Aboriginal Medical Co-operative Ltd
Mr Peter Fernando	Deputy Chief Executive Officer	Aboriginal Medical Co-operative Ltd
Mr Brad Freeman	Drug and Alcohol Coordinator	Aboriginal Medical Co-operative Ltd
Mr Grant Christian	Administration Manager	Aboriginal Legal Service
Mr Michael Mundine	Chief Executive Officer	Aboriginal Housing Company
Ms Linda Goldspink–Lord	Manager	Macarthur Drug and Alcohol Youth Project Service Profile
Ms Debbie Roberts	Senior Education Officer	Macarthur Drug and Alcohol Youth Project Service Profile
Ms Robyn Considine	Area Director	Hunter Centre for Health Advancement
Dr John Wiggers	Lecturer, Faculty of Medicine and Health Sciences	University of Newcastle
Mr S.W. Findley	Superintendent	NSW Police, Newcastle

Meetings and Site Visits – Northern Territory

Alice Springs, 31 July 2001

Meetings

Ms Jennifer Walker	Social Behaviour Program Manager	Tangentyere Council Inc.
Mr Nick Gill	Manager	Drug and Alcohol Services Assoc. Alice Springs Inc. (DASA)

Site Visits

Mr Tony Kells	Wardens Officer	Tangentyere Council Inc.
Mr Kevin Wirri	Wardens Officer	Tangentyere Council Inc.
Mr Eddie Taylor	Wardens Officer	Tangentyere Council Inc.
Ms Lorraine Liddle and representatives	Director	Central Australia Aboriginal Program Unit (CAAPU)

Tennant Creek, 1- 2 August 2000

Meetings

Mr Ross Williams	Chairman	Julalikari Council, Social Behaviour Interest Group, Night Patrol
Mr Jarrid Williams	Acting Coordinator for Night Patrol	Julalikari Council
Mr Kent Peak	Manager	Julalikari Council
Michelle and Shirley	Women's Night Patrol	Julalikari Council
Mr Michael Dougall	Chief Executive Officer	Tennant Creek Town Council
Mr Patrick McCloskey	Youth Community Development Worker	Anuinginui Congress Aboriginal Corporation
Ms Judy Murray	Manager	Alcohol Aftercare Services
Mr M. Jonny, Ms L. Neade and Ms L. Riley	Representatives	Alcohol Aftercare Services

Site Visits

Ms Yvon Magnery	Regional Director	Barkley Regional Alcohol and Drug Abuse Advisory Group (BRADAAG)
Ms Sharon Kinraid	Assistant Director	Barkley Regional Alcohol and Drug Abuse Advisory Group
Mr Jarrid Williams	Acting Coordinator for Night Patrol	Julalikari Council
Michelle and Shirley	Women's Night Patrol	Julalikari Council
Ms Paula Gates	Coordinator	Tennant Creek Women's Aboriginal Refuge

Darwin, 2 – 4 August 2000

Meetings

Mr Chris Howse	Executive Officer	Aboriginal Justice Advocacy Committee
Ms Kirsty Gowans	Lawyer	Northern Australian Aboriginal Legal Aid Service (NAALS)
Ms Julie Conden	Lawyer	Northern Australian Aboriginal Legal Aid Service (NAALS)
Mr Brain Bates	Police Commissioner	Northern Territory Police
Mr J. Valentin	Deputy Commissioner	Northern Territory Police
Mr B. Wernham	Assistant Commissioner	Northern Territory Police
Ms Elizabeth Kelly	Director, Policy Division	Attorney General's Department
Ms Zoe Marcham	Deputy Director, Policy Division	Attorney General's Department
Alderman J. Bailey		
Alderman R. Burridge	Chairman	Community Services Committee
Alderman J. Collins		
Ms Diana Leeder	Director of Community Services	Darwin City Council
Mr Peter Allen	Chairman	Northern Territory Licensing Commission

Site Visits

Mr Roger Sigston	Director	Council for Aboriginal Alcohol Program Services Inc.
Mr Craig Spencer	Night Patrol Coordinator	Aboriginal & Islander Medical Support Services

Meetings and Site Visits – Western Australia

Perth, 4 March – 6 March 2001

Meetings

Ms Anne Russell-Browne	Regional Manager	Mission Australia
Mr Brian Wooler	Operations Manager	Missions Australia
Mr Peter Osborn	Coordinator	Mission Australia
Ms Susy Thomas	Director	Drug Awareness and Relief Movement WA
Mr Matthew Waldron	Coordinator	Drug Arm WA
Mr Peter Murphy	Executive Director	Western Australian Drug Abuse Strategy Office
Mr Greg Swenson	Principal Information Officer	Western Australian Drug Abuse Strategy Office
Dr Richard Midford	Senior Research Fellow	National Drug Research Institute
Ms Brooke Sputore	Research Associate	National Drug Research Institute
Mr Garry Dunn	Director Service Units	Perth City Council
Ms Judy Mc Evoy	Councillor	Perth City Council

