



# Drugs and Crime Prevention Committee

## Inquiry into Public Drunkenness

DISCUSSION PAPER



**PARLIAMENT OF VICTORIA**

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**DRUGS AND CRIME PREVENTION COMMITTEE**

**INQUIRY INTO PUBLIC DRUNKENNESS**

**DISCUSSION PAPER**

**October 2000**

## **SUBMISSIONS ARE INVITED**

The Committee welcomes written submissions in response to the issues raised in this Discussion Paper or on any matter related to the Terms of Reference of the Inquiry.

To assist interested parties in making submissions a number of questions have been posed throughout the Discussion Paper.

Details of how to make a submission are included in the insert. Note that the Committee requires all submissions to be signed hard copy originals.

**Please take up the opportunity to make a written submission.**

Send all submissions to:  
Inquiry into Public Drunkenness  
Drugs and Crime Prevention Committee  
Level 8, 35 Spring Street  
Melbourne Victoria 3000

### **THE CLOSING DATE FOR SUBMISSIONS IS**

**Monday 6<sup>th</sup> November 2000.**

The Discussion Paper was prepared by the Drugs and Crime Prevention Committee.

The Committee records its appreciation to:

Ms Lisa Collins, Masters Student in Criminology, University of Melbourne. Ms Collins assisted in compiling a literature review whilst on a supervised field placement with the Committee as part of her studies. Her diligent work is greatly appreciated.

Mr Alan Tongs, Senior Policy Analyst, Ministry for 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.

All individuals, organisations and agencies who met with, or assisted the Committee in its task, in Victoria, New South Wales and the Northern Territory.

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## **Drugs and Crime Prevention Committee**

### **Members**

The Hon. Cameron Boardman, M.L.C - **Chairman** (from 22 August 2000)

Mr. Bruce Mildenhall, M.L.A. - **Deputy Chairman**

The Hon. Robin Cooper, M.L.A. (from 6 September 2000)

Mr. Kenneth Jasper, M.L.A.

Mr. Hurtle Lupton, M.L.A.

The Hon. Sang Minh Nguyen, M.L.C.

Mr. Richard Wynne, M.L.A.

Mr. Kim Wells, M.L.A. (Chairman 16 December 1999 to 22 August 2000 and discharged from Committee 6 September 2000)

### **Committee Staff**

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## **Functions of the Drugs and Crime Prevention Committee**

The 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.*

**The Drugs and Crime Prevention Committee's address is:**

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## **Terms of Reference**

**Received from the Governor in Council on 22 February 2000 and the Legislative Assembly on 14<sup>th</sup> 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.



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**Part A****Setting the Scene****1. Introduction**

The issue of public drunkenness is not inconsequential. It is the third most common charge heard in our courts and at times has accounted for forty percent of police cell occupation<sup>1</sup>.

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 paper. 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 will be no easy task.

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 is a key aspect of this reference. As such it will be discussed in detail in a later section of this Paper<sup>2</sup>.

It is therefore imperative that this Inquiry receives input and information from as many individuals, agencies and organisations with a stake or interest in this topic as possible. This paper does not by any means attempt to address all the issues associated with problem drinking and public drunkenness. There will be many views and 'angles' that will no doubt be brought to the Committee's attention by members of the general public. Accordingly, we welcome the views of such stakeholders by way of written submission. Formal hearings will take place in Melbourne on the 8 and 13 November 2000. Submissions will be due on 6 November 2000. Selected submission writers will be invited to present before the Committee. Details of submission procedures can be found on page 2 of this Discussion Paper.

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<sup>1</sup> For a statistical analysis with regard to public drunkenness offences, see Part C.

<sup>2</sup> See Part E.

## **2. History and Background to the Inquiry**

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

### **Terms of Reference**

#### **Received from the Governor in Council on 22 February 2000 and the Legislative Assembly on 14<sup>th</sup> 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;
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- C. such other legislation, case law, reports and materials as are relevant to the Inquiry.

Issues of public drunkenness offences with regard to the Victorian Indigenous community are clearly of concern to the Committee. Nonetheless, the Committee stresses that the problems associated with public drunkenness in Victoria are by no means restricted to Indigenous Victorian communities. It would seem 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. Some of the categories in which public drunkenness needs to be addressed include:

- Itinerant Public Drinking and Homelessness;
- Juveniles and Young People;
- Public Drunkenness and Women;
- Drunkenness in and around Licensed Premises; and
- Sports and Large Crowds and Event Management.

These issues will be covered to greater or lesser extents in the course of this paper.

### **3. Work of the Committee Undertaken to Date**

In commencing this Inquiry the Committee has undertaken a thorough review of the literature on public drunkenness in Australia, called for and received submissions from the community, visited various organisations and facilities, spoken to some key stakeholders and interested individuals and travelled to New South Wales, the Northern Territory and regional Victoria.



## Part B Law and Legal Issues

### 4. Background to the Current Law with regard to Public Drunkenness in Victoria

#### Legislative History

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 to be found in the *Summary Offences Act 1966* 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 1966*, pursuant to the publication of the *Interim Report* of the Muirhead Royal Commission into Aboriginal Deaths in Custody (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 RCIADIC, unanimously recommended the decriminalisation of public drunkenness crimes and the repeal of the relevant sections of the *Summary Offences Act* (see below).

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)<sup>3</sup>.

<sup>3</sup> Law Reform Commission of Victoria, *Public Drunkenness* Report no 25, 1989, p.9. According to James (1992), 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 (James 1992, 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 it produced in local government for decriminalisation was crucial in defeating the Bill in the Upper House (see below and James *ibid*, p.18).

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. This Committee has listened to opinions that support or oppose decriminalisation thus far 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, 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').

The Commission released two reports in 1989 and 1990 respectively<sup>4</sup>. The 1989 Report proposed and annexed legislation entitled 'Draft Bill for a Public Intoxication Act 1989'. This to a large degree formed the basis of the Public Drunkenness (Decriminalisation) Bill (1990). The Supplementary Report included in appendices, guidelines for Victoria Police in relation to the exercise of their powers under the proposed legislation. In addition, it set out guidelines for personnel employed in Sobering Up Centres to follow 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<sup>5</sup>;
- The right of police officers or 'authorised persons'<sup>6</sup> 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.

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<sup>4</sup> Law Reform Commission of Victoria, (1989) *Public Drunkenness* Report No 25, Victorian Government Printer; Law Reform Commission of Victoria (1990) *Public Drunkenness* Supplementary Report No 32 Victorian Government Printer.

<sup>5</sup> For a discussion of these sections, see section five below.

<sup>6</sup> 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;
  - Power to take the intoxicated person to a police station or lock up.

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 have been 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<sup>7</sup>.

The only change to the law with regard to public drunkenness to date has occurred with 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:

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<sup>7</sup> 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, Mrs Wade the former Victorian Attorney-General, 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 was to state 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<sup>8</sup>.

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

## **5. 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 maybe 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.

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<sup>8</sup> Mrs Wade (Attorney General) *Summary Offences (Amendment) Bill* Second Reading. Victoria, Legislative Assembly, 26 February 1998, *Debates*, p. 354.

### *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<sup>9</sup>.

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'<sup>10</sup>. Each case will be dealt with upon its own particular facts<sup>11</sup>. 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<sup>12</sup>.

### **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<sup>13</sup>.

In *Kruger v Humphreys*<sup>14</sup> 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

<sup>9</sup> See *Sheehan v Piddington; Ex Parte Piddington* [1955] QSR 574

<sup>10</sup> *R v Ormsby* [1954] NZLR 109, at p109 per Fair J

<sup>11</sup> *Brown v Bowden* (1900) 19 NZLR 98

<sup>12</sup> Paul's Summary and Traffic Offences, at p 51.

<sup>13</sup> In *Barrington v Austin*, it was stated by the judge:

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.

<sup>14</sup> [1968] SASR 75.

order of the neighbourhood or the peace and comfort of the homes of other persons'<sup>15</sup>. 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 whilst drunk behave in a *riotous* or *disorderly* manner in a public place. Note that this is a disjunctive and not 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'<sup>16</sup>. 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<sup>17</sup>.

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.<sup>18</sup>

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<sup>15</sup> 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.

<sup>16</sup> *Burton v Mills* (1896) 17 ALT 262.

<sup>17</sup> *Ex parte Jackson: Re Dowd* (1932) 49 WN (NSW) 126.

## 6. Victoria Police Practice and Procedures

It is difficult to state that there is any one way in which public drunkenness offences are processed in Victoria. As a later section 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 *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 Magistrates' Court) and kept to 'sleep it off' until they are judged sufficiently sober; this 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 their own protection.

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<sup>19</sup>.

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 (Victoria Police Manual, Section 8.2).

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:

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<sup>18</sup> 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 Garlick* [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* and in regulations under the *Transport Act 1983* (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*. (See also extended discussion with regard to public drinking and municipal regulation in Part F, Section 17)

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*. For provisions relating to being drunk on licensed premises, see *Liquor Control Act 1987*.

<sup>19</sup> See *Victoria Police Manual, Operating Procedures*, Section 4.6.1.2.

- 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)<sup>20</sup>.

After the four hours or period after which the person is deemed to be sufficiently sober, he or she is bailed and released usually on his or her own recognisance.

### **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<sup>21</sup>. From an offender's point of view the worst aspect of their behaviour being criminalised is that could receive a conviction if charged. This is unlikely to be the case if they have not been charged with any other offences. As no LEAP record is made in cases where there are no associated offences charged there is 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<sup>22</sup>.

- 1501 fines;
- 274 adjourned bonds;
- 111 Community Based Orders;
- 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:

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<sup>20</sup> Correspondence from Acting Superintendent Tim Cartwright, Policy and Research Division Victoria Police, 28 August 2000.

<sup>21</sup> Anecdotal evidence given by various police officers suggest that most Magistrates consider four hours in a lock up is sufficient punishment.

<sup>22</sup> These are the most recent statistics available at the time of writing this Paper.

- 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 a later section of this Paper<sup>23</sup>.

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 (James Transcript<sup>24</sup> 2000, p.4).

### **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 which 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 around Australia which cater for Aboriginal people will provide services and programmes which are culturally appropriate<sup>25</sup>. 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 Aboriginal Legal Service. A discussion of Aboriginal Sobering Up Centres will be presented in section 14.

In Victoria, however, the only centres that [officially] are run as Sobering Up Centres are the ones provided for Indigenous people. This has proven problematic. Many people with whom the Committee has met in regional Victoria have criticised the fact that the alcohol treatment facilities available for non-Indigenous Australians do not officially provide this service.

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<sup>23</sup> See below, Part E.

<sup>24</sup> Committee Interview with Acting Chief Inspector Steven James and other officers, Victoria Police, 7 July 2000, p.2. Hereinafter cited as James Transcript.

<sup>25</sup> 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).

The Committee has visited a variety of Sobering Up Centres around the country<sup>26</sup>. 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 rehydrated 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 Centres in the Northern Territory provided meals whilst others did not<sup>27</sup>. Importantly, centres also differed as to whether they would call the police when a client had absconded from their custody<sup>28</sup>. 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...'<sup>29</sup>

The Committee welcomes hearing the views of interested parties connected to Sobering Up Centres and their equivalents in Victoria<sup>30</sup>.

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<sup>26</sup> A detailed discussion of Sobering Up Centres based on the Committee's visits to the Northern Territory and New South Wales follows in a later section of this Paper, see Part D, Section 11.

<sup>27</sup> The manager of the Darwin and Katherine centres has stated to the Committee that providing meals and a laundry service in some cases may 'encourage[s] co-dependency and reward[s] drunken behaviour'. Mr Craig Spencer, Manager, Aboriginal and Islander Medical Support Services. August 3, 2000.

<sup>28</sup> To a certain extent this was circumscribed by their duties and responsibilities under legislation to report such departures. See discussion below, Part D, Section 11, and Table 1.

<sup>29</sup> 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 paper. 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.

<sup>30</sup> Mention has already been made of Aboriginal Sobering Up Centres in Victoria.

## **7. Public Drunkenness Laws and Procedures – An Interstate and Territory Comparison**

Following and extending the analysis of Commissioner Johnston in the Final Report of the Royal Commission into Aboriginal Deaths in Custody, 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)
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

Each Australian State and Territory deals with public drunkenness in differing ways as can be noted in the summary detailed in Table One.

The Committee has produced a comprehensive unpublished Position Paper comparing in detail the legislation, procedures and practices with regard to public drunkenness in each Australian State and Territory. For the purposes of this Discussion Paper, however, we restrict ourselves to an analysis of how public drunkenness is dealt with at a policy and practice level in the Northern Territory and New South Wales. This discussion is to be found in Part D. It will be preceded by an analysis of the statistical data with regard to public drunkenness.



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

	South Australia	New South Wales	Northern Territory	Western Australia	Australian Capital Territory
<b>Relevant legislation</b>	<i>Public Intoxication Act 1984</i>	<i>Intoxicated Persons Acts 1979 and 2000<sup>31</sup></i>	<i>Police Administration Act 1996</i>	<i>Police Act 1892</i>	<i>Intoxicated Persons (Care and Protection) Act 1994</i>
<b>Who may apprehend</b>	Police Officer/Authorised Officer	Police	Police	Police	Police
<b>Who may detain</b>	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	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	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
<b>Type of Drug/Level of Intoxication</b>	Under the influence of a drug or alcohol	Person appears to be seriously affected by alcohol or another drug or combination of drugs	Person appears to be seriously affected by alcohol or another drug	Seriously affected apparently by alcohol	Alcohol, another drug or a combination of drugs
<b>Criteria for Apprehension</b>	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	Public Place or trespassing on private property	Public Place or trespassing on private property	Public Place Disorderly; or Likely to cause injury to self, another person or property; or Incapable of protecting self from physical harm
<b>Power to search</b>	Yes. Also power to remove objects constituting a danger	Police may search detained person and take possession of objects	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
<b>Use of force or restraint</b>	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	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
<b>Disposition options</b>	Person's place of residence; Sobering up centre; Police cells	Responsible Person (includes sobering up centres) Home Police Cells	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 hospital or sobering up centre	Police may release intoxicated person into the care of a 'licensed place' (equivalent of sobering up centre) Police Cells
<b>Length of detention permitted</b>	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	Can be kept for long as it reasonably appears person is intoxicated But after 6 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
<b>Review mechanisms and safeguards</b>	Right of communication with friend or solicitor Special safeguards for children/young people 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	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 a civil escapee	Person must be informed can contact a responsible person at any time
<b>Indemnities</b>	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	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

<sup>31</sup> As explained in the text, the *Intoxicated Persons Act 2000* has been passed and assented to but not yet proclaimed. The table, however, represents the law as applicable to the new legislation with comments applicable to the current (1979) legislation as appropriate.

## Questions for Consideration

### Section 4. Background to the Current Law with regard to Public Drunkenness in Victoria

- *Are there any features of the Victorian Law Reform Commission's Reports into Public Drunkenness that could be usefully adopted or adapted by the Committee in its deliberations?*
- *A speculated reason for the failure of the 1991 Decriminalisation Bill was that insufficient consultation had been undertaken. Are there any groups, organisations or individuals that the Committee should consult with during its current brief?*

### Section 5. Current Law and Legal Procedure in Victoria

- *What legal problems would arise if public drunkenness offences were decriminalised?*
- *If public drunkenness offences were decriminalised what other legal measures would need to be implemented?*
- *Specifically, how should the law deal with disorderly behaviour associated with alcohol consumption should public drunkenness offences be decriminalised?*
- *Are there any benefits in maintaining any or all of the current laws pertaining to public drunkenness?*
- *Are there any current laws in place that may impact upon or prohibit the implementation of any programmes or initiatives designed to combat problems associated with public drunkenness and problem drinking?*

### Section 6. Victoria Police Practices and Procedures

- *What concerns, if any, would police or other sectors of the community, have if public drunkenness offences were to be criminalised?*
- *How effective are police practices and procedures with regard to the way in which public drunkenness is currently dealt with?*
- *Do current police practices make best use of diversionary schemes such as sobering up centres and community justice panels? What are the resource implications of such diversionary programmes?*
- *Is processing public drunkenness offences a drain on the use of police time and resources?*
- *Would decriminalisation result in a decrease, an increase or make little difference at all in the use of police time and resources?*

## **Section 7. Public Drunkenness Laws and Procedures: Interstate and Territory Jurisdictional Comparison**

- *What lessons can Victoria learn from the experiences of the other States with regard to the legal framework of decriminalisation?*
- *What aspects of legislation from other jurisdictions, if any, could usefully be incorporated into Victorian model legislation should the Parliament give consideration to decriminalising public drunkenness?*

**Part C****Public Drunkenness in Victoria:  
The Current Situation****8. Policing Public Drunkenness: A Statistical Profile**

The following statistical analysis is somewhat limited. This is because until very recently, data and figures with regard to public drunkenness offences were neither comprehensively nor accurately compiled. Therefore reliable data on trends in public drunkenness apprehensions is not readily available. In particular it is difficult to give an historical overview of statistical figures and patterns of public drunkenness due to:

- Until 1998 there was no overall central collation of public drunkenness data by Victoria Police<sup>32</sup>;
- Since the LEAP data base system was established in 1993, public drunkenness offences were only recorded and published when the offender was subject to other associated charges;
- From 1998, if 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 is 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; and
- Until 1997, Magistrates 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 a later section of the paper.<sup>33</sup>

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.44).

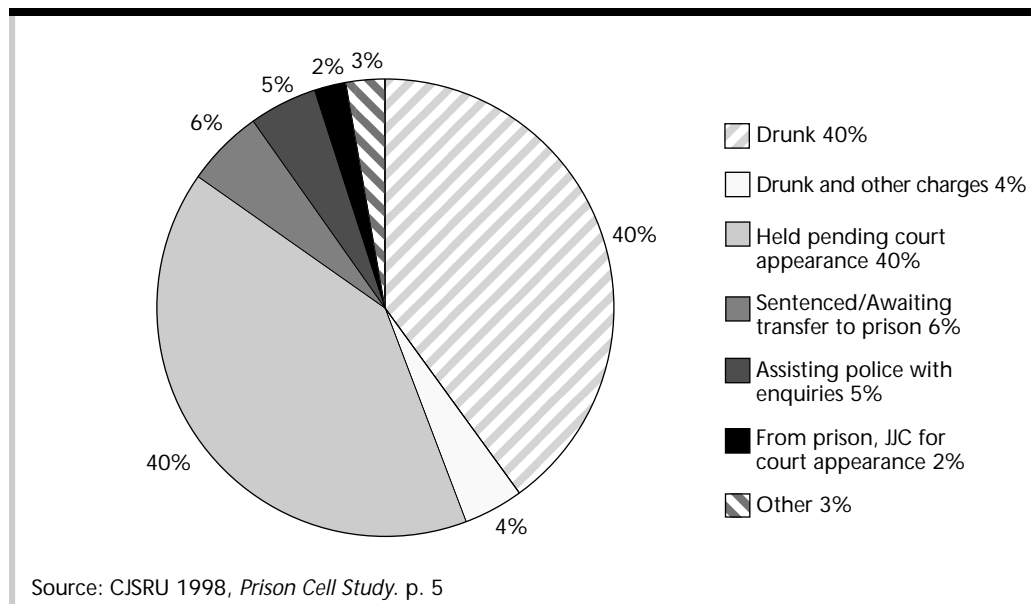
<sup>32</sup> We have been informed from police sources that data that was available was taken from individual police station Attendance Registers and stored [at most] at District Level.