Ms Jennifer McGill	Councillor	Perth City Council
Mr Garry Hunt	Chief Executive Officer	Perth City Council
Ms Maria McAtackney	Director	Noongar Patrol System
Mr Ray Allen	Clinical Manager	St John's Ambulance
Mr Peter Osborne	Coordinator	Mission Australia
Mr John Harris	Indigenous Officer	On Track
Mr Michael Martin	Manager	Services Funding & Development WA Drug Abuse Strategy Office
Mr Andrew Amor	Manager	Milliya Rumurra Aboriginal Corp.
Mr Peter Matsumoto	Coordinator	Milliya Rumurra Aboriginal Corp.
Ms Margie D'Antoine	Manager	Garl Garl Walbu Aboriginal Corp.
Mr Doug McCauley	Administrator	Nindilingarri Cultural Heath Services
Ms Emily Carter	Manager	Nindilingarri Cultural Health Services
Ms Elizabeth Topp	Manager	Halls Creek People's Church Sobering-Up Centre
Mr James Champion	Manager	Bega Garnbirringu Health Services
Ms Desley Rogers	Manager	Waringarri Aboriginal Corp.
Ms Rowena Raats	Manager	Port Hedland Sobering-Up Centre
Mr David Poultney	General Manager	Roebourne Sobering-Up Shelter
Mr Richard Whittington	General Manager	Nganggananawili Aboriginal Community Controlled Health & Medical Service Aboriginal Corp.
Assistant Commissioner John Standing	Metropolitan Region	Western Australia Police Service
Commander Darryl Balchin	Southern Region	Western Australia Police Service
Commander Graeme Power	North Eastern Region	Western Australia Police Service
Mr Terry Murphy	Director	Western Australian Drug Abuse Strategy Office
Mr Greg Swenson	Data Collection and Analysis	Western Australian Drug Abuse Strategy Office
Deakin Emanuel Stamatiou	On leave	Western Australian Drug Abuse Strategy Office

Site Visit

Captain Mike Coleman	Director	Salvation Army – Bridge Programme

Meetings and Site Visits – South Australia

Adelaide, 7 March – 8 March 2001

Meetings

Mr Tauto Sainsbury	Chairperson	Aboriginal Justice Advisory Council
Mr Trevor Warrier	Coordinator	Aboriginal Visitors Programme
Mr Scott Wilson	Chief Executive Officer	Aboriginal Drug and Alcohol Council
Mr Graeme Strathearn	Chief Executive Officer	Drug and Alcohol Services Council
Mr John Banks	Director of Community Services	City of Holdfast Bay
Ms Alison Miller	Crime Prevention Officer	City of Holdfast Bay
Mr Bill Pryor	Commissioner	Liquor and Gaming Commission of South Australia
Ms Sabine Jung	Manager Community Development	Adelaide City Council
Mr Nick Nash	Senior Project Officer – City Safety and Crime Prevention	Adelaide City Council
Assistant Commissioner Paul White	Crime Support Service	South Australia Police
Mr Tom Osborn	Superintendent	South Australia Police
Mr Barry Fletcher	Senior Sergeant	South Australia Police
Mr Shane Bills	Strategic Management Service	South Australia Police

Site Visits

Mr Victor Wilson	Chief Executive Officer	Kalparrin
Mr Andrew Biven	Representative	Kalparrin
Mr Jim Mulvihill	Representative	Kalparrin
Mr Laurie Ranking	Representative	Kalparrin
Mr Marshall Carter	Representative	Kalparrin
Mr Gordon Rigney	Representative	Kalparrin
Mr Richard Young	Acting Chief Executive Officer	Aboriginal Sobriety and Night Patrol
Major Sumner	Representative	Aboriginal Sobriety and Night Patrol
Mr Ian Carter	Representative	Aboriginal Sobriety and Night Patrol
Mr Alban Kartiyeri	Representative	Aboriginal Sobriety and Night Patrol
Mr Abdul Farouk	Representative	Aboriginal Sobriety and Night Patrol
Mr Graeme Cowan	Director	Towards Independence Network Services
Mr John Wright	Manager	Whitmore Square Sobering Up Centre

Meetings – Australian Capital Territory

Canberra, 28 August 2000

Legal Research Officer met with

Helen Kehoe	Substance Misuse Policy Officer	National Aboriginal Community Control Health Organisation
Ms Maggie Brady	Fellow Centre for Aboriginal Economic Policy Research	Australian National University

Appendix 4
List of Local Government Areas Included In Victorian Health Regions

Health Region	Local Government Area
Barwon	Colac-Otway
	Corangamite
	Glenelg
	Greater Geelong
	Moyne
	Queenscliffe
	Southern Grampians
	Surf Coast
	Warrnambool
Grampians	Ararat
	Ballarat
	Golden Plains
	Hepburn
	Hindmarsh
	Horsham
	Moorabool
	Northern Grampians
	Pyrenees
	West Wimmera
	Yarriambiack
Loddon	Buloke
	Campaspe
	Central Goldfields
	Gannawarra
	Greater Bendigo
	Loddon
	Macedon Ranges
	Mildura
	Mount Alexander
	Swan Hill
Hume	Alpine
	Delatite
	Greater Shepparton
	Indigo
	Mitchell
	Moira
	Murrindindi
	Strathbogie
	Towong
	Wangaratta
	Wodonga

Cont'd

Health Region	Local Government Area
Gippsland	Bass Coast
	Baw Baw
	East Gippsland
	La Trobe
	South Gippsland
	Wellington
Western metropolitan	Brimbank
	Hobsons Bay
	Maribyrnong
	Melbourne
	Melton
	Moonee Valley
	Wyndham
Northern metropolitan	Banyule
	Darebin
	Hume
	Moreland
	Nillumbik
	Whittlesea
	Yarra
Eastern metropolitan	Boroondara
	Knox
	Manningham
	Maroondah
	Monash
	Whitehorse
	Yarra Ranges
Southern metropolitan	Bayside
	Cardinia
	Casey
	Frankston
	Glen Eira
	Greater Dandenong
	Kingston
	Mornington Peninsula
	Port Phillip
	Stonnington