<sup>33</sup> This data was prepared by academics and researchers primarily from the Koorie Research Centre based at Monash University.

In 1998 the CJSRU conducted a study of police cell use in Victoria from January–June 1997<sup>34</sup>. Whilst the study only examined a six month period it provides us 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.

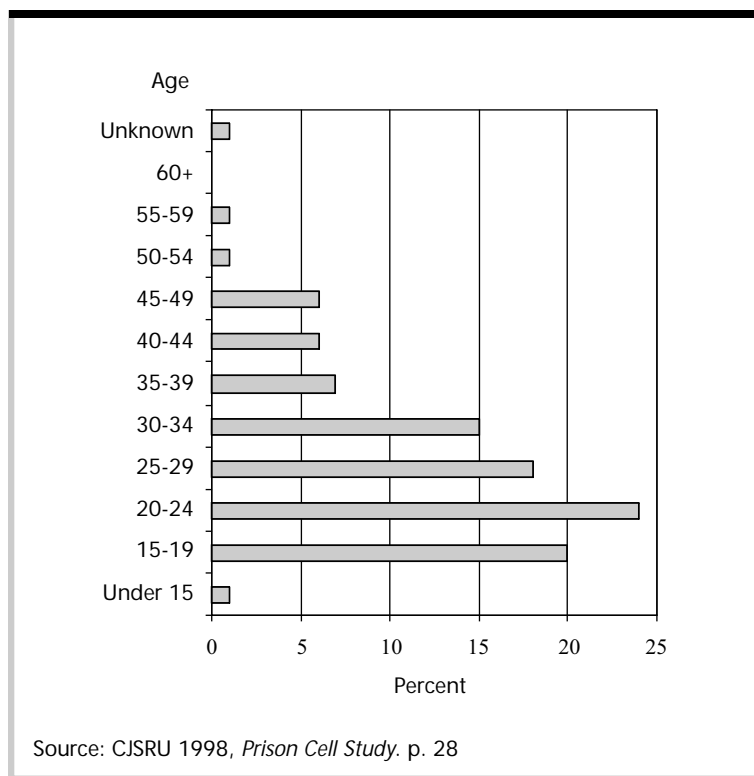
**Figure 1: Reason for being in police custody January–June 1997**



### Characteristics of Prisoners Held in Police Cells

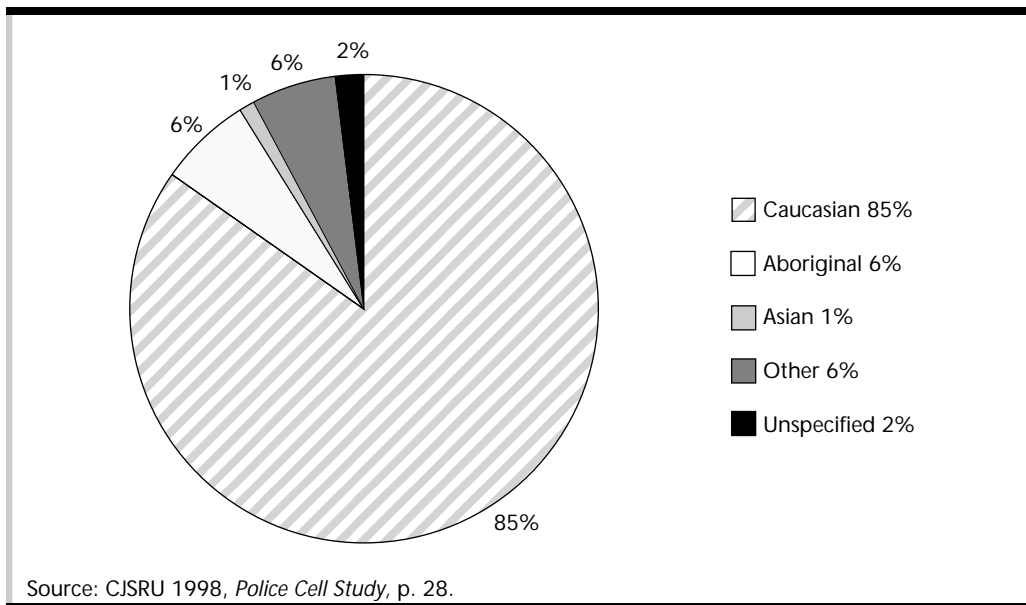
Ninety-two percent of the persons being held in police cells for public drunkenness were male. Most of the people being held (79.1%) were aged between 15–34 years, with the most frequent category being the 20 to 24 year age group. A further 18.7% were aged between 15 and 19 years of age and a small proportion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

<sup>34</sup> 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.

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

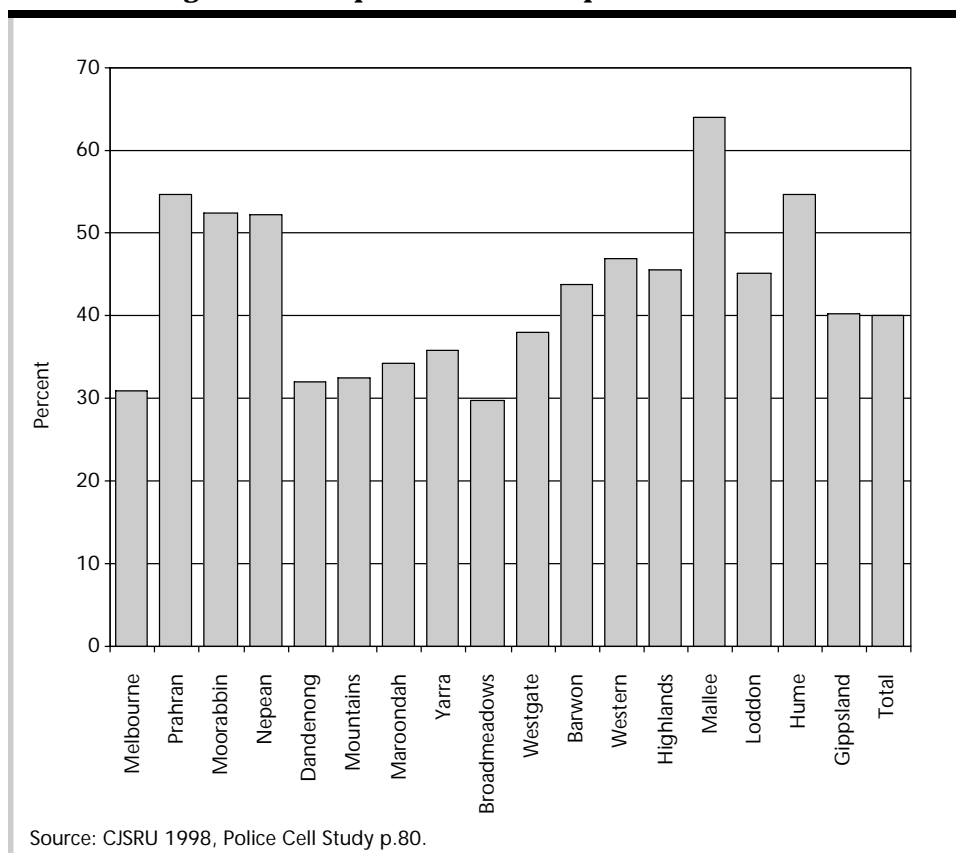
The overwhelming majority of intoxicated people being held in police cells were recorded as being of Caucasian appearance. Six and a half percent of intoxicated prisoners were recorded as being Aboriginal. This is a relatively high number when one considers that Aboriginal people are such a small proportion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



### **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**

### Intoxicated People Held in Police Cells

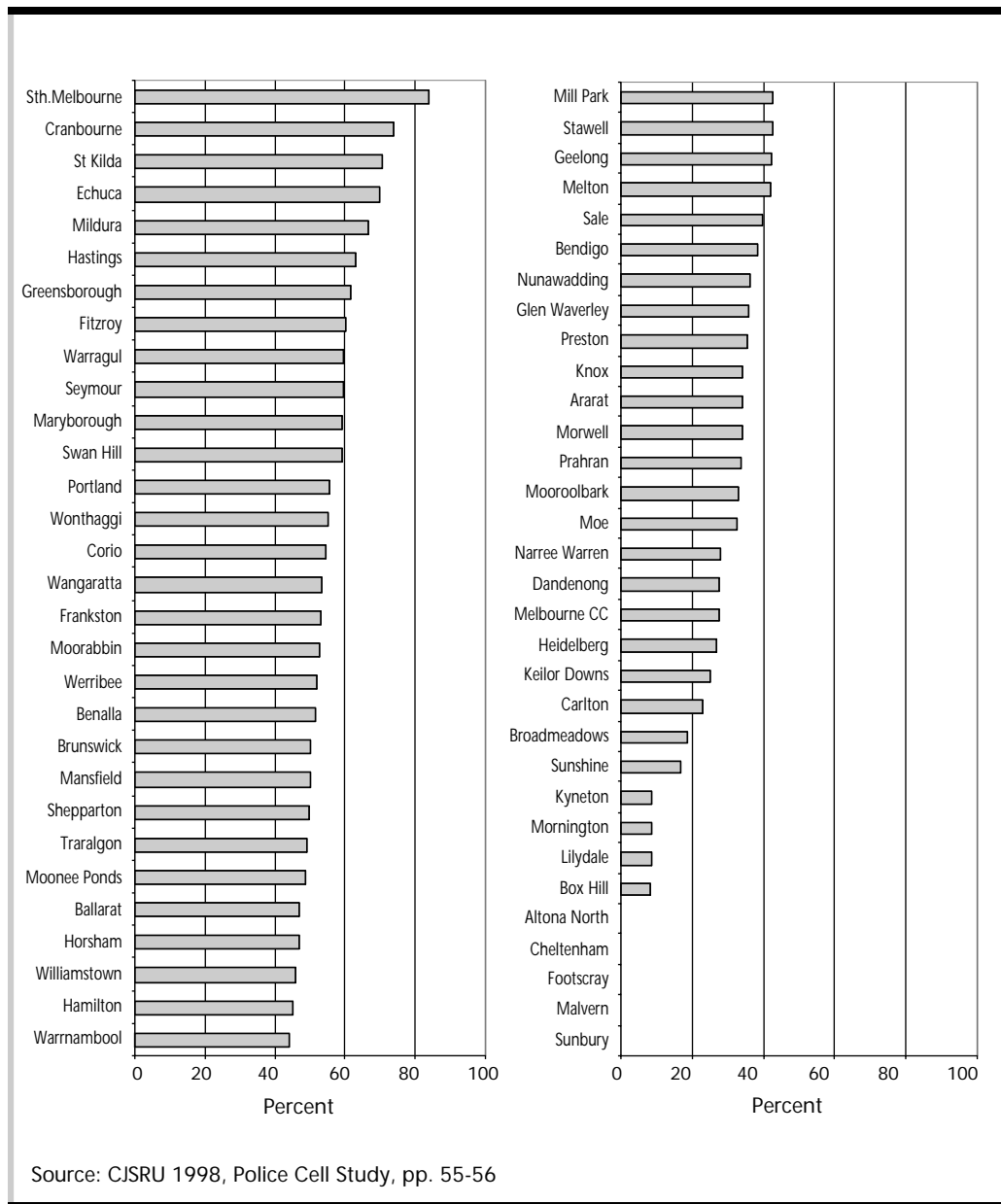
In terms of the proportion of people held in police cells for being drunk in a public place, there was wide variation; ranging from stations which recorded no 'drunks' held (Cheltenham, Malvern, Footscray, Altona North and Sunbury) to stations where intoxicated people represented about three-quarters 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<sup>35</sup>.

<sup>35</sup> 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 more crime 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**



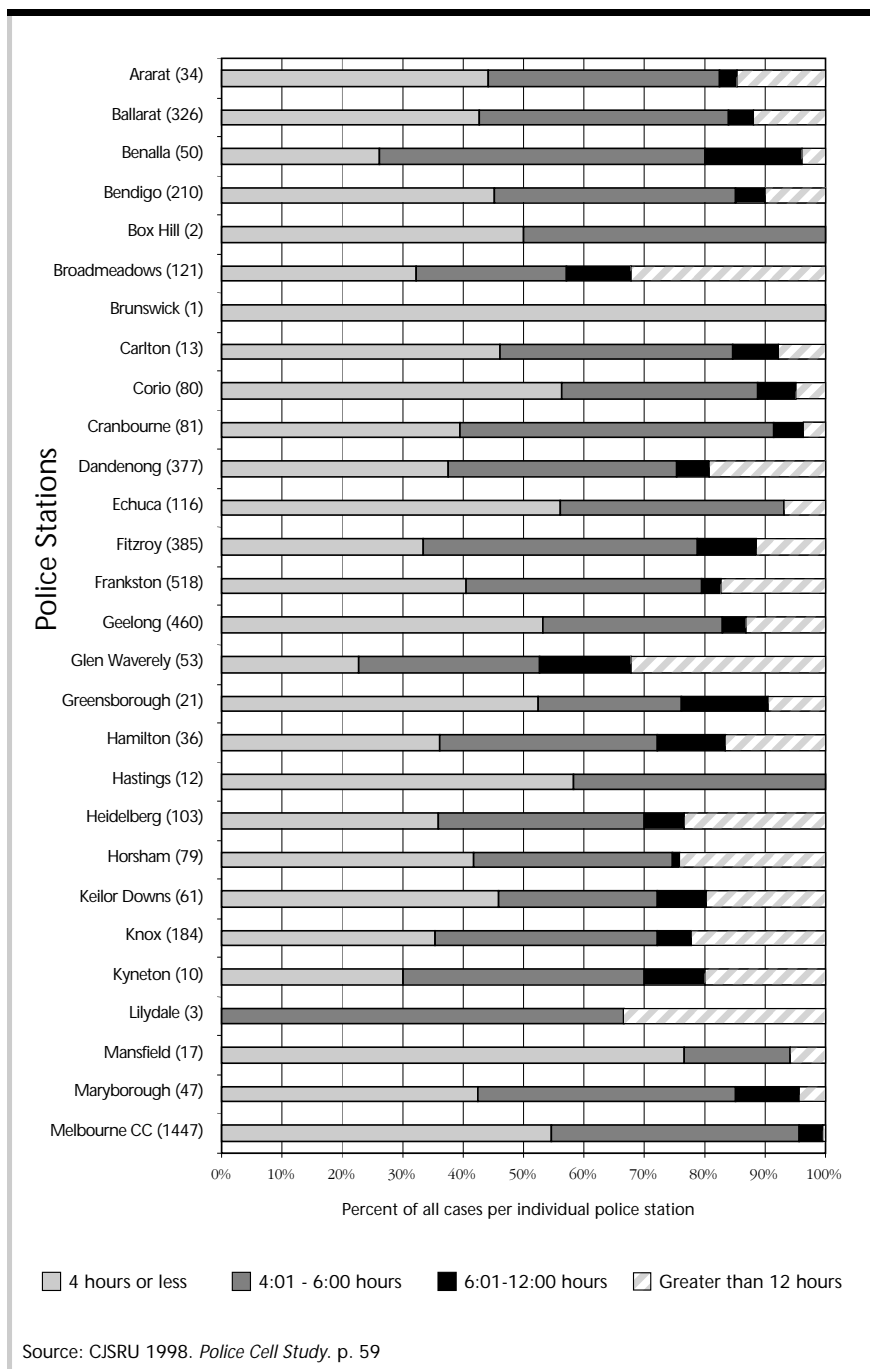
### **Length of Stay in Police Cells**

Figure 6 shows that on average 'drunks' stayed in police cells just over four hours. Specifically,

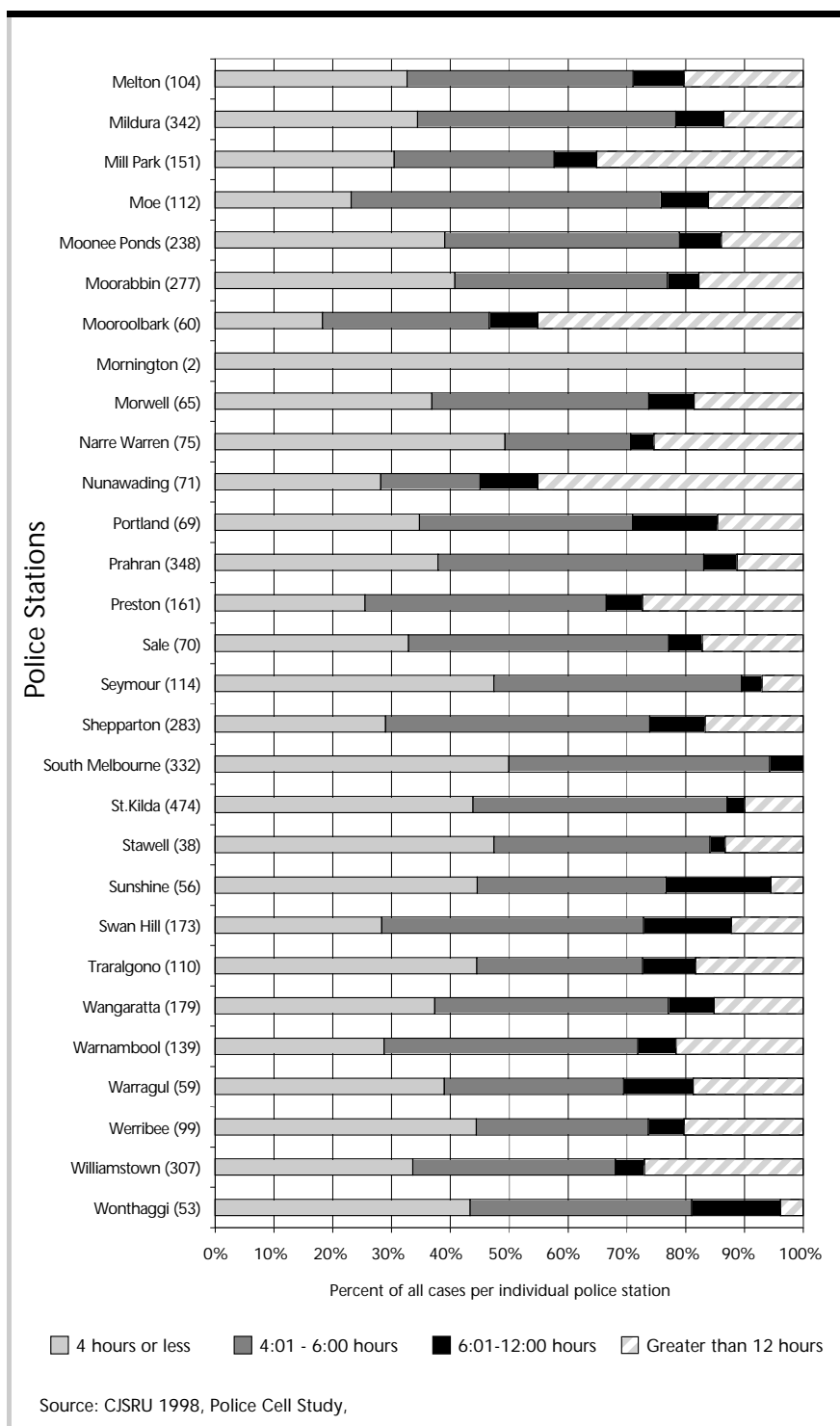
- 41.5 percent of all intoxicated people were held in custody for 4 hours or less,
- 39% percent stayed more than 4 hours but less than 6 hours
- 6.0% stayed more than 6 hours; and
- 13.4% were held longer than 12 hours.