Appendix 5
A Comparison of Alcohol and Non-Alcohol Related Deaths in Police Custody and Police Presence 1990-2000

Table 7a: A comparison of alcohol and non-alcohol related deaths in police custody 1990-2000

Deaths in Police Custody*	Alcohol Related	Non Alcohol Related	Total
1990	5	1	6
1991	4	1	5
1992	3	1	4
1993	0	4	4
1994	0	2	2
1995	1	2	3
1996	1	0	1
1997	1	0	1
1998	2	1	3
1999	0	0	0
2000	0	0	0
Total	**17**	**12**	**29**

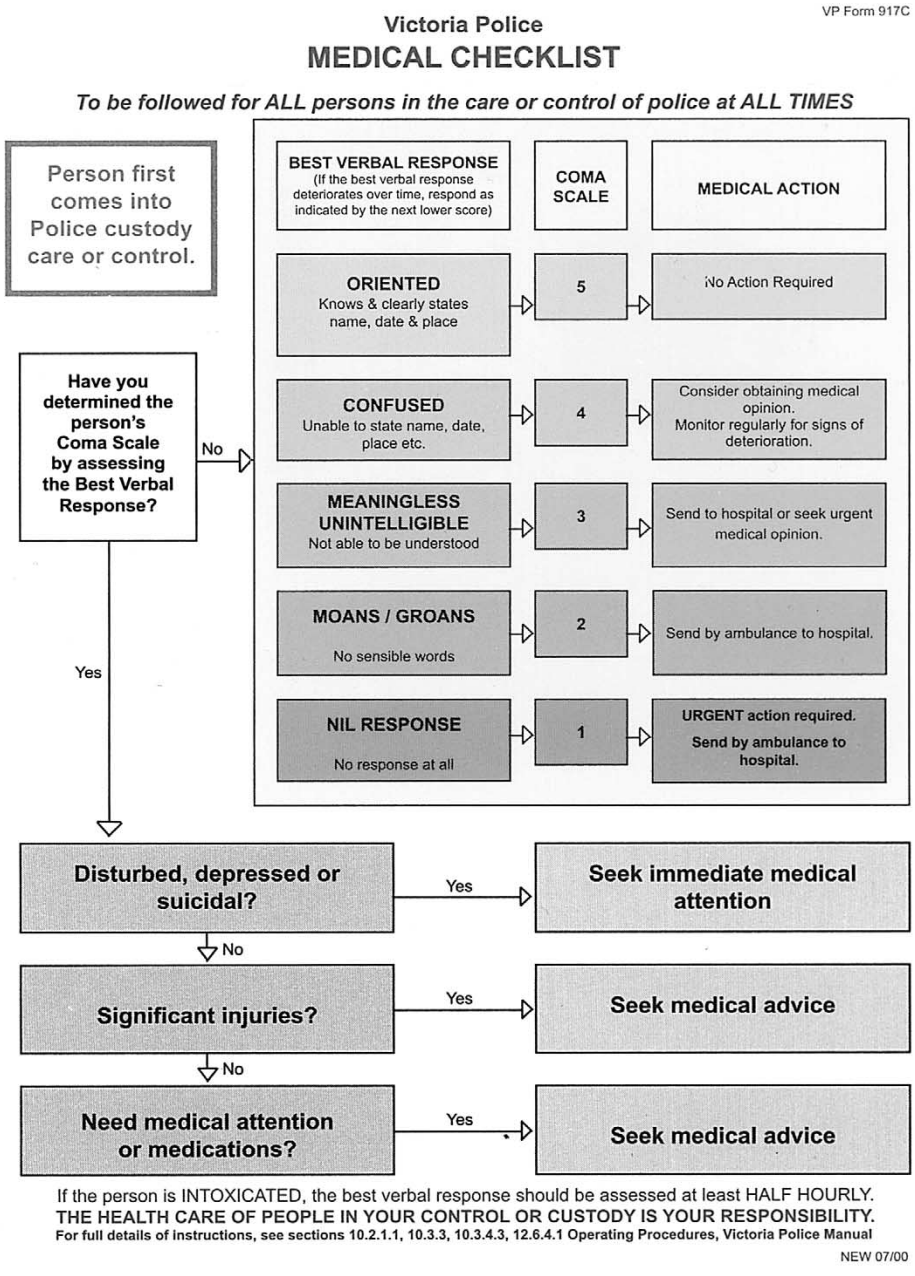
Table 7b: A comparison of alcohol and non-alcohol related deaths in police presence 1990-2000

Deaths in Police Presence	Alcohol Related	Non Alcohol Related	Total
1990	2	3	5
1991	0	5	5
1992	0	4	4
1993	1	2	3
1994	0	9	9
1995	0	10	10
1996	0	1	1
1997	0	2	2
1998	2	3	5
1999	0	4	4
2000	0	5	5
Total	**5**	**48**	**53**

Source: Collation of data from Victoria Police Form 83 provided by the State Coroner's Office.

* custody in police cells lockups, (including Melbourne Custody Centre), police wagons and police vehicles.