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**



**Figure 6 (cont): Length of stay for 'drunk' prisoners held in police cells**



### **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, p137).

## **9. Victorian Aboriginals and Public Drunkenness Offences<sup>36</sup>**

Some commentators and the Final Report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) have remarked upon 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:

In May 1997, for example, the total [Australian] prisoner population nationally was 17,157. Of these, 3409 inmates were Indigenous, representing almost twenty per cent 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).

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<sup>36</sup> 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 and 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).

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 (ibid).

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 and 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).

## **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 the 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... (1997, p.18).<sup>37</sup>

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.

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<sup>37</sup> The Alpha district includes Fitzroy, an area in which a proportionately high number of Aboriginal people reside in 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 since been reorganised into a group of five major police regions.

Earlier research by Mackay (1995) found that arrests for drunkenness are concentrated along Murray River towns. Cunneen and Mc Donald (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 and McDonald 1996, p.112). The Committee is interested to discover whether the position has changed in the intervening years. A fact finding trip to these districts in September 2000 may assist in eliciting this information.

Adding these two totals reveals that 23.6% per cent 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 and 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 (ibid)<sup>38</sup>

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.

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<sup>38</sup> 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.

## 10. Alcohol Consumption – Patterns and Problems in Australia and Victoria

This section 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.<sup>39</sup>

### **Alcohol Consumption Patterns in Australia-1998<sup>40</sup>**

In 1998 Australians consumed 7.8 litres of absolute alcohol per capita per year which was ranked as 20<sup>th</sup> 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 and Lapsley 1992; 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 anti social behaviour are not included in this estimate (NEACA 2000, p.20).

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<sup>41</sup>. 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 (NEACA 2000, 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).

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<sup>39</sup> Information for the dissemination of Australian alcohol consumption patterns and data is taken primarily from the Consultation Paper *Alcohol in Australia: Issues and Strategies* 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.

<sup>40</sup> This is the most recent year for which NEACA has supplied comprehensive and reliable data

<sup>41</sup> Australian Institute of Health and Welfare (1999).



## ***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<sup>42</sup> 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 (1998 National Drug Strategy).

## ***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 olds consumed seven or more standard drinks at least once per week compared with 10% of adults (NEACA 2000, p.5; National Drug Strategy 1998).

Binge drinking or deliberate drinking to intoxication is common amongst young people<sup>43</sup>.

## ***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 to 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 (NEACA 2000, 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.

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<sup>42</sup> Defined as more than four standard drinks per day for men and two standard drinks per day for women (1992 National Health and Medical Research Council).

<sup>43</sup> Defined as drinking more than seven drinks for males or more than five drinks for females in one sitting (Makkai and McAllister 1998).

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 (NEACA 2000, 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 (National Drug Strategy Household Survey, Aboriginal Supplement 1995).

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 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 2000, 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 and 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 2000, 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<sup>44</sup>.

## ***Alcohol Use and Crime***

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 2000, p.7)<sup>45</sup>. 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 2000, p.70).

Alcohol misuse has been indicated as a key contributor to domestic violence, interpersonal assaults and child abuse, and in some cases suicide (NEACA 2000, 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.

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<sup>44</sup> For further discussion of this issue, see discussion in Part D, Section 11 and Part F, Section 16.

<sup>45</sup> This is particularly true of homicide. In New South Wales alcohol was found to be a factor in 42% of homicide incidents (Wallace 1986).

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 2000, p.7).

Issues with regard to Aboriginal people and alcohol related crime and violence have been addressed in a previous section.

### **Victorian Consumption Patterns**

A major study of Victorian alcohol consumption patterns and alcohol related harms has recently been conducted by the Epidemiology Unit at the Turning Point Alcohol and Drug Centre in Melbourne. The areas of research most relevant for the purposes of this Inquiry undertaken by the unit have 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 section 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 statewide, regional, and local areas<sup>46</sup>. The following analysis is based primarily on Victorian Health Regions data.

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<sup>46</sup> 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 *Alcoholic Statistics Handbook*.

**Table 2: Victorian health regions and their populations**

<b><i>Melbourne Metropolitan Region</i></b>	
Northern	726, 385
Eastern	934, 729
Southern	1,037,193
Western	552, 534
<b><i>Regional/Rural</i></b>	
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
<b><i>Total Estimated Victorian Population</i></b>	
	4, 530, 866

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

### ***Licensed Premises in Victoria<sup>47</sup>***

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)<sup>48</sup>. 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).

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<sup>47</sup> For further discussion on licensing issues, see Part F, Section 15.

<sup>48</sup> 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.

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).

### *Alcohol Consumption Patterns*

**Table 3: 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 <sup>49</sup>	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).

<sup>49</sup> Again, Western metropolitan figures must account for the Melbourne CBD within its borders

***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 allow 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.

**Table 4: 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 <sup>49</sup>	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).

<sup>49</sup> Again, Western metropolitan figures must account for the Melbourne CBD within its borders.

**Table 5: 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.

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<sup>50</sup>.

<sup>50</sup> 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* provide a more detailed breakdown of the statistical data based on local government areas within the health regions.



## Questions for Consideration

### Sections 8, 9 and 10

- *How should collation, interpretation and analysis of statistical and other data in relation to public drunkenness best be undertaken and maintained?*
- *What other research should be undertaken with regard to public drunkenness and associated offences?*
- *What other research findings and relevant data might be available that the Committee should be aware of?*
- *Is there anything in the presentation of Australian and Victorian alcohol patterns and consumption data that may repay further study or analysis with regard to issues associated with public drunkenness?*

<b>Part D</b>	<b>The Experience of Decriminalisation: Two Case Studies</b>
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## 11. A Critique of Law, Policies and Procedures in the Northern Territory and New South Wales

This section will concentrate on the Northern Territory and New South Wales as policy case studies in an effort to ascertain both the positive and negative consequences of decriminalisation in these jurisdictions. It will refer to other jurisdictions, however, as appropriate.

### Northern Territory

#### ***The Law - (Summary Offences Act 1996 and Police Administration Act 1996)***<sup>51</sup>

The Northern Territory, in 1974, was the first Australian jurisdiction to decriminalise the offence of being intoxicated in public.

In the first years of decriminalisation in the Territory there were no Sobering Up Centres or equivalent facilities to transport intoxicated persons to. Therefore, the level of people detained in police cells and the attendant problems associated with this (including Aboriginal deaths in custody) remained high<sup>52</sup>.

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***

These provisions to a certain degree mirror the municipal laws administered by some local councils in Victoria<sup>53</sup>. 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<sup>54</sup>. 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 bear some brief scrutiny.

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<sup>51</sup> 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.

<sup>52</sup> See, *Interim Report* 1988, Royal Commission into Aboriginal Deaths in Custody and *Final Report*, 1991, Royal Commission into Aboriginal Deaths in Custody, Vol. 3.

<sup>53</sup> For a discussion of public drinking and local government regulation, see Part F, Section 17.

<sup>54</sup> Some groups, however, argue that the two kilometre law is simply criminalisation by another name. See for example Northern Australian Aboriginal Legal Service (NAALS) Transcript, 3 August 2000.

The basic position can be paraphrased thus:

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 in the future drink, 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 in the future be drunk from 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 apparently 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 such 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 7.30am of that day, notwithstanding that the person is no longer intoxicated.

A police officer, at any time, 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<sup>55</sup>.

### ***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;
- use of restrictions imposed by the Northern Territory Licensing Commission

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<sup>55</sup> 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 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. (Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee, 3 August, 2000, Transcript, p.35).

These issues will be discussed in the context of the three areas 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<sup>56</sup>. 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 problems was recognised by Northern Territory and local government, the Northern Territory Department of Health (Territory Health Services) and concerned private citizens.