Appendix 6
Victoria Police Medical Checklist



Appendix 7a

Public Drunkenness: Police Guidelines – From the Law Reform Commission of Victoria 1990, *Public Drunkenness, Supplementary Report Number 32*

These guidelines were developed in cooperation with the Victoria Police

Guidelines for Police Who Exercise Powers Under the Public Intoxication Act

What the Public Intoxication Act does

1. Under the Act, it is no longer an offence to be drunk or drunk and disorderly in public. However, you can pick up a person who is intoxicated (whether by alcohol or drugs) in a public place if the person:
    - is at significant risk because he or she is unable to take proper care of himself or herself; or
    - is behaving in a way that is likely to cause injury to others or damage to property.

What should you do if you pick up an intoxicated person?

2. Under section 4 of the Act, there are four options:
    - release the person
    - take the person home or release him or her into the care of a responsible person
    - take the person to a sobering up unit
    - take the person to a police lockup
3. You have to choose the least restrictive option that is practicable in all the circumstances, including operational priorities.
4. You should inform the person that he or she has been apprehended for being intoxicated and posing a significant risk to himself or herself, or to other people, or to property. You should also inform the person of the option you propose to adopt.
5. If you apprehend a person, upon release you must give the person a 'notice of apprehension' containing the time, date and place of apprehension, the place of

detention, if any, and the time and date of release. The notice of apprehension also contains a medical checklist. (See Appendix 4).

Release

6. If the danger to the person or to others can be avoided simply by removing the person from a particular place (for example a sports venue), you should adopt that course of action.

Taking the person home/release into the care of a responsible person

7. If you decide to take the person home, you should consider whether the person is likely to be violent to household members. If practicable, you should first contact household members to see whether they object to the return of the detained person. If so, you should adopt one of the other options. You should leave a copy of the notice of apprehension/medical checklist with a member of the household.
8. If you decide to release the person into the care of a responsible person, you should inform the detained person of his or her right to make a phone call in order to arrange for a responsible person to pick him or her up. You should satisfy yourself that the detained person is not likely to be violent towards the responsible person and that the responsible person is willing and able to take care of the detained person. You should hand the responsible person a copy of the notice of apprehension/medical checklist.

Sobering up units

9. You should take a person to a sobering up unit rather than a police station wherever practicable.
10. If you decide to take the person to a sobering up unit you should first make sure that room is available.
11. You should satisfy yourself that the person is not likely to be violent towards sobering up unit staff or other people at the sobering unit.
12. You should search the person and remove any valuables or objects which may be used for causing injury before handing the person over to the sobering up unit. The person should be given a receipt for these items. Any such items should be left in the custody of the sobering up unit staff for return to the person at the end of the detention.
13. You should hand the notice of apprehension to the sobering up centre staff who will subsequently complete the release details and hand the notice to the person upon release.

Aborigines

14. The same four options apply to Aboriginal people as apply to other people. However, the following special conditions apply:
    - you should follow the normal procedure to contact the local Community Justice Panel to notify them of the person's detention
    - where a sobering up centre specially catering for the needs of Aborigines is available, it should be used

- if the person has to be detained in a police cell, monitor the person especially carefully at least every half hour and if practicable place the person in a cell with other Aboriginal people

What should you do if the person is admitted to a police lockup?

15. Follow normal watch house procedures. Make sure the person is searched for any valuables or objects which may be used for causing injury. Make a record of the person's name and address, the date, and complete a property sheet. These belongings should be removed and returned to the person upon release.
16. Remove any necktie, belt and shoelaces and make sure any shirt collar is loosened.
17. Inform the person that he or she has the right to visitors and to make a telephone call to a doctor, a lawyer or another person. Inform the person that he or she may use this call if he or she wants to dispute the basis for the detention or for other reasons. If you are asked, arrange the telephone call. [763]
18. If, because of the person's background or condition, he or she has special needs, notify the relevant body or service.

What should you do about medical treatment?

19. People can die from the effects of intoxication or the combination of intoxication and some other medical condition. In addition, you should be aware that some illnesses or injuries – such as epilepsy, head injuries, stroke, brain damage and diabetes – or other drugs can mimic the effects of alcohol.
20. You should go though the steps on the medical treatment checklist.
21. If the person needs regular medication (eg: asthma spray), you should ensure that it is available. If you are unsure about the correct dosage, seek medical assistance. You should inform the person of the right to contact his or her own medical practitioner.
22. If the person appears to need medical treatment, you should arrange for a forensic medical officer or other medical practitioner to examine the person. If necessary, arrange for the person to be transported to the nearest public hospital.
23. An intoxicated person who is apparently asleep may be in a coma. Where you think this may be the case, you should gently rouse the person in order to determine his or her condition. If the person is unable to respond appropriately to questions, you should seek medical assistance urgently.
24. Intoxicated people may choke by vomiting in their sleep. Such people should be checked at least half-hourly and kept under video or direct surveillance, if possible. You should ensure, as far as possible, that such people are placed in the coma position while asleep. You should also ensure that such people have sufficient warm blankets. If necessary, their clothes should be removed and dried.

763 The Victorian Police would prefer this sentence to be replaced by the following: If the person disputes the basis for the apprehension, inform the person that he or she may use the telephone call for this purpose.

Alcohol Withdrawal Syndrome (Delirium Tremens – 'DTs')

25. Alcohol withdrawal Syndrome (the DTs) can be fatal. Symptoms include severe shaking, agitation, hallucinations, epileptic seizures, and confusion. A person with one or more of these symptoms should be medically assessed as quickly as possible. If necessary, arrange for the person to be transported to the nearest public hospital.