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 other recognised needs.

The DASA Sobering Up Centre will receive 'clients' from both the police and the Night Patrols<sup>57</sup>. 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<sup>58</sup>.

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<sup>56</sup> See the Alcohol in Alice Report 2000, cited as Hauritz et al 2000. This report is discussed in detail later in this part.

<sup>57</sup> For a discussion of Night Patrols, see below.

<sup>58</sup> For a discussion of which, see below.

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’<sup>59</sup>. 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, states 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 states that there have been no deaths in sobering up shelters since the programme was set up<sup>60</sup>. 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<sup>61</sup>. On the basis of the 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;
- Co-operative 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<sup>62</sup>. No Sobering Up Centres in the Territory will admit children and there are few other resources available<sup>63</sup>.

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<sup>59</sup> These statistics are based on figures given to the Committee in discussion with Mr Nick Gill, Director, DASA. 31 July 2000.

<sup>60</sup> Mr Nick Gill, in conversation with the Committee. 31 July, 2000.

<sup>61</sup> 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.

<sup>62</sup> 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* (section 45K).

<sup>63</sup> 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.

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 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 per night at the hospital – all alcohol related. Decriminalising drinking hasn't changed behaviour. When we got rights, we didn't get education...so social problems increase<sup>64</sup>.

## **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.

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 Patrols 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,

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<sup>64</sup> Lorraine Liddell, Director, CAAAPU in conversation with the Committee, 1 August 2000

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<sup>65</sup>.

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, which 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 co-operative 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. 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 paper.

### ***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.

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<sup>65</sup> Ms Jennifer Walker, Co-ordinator Tangentyere Council Remote Night Patrol, Transcript, 31 July 2000, p.2.



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 Paper, 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 drunken partner to the local women's refuge.

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 co-operative 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<sup>67</sup>.

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.

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<sup>66</sup> Agreement on Practices and Procedures between the Northern Territory Police and the Julalikari Council concerning the Julalikari Council Night Patrol.

- 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 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 co-operative 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 bandaid 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<sup>67</sup>.

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<sup>67</sup> Further discussion of 'supply side' and licensing issues can be found in Part F, Section 15. For an account of the Tennant Creek licensing restrictions and their evaluation, see Sagers et al 1998.

As one member of the Julalikari Council has 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<sup>68</sup>.

## 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<sup>69</sup>. 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. 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.

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<sup>68</sup> Representative of Julalikari Council in conversation with the Committee. 1 August 2000.

<sup>69</sup> Mr Craig Spencer, Manager, Darwin Sobering Up Centre, in conversation with the Committee. 3 August, 2000.

The Darwin Centre has facilities for 20 males and 10 females with two 'protective beds'.

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 dries' because 'You go in wet, you come out dry and you lie on the bed and the room goes around'<sup>70</sup>. 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'<sup>71</sup>.

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<sup>72</sup>, 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 [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

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<sup>70</sup> As related by Ms Kirsty Gowans, Solicitor, Northern Australian Aboriginal Legal Service (NAALS), in conversation with the Committee. 3 August, 2000.

<sup>71</sup> 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.

<sup>72</sup> 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 2pm in the afternoon and 6pm at night.

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<sup>73</sup>.

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<sup>74</sup>.

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 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:

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<sup>73</sup> Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee. 3 August , 2000.

<sup>74</sup> Mrs Diana Leeder, Director of Community Services, Darwin City Council Transcript, 3 August , 2000, p.42.

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<sup>75</sup>.

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<sup>76</sup>:

[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<sup>77</sup>.

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<sup>78</sup>.

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<sup>75</sup> Ibid at p.42

<sup>76</sup> For a more detailed discussion of public drinking and local government regulation, see Part F, Section 17.

<sup>77</sup> Alderman John Bailey, Darwin City Council Transcript, 3 August, 2000, p.47.

<sup>78</sup> Mrs Diana Leeder, Transcript, Darwin City Council, p.43.

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 expresses this approach:

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<sup>79</sup>.

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<sup>79</sup> Alderman John Bailey, Transcript, Darwin City Council, p.47.



## **New South Wales**

### **The Law - New South Wales (Intoxicated Persons Act 2000)<sup>80</sup>**

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 it is thought it will commence by proclamation in late 2000. The following discussion is based on the law applicable to the amended Act, a comparative analysis with the original Act also being given where relevant.

The 1979 laws can be summarised as follows:

- Government and non-government facilities could be gazzetted 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 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.

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 the Act through the definition of *intoxicated person* 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.

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<sup>80</sup> 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

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 a 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 ascertaining a responsible person or facility willing to receive the intoxicated person;
- a responsible person can not be found or is not willing to receive the intoxicated person into their custody;
- it is impracticable to take the intoxicated person home;
- 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;

- The intoxicated person as far as reasonably practicable 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 intoxicated 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 property from damage (See sections 5 and 6).

Under 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 public drunkenness since its decriminalisation in New South Wales in 1979 has become viewed as an issue pertaining almost exclusively to the homeless and itinerant 'drunk'. This applies equally to the use of proclaimed places<sup>81</sup>.

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.

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<sup>81</sup> 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.

- 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<sup>82</sup>. An officer from the Proclaimed Places Senior Officer's Group (hereinafter PPSOG) puts it thus:<sup>83</sup>

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, a hundred per cent. Its difficult to know measure. There would only be the odd exception where a person who wasn't homeless would use these services.(PPSOG, 19 June, Transcript, pp.2-3).

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<sup>84</sup>. 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 state

<sup>82</sup> This is the experience of two of the biggest proclaimed places, such as the Albion Street Shelter and the Matthew Talbot Hostel.

<sup>83</sup> This group is comprised of senior analysts, planners from the Ministries of Police, Community Services, Health, Cabinet Office and NSW Police.

<sup>84</sup> 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.

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 8 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, 19 June, Transcript, p.5).

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<sup>85</sup>. 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 19 June, Transcript, p. 16)<sup>86</sup>.

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<sup>85</sup> 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 auspiced through 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.

<sup>86</sup> 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.

The cornerstone of New South Wales intoxicated persons policy is known simply as 'The Protocol'<sup>87</sup>. 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 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 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, June 19, Transcript, p.19).

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 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).

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<sup>87</sup> 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*.

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 arrangements.

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;
- request the nearest SAAP service arrange appropriate emergency accommodation once points one to three have been addressed (The Protocol – Police Responsibilities)<sup>88</sup>.

As discussed, The Protocol is predicated on the types of persons being 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<sup>89</sup>.

For the most part, the representatives from the 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<sup>90</sup>. 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

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<sup>88</sup> For an outline of the reciprocal responsibilities of the Departments of Health and Community Services, see The Protocol.

<sup>89</sup> The number of police cells in metropolitan Sydney has recently been rationalised. Very few suburban police stations now have their own 'lock ups'. 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.

<sup>90</sup> 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.

available through federally funded SAAP programmes<sup>91</sup>.

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, 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<sup>92</sup>.

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 which have gone down the path of decriminalisation. At this stage some questions may be posed or propositions put:

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<sup>91</sup> 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).

<sup>92</sup> Aboriginal Liaison Officers are usually full-time paid workers, that 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.



## Questions for Consideration

### Section 11. Critique of Policies and Procedures in the Northern Territory and New South Wales

- *What lessons can Victoria learn from the experiences of the Northern Territory and New South Wales in relation to its policies and programmes with regard to public drunkenness?*
- *How relevant are the various programmes that have been developed in the Northern Territory and New South Wales to the Victorian situation? In particular how applicable to Victoria are such strategies as:*
  - Night Patrols;*
  - Licensing Restrictions;*
  - Sobering up centres;*
  - Rehabilitation and Detoxification Centres;*
  - Marketing Strategies;*
  - Education Programmes*
- *If Victoria was to decriminalise public drunkenness offences, which programmes from these jurisdictions could usefully be adapted?*
- *Should communities most affected by the problem of public drunkenness have at least some involvement in the planning and delivery of services designed to deal with the problem? Is this particularly true for Aboriginal communities?*
- *Have community consultation and community development models proved positive in developing effective strategies to prevent and combat public drunkenness or at least minimise the worst features associated with the problem?*
- *It has been stated that 'Partnership Models' have also proved effective when entered into in a true spirit of co-operation and willingness to work for the betterment of the community. This is particularly crucial in the area of policing in Indigenous communities. Policing models which work in tandem with Aboriginal communities are seen to have better outcomes than those that favour a 'top down' approach. How applicable is this to Victoria?*
- *Are there good examples of diversionary and partnership programmes existing in the Victorian context? If not, are such strategies desirable and likely to be effective in the Victoria?*
- *An almost universal comment in the Committee's meetings and in the literature in this area has been that decriminalisation can only work when it embraces two distinct but complementary components – changes to the legislation and legal process, and development of (well funded and staffed) alternative facilities. How true is this statement in the Victorian context?*
- *Are Minimalist or Harm Minimisation/Diversion Programmes (ie: Treatment/Detoxification) preferable in the Victorian context?*

It can be noted that New South Wales Police have multiple, time consuming and even onerous responsibilities, under The Protocol<sup>93</sup>. Another key question for the Committee to consider is:

*Whether the time and cost savings for police in not having to process public drunkenness offences as criminal charges (including court attendance) are outweighed by the costs and time incurred by their duties under the new procedures?*

Such a consideration is a significant one, if Victoria was to contemplate introducing a similar system.

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<sup>93</sup> Although some respondents working in this area have commented that The Protocol merely ratifies existing practices rather than introducing major new procedures.



## **Part E**                      **Public Drunkenness: Law, Policy and Indigenous People**

### **12. Royal Commission into Aboriginal Deaths in Custody – An Australian Overview<sup>94</sup>**

The 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 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

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<sup>94</sup> 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*, Volume One, (The Johnston Report) AGPS, Canberra, 1991, Chapter Two; 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.

Aboriginal people who died in custody were originally incarcerated (see RCIADIC, *Final Report* Ch 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, 3, para 21.1.2).

The Commission had also noted 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)

One key issue for the Committee will be therefore to determine whether this situation has changed in the last 10 years.

### **13. 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 than 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<sup>95</sup>. Nonetheless, as stated earlier, all three of the indigenous people who died in custody

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<sup>95</sup> 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 1999, *Aboriginal and Torres Strait Islanders – A Statistical Profile from the 1996 National Population Census*.

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 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 non-Aboriginal people<sup>196</sup>.

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.

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<sup>96</sup> See RCIADIC 1989, *National Police Custody Survey*, Research Paper No 8. Canberra. See also, (1989) Law Reform Commission of Victoria, Report Number 25 - *Public Drunkenness*

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 *Summary Offences Act 1966* (Vic)) The Royal Commission into Aboriginal Deaths in Custody (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 them with, or at least none that would be likely to result in conviction (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.

### **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*<sup>97</sup> (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.

As a result of the findings of 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<sup>98</sup>.

The (then) Victorian Labor government responded to the findings of the *Interim Report* of RCIADIC by investing the former Law Reform Commission of Victoria with the responsibility of producing a report on public drunkenness in Victoria.

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<sup>97</sup> See discussion above, Part B, Section 7.

<sup>98</sup> 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.

## 14. Victorian Responses to the Royal Commission post-1991<sup>99</sup>

Victoria, whilst not decriminalising public drunkenness, did put into effect other strategies as a response to the *Final Report* of the 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. The Department of Justice has 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 2000, para 17)<sup>100</sup>.

Gardiner and Mackay have also argued that the Victorian government based their 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 indigenous persons are processed for public drunkenness offences in comparison to non-Aboriginal offenders. These arguments have been canvassed in the section dealing with statistical analysis<sup>101</sup>.

### Sobering Up Centres

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, CJPs and where relevant a Sobering Up Centre:

<sup>99</sup> For a general account of the Victorian response, see RCIADIC–1996/97 *Victorian Government Implementation Report*.

<sup>100</sup> The quote in italics is taken from the RCIADIC–1996/97 *Victorian Government Implementation Report* p.42.

<sup>101</sup> See Part C, Section 9.



[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 Manual Operating Procedures 12.5.2.1).

Due to resource constraints such an option is not always possible<sup>102</sup>.

Currently there are seven Koori sobering up and detoxification centres operating across the State. These provide a safe, culturally appropriate, and hygienic environment in which Koori people can 'dry out' for up to 48 hours<sup>103</sup>. 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:

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).

## **Community Justice Panels**

CJPs were established in Victoria prior to the *Final Report* of the RCIADIC. 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 in being 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).

It should be noted that not all of the Aboriginal people with whom the Committee has met have uniformly welcomed the prospect of decriminalising the offence of public drunkenness. Indeed, some of those Aboriginal people working in Sobering Up Centres, Community Justice Panels and various community agencies have stated that without proper diversionary programmes in place, decriminalisation could create more problems than it solves. 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

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<sup>102</sup> See Part B, Section 6 – 'Police Practice', above.

<sup>103</sup> These centres are located in Northcote, Corio, Bairnsdale, Morwell, Mildura, Swan Hill and Shepparton.

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...'<sup>104</sup>

Whilst such a view is probably not typical of a majority of Aboriginal people, it is a salutary reminder that to speak of one 'Aboriginal' position on this complex matter is both simplistic and reductionist.

## Questions for Consideration

### Section 12. Royal Commission into Aboriginal Deaths in Custody – An Australian Overview

- *What types of services are in place to support people found publicly drunk in jurisdictions that have decriminalised public drunkenness?*
- *Have the types of services changed in any noticeable ways since the release of the Final Report in 1991?*
- *How and to what extent have these services been funded in the intervening years since 1991?*
- *What is the legal and legislative base for decriminalisation in these jurisdictions? Has this noticeably changed in the intervening years since 1991?*
- *What are the police protocols (if any) for dealing with the problem of public drunkenness in jurisdictions where it has been decriminalised? Have these changed to any significant extent since 1991?*
- *To what extent have measures that have been put in place in the jurisdictions that have decriminalised public drunkenness been effective in dealing with public drunkenness in general? Specifically, is there any demonstrable nexus between the utilisation of such measures and a decrease, if any, in incarceration and detention numbers?*

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<sup>104</sup> Aboriginal Community Worker in conversation with the Committee. For obvious reasons the person prefers to remain anonymous.

### **Section 13. Royal Commission into Aboriginal Deaths in Custody – The Victorian Experience**

- *How relevant have the RCIADIC'S recommendations with regard to public drunkenness been for Aboriginal Victorians?*
- *What have been the hurdles to implementing the recommendations of the Royal Commission?*
- *Have there been any positive outcomes in Victoria emanating from the Royal Commission?*
- *What strategies have been developed between Aboriginal agencies, police and other government and non-government organisations with regard to issues associated with public drunkenness in Victoria?*

### **Section 14. Victorian Responses to the Royal Commission post-1991**

- *How effective have diversionary programmes such as Sobering Up Centres and Community Justice Panels been in addressing problems of Public Drunkenness in Victoria?*

## **Part F**

# **Public Drunkenness: Issues for Community Consideration**

The following sections contain a miscellany of issues which impact upon the question of the decriminalisation of public drunkenness.

### **15. Licensing Issues**

In recent trips to the Northern Territory, it was impressed upon the Committee the importance of liquor licensing laws and practice and the role of the Licensing Commission in regulating alcohol consumption and related harms in the Territory. This reflects a major concern of the *Final Report* of the Royal Commission into Aboriginal Deaths in Custody<sup>105</sup>.

Whether such considerations are of equal or comparable importance to Victoria remains to be seen.

#### **The Alcohol Industry**

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 2000, 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.

Several initiatives at local, state and federal government level have sought to develop harm minimisation policies with regard to alcohol and its attendant harms over the last 15 years<sup>106</sup>. The National Drug Strategy is a joint effort of Commonwealth, State and Territory governments in combination with the non-government and commercial sector with the aim of 'minimisi[ng] the harmful effects of drugs and drug use in Australian society':

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<sup>105</sup> 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'. Volume 4, *Final Report*, Royal Commission into Aboriginal Deaths in Custody 1991, pp. 246 ff.

<sup>106</sup> 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*.

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 2000, 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 co-operative and co-ordinated 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.<sup>107</sup>

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
- Indigenous Community Initiatives
- Drug Education

(NEACA 2000 pp.36ff).

### ***Liquor Licensing Laws***

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 and Rydon 1993, cited in NEACA 2000, p.37).

Further research may need to be conducted to be able to demonstrate with any confidence a clear nexus between alcohol licensing and marketing laws and strategies and violence, crime and public health.

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<sup>107</sup> For discussion of these and other government policy initiatives in the drug and alcohol field, see (NEACA 2000).

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 2000, p.17)<sup>108</sup>.

Areas where 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; and
- limits on crowding and parking.

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)<sup>109</sup>, 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 2000, 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

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<sup>108</sup> 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).

<sup>109</sup> Defining what is intoxication would seem to be a key issue with regard to detaining a person for 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.

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 (NEACA 2000, p.38. citing research, by Lang et al 1992).

During the Committee's visit to the Northern Territory, a comprehensive research report entitled *Dollars made from Broken Spirits: The Alcohol In Alice Report*<sup>110</sup> was released. This report was commissioned by the Alice Springs Alcohol Representative Committee in association with Indigenous and non-Indigenous community groups in Alice Springs<sup>111</sup>.

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<sup>112</sup>. The needs and wishes in turn are often gauged through the commission of research reports such as the *Alcohol in Alice Report*<sup>113</sup>.

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<sup>114</sup>.

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:

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<sup>110</sup> Hereinafter cited as (Hauritz et al 2000).

<sup>111</sup> 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 report's methodological validity must await a closer examination of the research base in the full Report.

<sup>112</sup> *Liquor Act 1978*, section 32(d).

<sup>113</sup> Mr Peter Allen, Licensing Commissioner for the Northern Territory. Transcript, Darwin 3 August.

<sup>114</sup> 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.

- under age drinking;
- 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 include:

- 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);<sup>115</sup>
- 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*;
- tougher penalties for licensees who infringed licensing provisions or conditions<sup>116</sup>.

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<sup>115</sup> 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.

<sup>116</sup> 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.



Other key recommendations include:

An overall strategy that change is required at three levels:

1. Territory 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 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. The Committee would welcome hearing from interested groups as to whether any of the outlined proposals would be relevant or applicable in the context of public drunkenness and alcohol related harms in Victoria. Of particular interest would be whether Victorian liquor legislation could usefully incorporate a community interest model similar to the Northern Territory.

### ***Community Accords***

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. 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:

- safety audits of the immediate area surrounding licensed premises;
- improvements of the physical environment following such an audit (better lighting, security systems, police booths in nightclub areas etc).