When should you transfer a person?

26. If it becomes practicable to transfer a person from a police lockup to a sobering up unit, the officer in charge of the lockup should make the necessary arrangements.
27. The officer should make sure that the person's personal belongings are transferred with him or her, and that the person in charge of the sobering up unit gives a receipt for those belongings.
28. A person must not be transferred from a sobering up unit to a police lockup without the approval of an officer with the rank of Sergeant or above.

How long should you detain the person?

29. You should only detain the person for as long as it is necessary for his or her protection or the protection of the public.
30. In no case are you entitled to keep the person against his or her wishes for more than eight hours. However, the person may remain beyond the eight hour period if the person consents and it is reasonable in all the circumstances to allow him or her to remain.

Appendix 7b

Public Drunkenness: Guidelines for Personnel at Sobering Up Centres – From the Law Reform Commission of Victoria 1990, *Public Drunkenness, Supplementary Report Number 32*

What the Public Intoxication Act does

1. Under the Act, it is no longer an offence to be drunk or drunk and disorderly in public. However, police or a specially authorised person can pick up a person who is intoxicated (whether by alcohol or drugs) in a public place if the person:
    - is at significant risk because he or she is unable to take proper care of him or her self; or
    - is behaving in a way that is likely to cause injury to others or damage to property.

Role of the police

2. The police are required to choose from among four options. They must choose the least restrictive, practicable option:
    - release the person
    - take the person home or release him or her into the care of a responsible person
    - take the person to a sobering up unit
    - take the person to a police lockup.

Self-referrals

3. Sobering up centres are not meant as a substitute for other forms of shelter for intoxicated people. You should only admit people who have been brought to you by the police or by a specially authorised person.

What should you do if contacted by police?

4. If you receive a request from police or a specially authorised person to accommodate an intoxicated person, you can assume that other less restrictive options are not practicable.
5. You should endeavour to meet requests from police or specially authorised persons. However, you do not have to accept an intoxicated person if, for example:
    - no places are available in the centre
    - you do not believe the person fits the statutory criteria

- you believe the person requires medical attention
- you believe the person represents a threat to people at the centre.

6. If you accept a person, you should obtain a copy of the notice of apprehension from the police officer or from the specially authorised person.

What powers does the Act confer on you?

Detention

7. The Act gives you lawful authority to detain the person while the person is intoxicated *and* poses a threat to him or her self, to others, or to property.
8. You should inform the person that he or she has the right to visitors and that he or she may make a telephone call to a doctor, a lawyer or another person. Inform the person that he or she may use this call if he or she wants to dispute the basis for the detention or for other reasons. If you are asked, arrange the telephone call.
9. You may use reasonable force to prevent a person from leaving but you should only do so if the reasons are compelling. It is preferable to call the police – where practicable – if reasonable force seems to be necessary.

Search

10. The Act gives you the power to search a detained person. Where a search is necessary – for example, to remove valuables or potential weapons – it is preferable for police to do this before you take custody of the person. The police will leave any goods in your custody for return to the person on release. If you remove items from the person, you should give the person a receipt.

What should you do about medical treatment?

11. People can die from the effects of intoxication or the combination of intoxication and some other medical condition. In addition, you should be aware that some illnesses or injuries – such as epilepsy, head injuries, stroke, brain damage and diabetes – or other drugs can mimic the effects of alcohol.
12. You should go through the steps in the medical treatment checklist.
13. If the person needs regular medication (eg: asthma spray), you should ensure that it is available. If you are unsure about the person's ability to administer the correct dosage, seek medical assistance.
14. If the person appears to need medical treatment, you should arrange for a forensic medical officer or other medical practitioner to examine the person. If necessary, arrange for the person to be transported to the nearest public hospital.
15. An intoxicated person who is apparently asleep may be in a coma. Where you suspect this may be the case, you should gently rouse the person in order to determine his or her condition. If the person is unable to respond to questions appropriately, you should seek medical assistance urgently.
16. Intoxicated people may choke by vomiting in their sleep. Such people should be checked at least half-hourly. You should ensure, as far as possible, that such people are

placed in the coma position while asleep. You should also ensure that such people have sufficient warm blankets. If wet, their clothes should be removed and dried.

Alcohol Withdrawal Syndrome (Delirium Tremens – 'DTs')

17. Alcohol Withdrawal Syndrome (the DTs) can be fatal. Symptoms include severe shaking, agitation, hallucinations, epileptic seizures, and confusion. A person with one or more of these symptoms should be medically assessed as quickly as possible. If necessary, arrange for the person to be transported to the nearest public hospital.

How long should you detain the person?

18. You should only detain the person for as long as it is necessary for his or her protection or the protection of the public.
19. In no case are you entitled to keep the person against his or her wishes for more than eight hours. However, the person may remain beyond the eight hour period with the person's consent and where it is reasonable to allow him or her to remain.
20. Upon release, you should complete the release details on the notice of apprehension form and give the person a copy.

Appendix 8

Northern Territory Police Force Agreement on Practices and Procedures Between the Northern Territory Police and the Julalikari Council Concerning the Julalikari Council Night Patrol, Julalikari Council Inc.

Preamble:

1. The following agreement is intended to establish a protocol between the Julalikari Council's Night Patrol and the Tennant Creek Police. It is not intended to provide a basis for legal rights or powers in the Night Patrol and must not be construed as giving any such rights or powers. The following provisions are to serve as a working guide only, subject to change upon mutual agreement.

It is agreed that:

2. It is accepted that, where diversionary procedures or facilities are available, a person should not be detained in Police custody for being intoxicated or held for minor offences unless that person is violent or an offence is likely to occur or continue. In cases of detention for offences, bail procedures are to be instituted as soon as possible unless the person is too intoxicated to be released.
3. Persons apprehended for Protective Custody under the provisions of Section 128 of the Police Administration Act and kept in Police cells are to be released as soon as possible or as soon as that person can be placed into the care of a relative or friend capable, in the opinion of Police, of looking after that person.
4. The Barkly Regional Alcohol and Drug Abuse Advisory Group (BRADAAG) House in Thompson Street is a special centre where intoxicated persons can be taken and cared for. BRADAAG House accepts intoxicated people who have been referred by Police, Julalikari Council Night Patrol, family and friends and self-referrals.
5. When Patrollers locate an intoxicated person and cannot give that person to a friend or relative to mind, they have the option of taking the intoxicated person directly to the shelter. BRADAAG House holds 15 people and when it is full any person taken into custody must be lodged in the Police cells.
6. Julalikari Council will provide training for Night Patrollers by negotiation with Police, St John's Ambulance and BRADAAG. Night Patrollers will receive training concerning their rights, obligations and First Aid. Julalikari Council will provide Night Patrollers with a vehicle clearly identifiable by the reflector signs displaying 'Julalikari Night

Patrol'. The Patrollers must wear shirts authorised by the Council and carry identification cards.

7. Julalikari Council will provide informal Night Patrol orientation and cultural awareness training for new Police recruits and new members stationed at Tennant Creek Police Station.

8. Police and Julalikari Council will participate in a combined community awareness and education program in consultation with the various Tennant Creek Aboriginal communities.

9. When any disturbances involving Aborigines arises within the camp or town areas, the Patrollers when possible will attempt to resolve the dispute in the first instance. If the Patrollers are unable to resolve the dispute Police will be called and the Patrollers will assist Police in resolving the dispute. On arriving at the scene of a dispute Police should, wherever possible, consult with the Patrollers as to the circumstances and the nature of the problem. Where it is agreeable to all parties, Police may leave the situation in the care of the Night Patrol.

10. Following Police intervention, Police will where practicable consult with the Patrollers as to the most appropriate action to take in the circumstances. Police should give consideration to allowing the Patrollers to relocate persons involved if the Patrollers make such a request. Where necessary, Police will take the persons into Protective Custody and convey them to BRADAAG House. Persons will only be placed in the Police Cells as a last resort. Where Police and Patrollers are unable to agree on what action should be taken at the time, the decision of the Police Officer will apply.

11. In circumstances where Police take action and the Council is not happy with that action or Patrollers take action and Police are not happy with that action, a meeting will be held at the earliest opportunity between the Senior Sergeant, Tennant Creek Police Station and a nominated member of the Julalikari Council to resolve the dispute.

12. If more immediate action is required, it shall be pursued jointly by the Night Patrol Coordinator and the Senior Police Officer on duty.

13. Intoxicated persons who, in the opinion of the Patrollers and Police, are violent or likely to be violent or likely to re-offend should be placed in Police Custody until sober rather than released to family or Council members.

14. The Julalikari Council will have community meetings to encourage all Aboriginal town campers to attempt to contact the Patrollers in the first instance when the Night Patrol is operating. If the Patrollers are unable to be contacted or the matter is urgent or serious, Police will be called. Police are to be able to contact persons designated by Julalikari Council at each camp who can be called upon in the event of trouble at the camp.

15. Police will continue, where workload permits, to conduct mobile patrols of all the town camps primarily to keep the peace and for the protection of persons living in the camps.

16. Patrollers, where practicable, will try to assist Police to keep the peace when they have time to meet such requests by talking to the people and trying to sort out any arguments or differences. However, when the Police decide that a person should be taken into

custody or arrested, the Patrollers will assist by making the arrest as trouble-free as possible.

17. Where an Aboriginal person has warrants issued for his/her arrest, the following arrangements will apply:

    17.1. If the warrant is a Mesne Warrant or Warrant of Apprehension the warrant will be executed and the person placed before a Magistrate as soon as possible.

    17.2. If the warrant is a Warrant of Commitment issued for the non-payment of fines, that person can pay the money or will be arrested and assessed for a Community Service Order at the first opportunity.

    17.3. If the warrant is a Warrant of Commitment for forfeited bail, an unpaid Traffic Infringement Notice, an unpaid Summary Infringement Notice, or unpaid compensation and the person is unable to pay the amount that person will be taken into custody.

18. Any person in Police custody who exhibits signs of mental or physical distress, including alcohol or drug withdrawal symptoms, or is unconscious or who exhibits other symptoms that cause Police or a Patroller concern about that person's welfare, that person is to be taken immediately to the Hospital for assessment.

19. Juveniles will only be taken into custody as a last resort. Police will make every attempt to place the juvenile into the care of a friend or relative capable, in the opinion of Police, of looking after that juvenile. Where that is not possible or appropriate, Police will notify Family, Youth and Children's Services (FYCS).

20. If the person in custody is a woman with a child under the age of two years, Police will make every attempt to place the child into the care of a friend or relative capable, in the opinion of Police, of looking after that child. Where that is not possible or appropriate, Police will notify Family, Youth and Children's Services (FYCS).

21. Wherever possible, an Aboriginal person who is arrested will be placed in a multi-prisoner cell, preferably with another Aboriginal person or persons, unless there is an identified danger or disruption to others by placing them together.

22. As part of the Cell Watch Scheme, Patrollers will be available, on an on-call basis, to make cell visits between the hours of 10.00 p.m. and 7.00 a.m. At any other time, where a Patroller requests to visit an Aboriginal person in the cells, Police will facilitate reasonable access if operation contingencies allow.

23. Where a person in custody is aggressive and unable to be calmed down, Police will contact Night Patrol to arrange for a family member or friend of the person to attend the cells to attempt to calm the person down. Such cell visitors will be given all reasonable and continued access for this purpose.

24. Patroller and Police will work together and assist each other wherever possible. If disputes or misunderstandings occur at any time, meeting will be called to resolve those problems as soon as possible as per the provisions of paragraphs 11 and 12.

25. This agreement will be reviewed by all parties at combined meetings after having been in operation for a period of three (3) months in the first instance and six (6) months thereafter or as required by either party.

Appendix 9

Protocol Between Department of Community Services, Police Service and NSW Health, for Provision of Services to Homeless People who are Affected or Addicted to Alcohol and/or Other Drugs[764]

Background

The NSW Government is committed to providing a comprehensive range of services to better meet the needs of homeless people. This Protocol has been developed as part of a Whole of Government approach to managing homeless persons with addictions to alcohol and other drugs.

This Protocol also includes that group of people who are intoxicated and/or drug affected in a public place and are behaving in a disorderly manner, behaving in a manner likely to cause injury to themselves or others, damaging property, or are in need of physical protection because of incapacity due to intoxication. For the purposes of this agreement it will be assumed that they are homeless or at risk of homelessness as prescribed under section four of the Supported Accommodation Assistance Program Act 1994.

To address the needs of homeless people or people at risk of homelessness who have addictions to alcohol and/or other drugs, requires a multifaceted and specialised response from a range of Government agencies.

This Protocol aims to better integrate the wide range of services needed by homeless people or people at risk of homelessness with alcohol or drug addictions, and clarify the roles and responsibilities of the Department of Community Services, Police Service and NSW Health.

Within the context of this Protocol:

- The Department of Community Services is responsible for managing the Supported Accommodation Assistance Program (SAAP) which provides a crisis and transitional response to assist homeless people move to independent living and for investigating and assessing the needs and risks of children and young persons.
- The NSW Police Service is responsible, where appropriate, for the immediate safety of alcohol and drug affected individuals in public places, who may reasonably be argued to be a risk to themselves or others, including seeking a safe place for their immediate care.

764 The Committee would like to thank Mr Alan Tongs, Senior Policy Analyst, Ministry of Police, New South Wales, for his assistance in allowing the Committee to quote from sections of the New South Wales Police and Department of Community Services Protocol.

- NSW Health is responsible for assisting individuals to manage their addictions through a range of services which include detox and counselling.

This Protocol is an agreement between the three government agencies which sets our formal liaison and referral procedures by which homeless individuals with addictions (including those intoxicated and/or drug affected in a public place) will be offered a range of support to assist them to:

- reduce their immediate risk
- manage their addiction(s) and
- move into a long term accommodation arrangement.

Target Client Groups

These Protocols are directed to homeless people or people at risk of homelessness with:

- Addictions to alcohol and/or other drugs
- Alcohol and/or other drug addictions and mental health problems; and
- Will include those individuals who are intoxicated or drug affected in a public place and are considered by Police to be at risk to themselves or others.

Objectives of this Protocol

- To improve co-ordination of support and related services to homeless people or people at risk of homelessness with addictions to alcohol and/or other drugs
- To provide homeless persons with addictions opportunities for:
    - A long term resolution of their homelessness through the provision of services through SAAP;
    - Detox and counselling support to assist them to address their addictions; and
    - Receiving support to address mental health issues, where appropriate.
- To facilitate information exchange and effective collaborative working arrangements between Departments in the management process.
- To ensure that problems in the management of homeless persons with addictions are considered and resolved at an appropriately senior level.
- To address the needs of homeless young people under 18 years of age within the framework of the Children and Young Persons (Care and Protection) Act 1998. To recognise and address the additional risk factors for Aboriginal and Torres Strait Islander persons.
- To assist Police to better manage the immediate needs of intoxicated or drug affected persons in a public place and considered to be at risk, by providing immediate crisis accommodation and support.

Statement of Roles and Responsibilities of Government Departments in the Provision of Services to Homeless Persons with Alcohol and/or Drug Addictions:

- **Police will:**
    1. Approach a person or persons in a public place whom they believe to be at risk to themselves or others and under the influence of alcohol or other drugs.
    2(a) Assist in obtaining appropriate medical assessment and treatment, if Police believe that the subject person(s) is injured or has immediate health needs.
    2(b) Attempt to encourage the person into appropriate transport to convey them to their place of residence.
    2(c) Attempt to identify a responsible person, including a friend or family member, to assume responsibility for the person(s).
    2(d) Attempt to identify an appropriate responsible person to transport the person to a place of safety.
    2(e) Arrange appropriate Police accommodation if Police believe the person(s) is violent or at imminent risk of violence.
    3. Consult, if appropriate, with the relevant Mental Health Team if Police believe that the person(s) is indicating they may have an uncontrolled mental health disorder.
    4. Request the nearest SAAP service arrange appropriate emergency accommodation once points one to three have been addressed.
- **Department of Community Services (DOCS) through SAAP service providers will:**
    1. Make available to police appropriate SAAP Services, (and provide police with contact details of each service);
    2. Accept referrals from Police as an emergency overnight placement;
    3. Arrange for an alternative placement to be offered if there is no capacity in the SAAP service. This may be in another local SAAP service or in a local hotel or motel utilising brokerage.
    4. Assess the ongoing needs of the person(s) as soon as practicable the next day and offer placement as a client of the SAAP service subject to the eligibility criteria being met and the capacity of the service.
    5. Arrange for a service in another SAAP agency (including transportation costs) if service capacity is not available;
    6. Arrange for an immediate referral to NSW Health if after assessment it is reasonably believed that the client has an addiction to alcohol or other drugs which is likely to result in ongoing alcohol or drug abuse; and
    7. Provide or arrange a service for the client after completion of detox.
- **NSW Health will:**
    1. Provide Police with access to Mental Health Teams (and provide police with contact details of each team).

2. Assess persons referred by Police who believe that the subject person(s) is injured or has immediate health needs, and arrange for appropriate medical treatment to be provided.
3. Develop local cooperative working arrangements with service providers to provide detox and other support services to clients referred by these providers.
4. Support service providers in the management of clients with mental health problems and alcohol and/or other drug addictions.

- All parties will participate at a local level in the development of written protocols or agreements which will:
    1. Use this Protocol as the basis for operationalising the agreement between the parties at the local level;
    2. As a minimum requirement this will involve DoCS Area Managers, Mental Health Coordinators, Drug and Alcohol Coordinators, Health Promotion Coordinators and Regional Commanders (or designated officers) entering into a written agreement on how the three agencies will work together to the benefit of this client group.
    3. Include local issues where some additional emphasis may be required; and
    4. Consult relevant Aboriginal communities prior to the finalisation of local protocols.

Monitoring Arrangements

A protocol Working Group comprising representation from Police, NSW Health, DOCS and SAAP service providers will be established to report progress on the implementation of this Memorandum of Understanding. Meetings will be quarterly for 12 months.

This group may recommend amendments to the Protocol during this period.

An evaluation of the protocol will be completed at the end of this 12 month period when a recommendation may be made about any variations that may be required.

Appendix 10
Existing offences under the Summary Offences Act 1966

Section 17 – Obscene, indecent, threatening language and behaviour etc in public

(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 –

(a) sings an obscene song or ballad;

(b) writes or draws, exhibits or displays an indecent or obscene word figure or representation;

(c) uses profane indecent or obscene language or threatening abusive or insulting words; or

(d) behaves in a riotous indecent offensive or insulting manner –

shall be guilty of an offence.

Penalty: 10 penalty units or imprisonment for two months; For a second offence – 15 penalty units or imprisonment for three months; For a third or subsequent offence – 25 penalty units or imprisonment for six months.

(2) Where in the opinion of the chairman presiding at a public meeting any person in or near the hall, room or building in which the meeting is being held –

(a) behaves in a riotous indecent offensive threatening or insulting manner; or

(b) uses threatening, abusive, obscene, indecent or insulting words –

the chairman may verbally direct any member of the police force who is present to remove such person from the hall, room or building or the neighbourhood thereof and the member of the police force shall remove such person accordingly.

Section 23 – Common assault

Any person who unlawfully assaults or beats another person shall be guilty of an offence. Penalty: 15 penalty units or imprisonment for three months.

Section 24 – Aggravated assault

(1) (a) Where a person is convicted before the Magistrate's Court of an assault or battery upon any male child whose age in the opinion of the court does not exceed fourteen years or upon any female, if in the opinion of the court the assault or battery is of such an aggravated nature that it cannot sufficiently be punished under the last preceding section the person offending shall be liable on

conviction to a penalty of 25 penalty units or to imprisonment for six months and the court may (if it thinks fit in any of the said cases) without any further or other charge adjudge any person convicted to enter into a recognizance and find sureties to keep the peace and be of good behaviour for a term of not more than six months from the expiration of such sentence.

(b) In default of compliance with any such order to enter into a recognizance and find sureties the court may order a defendant to be imprisoned until he complies with the order: Provided that no person shall be imprisoned for non-compliance with any such order for a longer period than twelve months.

(2) Any person who in company with any other person or persons assaults another person shall be liable to imprisonment for twelve months and any person who by kicking or with any weapon or instrument whatsoever assaults another person shall be liable to imprisonment for two years.

Section 52 – Assaulting or resisting constables etc.

(1) Any person who assaults resists obstructs hinders or delays or incites or encourages any other person to assault, resist, obstruct, hinder or delay any member of the police force in the execution of his duty under this Act or otherwise, or any person lawfully assisting any such member in the execution of his duty under this Act, or any member of the staff of the local authority in the execution of his duty under this Act shall be guilty of an offence.

Penalty: 25 penalty units or imprisonment for six months.

(1a) Any person who together with others wilfully and without lawful authority besets any premises, whether public or private, for the purpose and with the effect of obstructing, hindering, or impeding by an assemblage of persons the exercise by any person of any lawful right to enter, use, or leave such premises shall be guilty of an offence.

Penalty: 15 penalty units or imprisonment for three months.

(2) In addition to imposing a penalty the court may order and award a sum sufficient to cover any damage which any such member of the police force, person or member of staff has sustained by such assault, resistance, obstruction, hindrance or delay, such sum to be recoverable in the same manner as the penalty.

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