Hemel 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 programmes and partly because liquor licensing laws are not very effectively enforced on a routine basis (Hemel et al 1998, p. 265).

Despite the clear benefits of co-operative 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 2000, 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 2000, 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:

[[licensees 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<sup>117</sup>. 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

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<sup>117</sup> The evaluation was conducted by researchers from the Turning Point Alcohol and Drug Centre in Melbourne.

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;
- 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;
- 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 percent of local licensees reported to the evaluation researchers that the Accord had a positive impact on business and community well being. No licensees reported a negative impact (Rumbold et al., 1998, p.ix and pp 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 in particular 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 and pp.98-99)<sup>118</sup>.

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 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, 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).

Nonetheless, police officers and police staff that the Committee have consulted with generally seem to be in favour of these types of Accord and the increasingly pro-active roles of liquor licensing inspectors<sup>119</sup>. A staff member from the Victoria Police Drugs and Alcohol Policy Unit states:

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 proactive as well as reactive. And in 90% of cases you will get responsible reactions from licensees (Vincent, 7 July, cited in James Transcript, p. 24).

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).

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<sup>118</sup> 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.

<sup>119</sup> 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 proactive 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.

## 16. Police Attitudes to Public Drunkenness and Related Issues

Every policeman (sic) knows that, though governments may change, the police remain.

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 which 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.

### Victoria

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, are not going to 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 would have had different attitudes prior to decriminalisation than those that they hold now. 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 have 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'<sup>120</sup>.

<sup>120</sup> Committee Interview with Acting Chief Inspector Steven James and other officers, Victoria Police, 7 July 2000, p.2. Hereinafter cited as James Transcript.

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 (James Transcript, p.4).

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. ( James Transcript, p.5)

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 (James Transcript, p.5).

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 lock ups.

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 phrase 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 area, it may be that it would be expected 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, and;
- 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 particularly be the case with youth and children. 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 (cited in James Transcript, p.12).

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)<sup>121</sup>.

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 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)<sup>122</sup>.

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 argues, by employing their discretionary judgement as to whether a crime or a disorderly act has taken place, they define criminality (Brogden et al 1988, p.2).

Lawyers from the Northern Australian Aboriginal Legal Service have stated to 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:

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<sup>121</sup> 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; 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 who.

<sup>122</sup> 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 section, there are no substantial police guidelines with regard to the policing of public drunkenness.

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...<sup>123</sup>.

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 is illustrative:

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 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 (Van Groningen Transcript 2000, p.6)

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 (James Transcript, p.7).

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<sup>123</sup> Ms Kirsty Gowans, Solicitor, NAALS, in conversation with the Committee. 3 August, 2000. Transcript, p.35.

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. (James Transcript, p.15).

The Law Reform Commission of Victoria's Inquiry into Public Drunkenness in 1989 investigated the cost of decriminalisation with regard to the use of police resources, particularly police time:

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<sup>124</sup>. 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 (James Transcript, p.13). 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

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<sup>124</sup> To a certain extent this problem of time allocation is alleviated when [Aboriginal] Night Patrols take over these duties, see Part D, Section 11.

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***

Victorian police have expressed concerns both officially and unofficially that if the offence of public drunkenness was decriminalised the boundaries of police liability with regard to duty of care issues become blurred. In some other jurisdictions duty of care protocols have been built into legislation requiring certain procedures be followed with regard to the health and well being of intoxicated persons being held in police cells or being transported to Sobering Up Centres<sup>125</sup>. There are certainly protocols and police guidelines in place now in Victoria that must be followed with regard to people placed in police custody, all of which apply to people being held for public drunkenness. Specific operating procedures also apply to juveniles and Aboriginal and Torres Strait Islanders<sup>126</sup>. There are also strict protocols applicable for medical care, particularly with regard to people suspected of drug misuse<sup>127</sup>.

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.

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<sup>125</sup> See Part B, Section 6.

<sup>126</sup> 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* Section 12.5. For operating procedures with regard to juveniles, see section 7.5.3.

<sup>127</sup> See Victoria Police, *Manual: Operating Procedures*, sections 1.3.6 (Impaired Conscious State), and Chapter 10 – Prisoners.

Again 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 with – 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 and wait for a taxi to turn up to take them off. So there are many functional issues that have to be dealt with (James Transcript, p.13).

- ***Poly Drug Use***<sup>128</sup>.

All of the concerns that police have with regard to the transport and custody 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 (NEACA 2000). 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<sup>129</sup>.

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<sup>128</sup> 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 2000, p.67).

<sup>129</sup> 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).

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<sup>130</sup>. 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 explains 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 (James Transcript pp.6-7).

### ***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 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 even more acutely felt 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 (James Transcript p.14).

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<sup>130</sup> 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; Mueser et al., 1997; Teeson et al., 1998; NEACA 2000).

## ***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<sup>131</sup>. Duty of care protocols need to be clearly defined and appropriate procedures put in place to protect both the police officer and safeguard the well being of the intoxicated person. Such procedures should cover the stages of apprehension, detention, transport, and handover 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<sup>132</sup>. 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<sup>133</sup>.

- 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. This may entail drafting new legislation providing for specific public disorder offences or statutory breach of the peace laws.

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<sup>131</sup> 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).

<sup>132</sup> 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*. The Committee welcomes the views of interested parties in their submissions as to the appropriateness or otherwise of these protocols.

<sup>133</sup> 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.



In summary, the views of the operational police that the Committee has consulted with 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 puts 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 is, 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 which the DPP wouldn't think would process before a County Court for a serious offence...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 (James Transcript pp.8-9).

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 best dealt with by the appropriate health agencies. The Victoria Police *Submission* states:

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).

## 17. 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 section of this paper, 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.

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<sup>134</sup>. 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 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<sup>135</sup>. 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;

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<sup>134</sup> 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*.

<sup>135</sup> As stated above, the number of such councils has since significantly increased.

- 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).

## **Arguments For and Against Local Government Regulation**

The Committee stresses that that this stage it forms no view as to the merit or otherwise of any of the positions advocated in the following section.

### ***Arguments Against***

A concern of community legal centres<sup>136</sup>, 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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<sup>136</sup> 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.

Other arguments against using local government regulation to control public drinking centre on the findings of the Royal Commission into Aboriginal Deaths in Custody (RCADIC). 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 1983; James 1994; Findlay, Odgers and Yeo 1996). RCADIC, 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 have considerable power.

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. 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).

## ***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.

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<sup>137</sup>. 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 thus seen by its supporters as a measure 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.

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<sup>137</sup> Officers of the City of Darwin were at pains to point out during the recent meeting with Committee, that the administration of the two kilometre rule was predominantly about the protection, safety and well being 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.

## **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.

## **18. Decriminalisation of Public Drunkenness: The Arguments For and Against**

Although the Committee is still in the early phases of its deliberations, research and consultations for this Inquiry, some broad and tentative points can be put forward. The Committee stresses that at this stage it neither supports nor disagrees with any of the following conclusions that have been taken from a review of the relevant literature.

### **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 .
- 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; Final Report of the Royal Commission into Aboriginal Deaths in Custody 1991; Mackay 1995; Cunneen and McDonald 1996; Gardiner and 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<sup>138</sup>. 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 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)<sup>139</sup>.

- 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;

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<sup>138</sup> Support for this argument can be made by reference to the statistical analysis presented earlier. In particular the Cell Study (Figures 5 and 6) indicates the, arguably excessive, amount of police custodial time taken up with processing persons arrested for intoxication related offences.

<sup>139</sup> 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.



- Where there is no other specific anti social 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 and 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<sup>140</sup>.
- Public drunkenness should continue to be policed and arrests made to protect the health, safety and well being 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).

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<sup>140</sup> 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).

- It has been argued that public drunkenness has been used as a 'soft option' by police. As the Law Reform Commission of Victoria has 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 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<sup>141</sup>.
- 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)<sup>142</sup>.

- 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 criminalisation 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.

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<sup>141</sup> See the discussion with regard to police attitudes and the use of police discretion in this part, section 16.

<sup>142</sup> 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

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 warrants for arrests. If there are any outstanding warrants, the police serve these upon the detainees as they are released from protective custody (RCIADIC 1991g, 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 1991, *Final Report* vol.3, p.24)<sup>143</sup>.

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<sup>144</sup>.

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:

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<sup>143</sup> This has been safeguarded against in some jurisdictions, see discussion of legislative provisions in Western Australia and the Northern Territory.

<sup>144</sup> Ms Julie Condon, Solicitor, NAALS, in conversation with the Committee. August 3, 2000.

- The use of alternative (summary) charges such as disorderly behaviour, obscene language, and other 'street offences';<sup>145</sup> and
- 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 sections of this paper and do not require further consideration at this point.

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<sup>143</sup> 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 Part C, section 9 and Taylor 1995; Mackay and Munro 1996.

## Questions for Consideration:

### Section 15. Licensing issues.

- *Can accords such as the Geelong Local Industry Accord be usefully and successfully extrapolated to large cities such as Melbourne?*
- *Should Melbourne based accords be developed further within local government areas as has been done in some municipalities?*
- *Should accords be incorporated into legislation or given legal force?*

### Section 16. Police Attitudes to Public Drunkenness.

- *To what extent should police be able to use discretion in their handling of public drunkenness?*
- *Should there be more specific guidelines curtailing or modifying the use of discretion with regard to public drunkenness?*
- *Police have stated that a concern with regard to public drunkenness is the diversity of groups that come to their attention, from homeless and itinerant people to drunken sports crowds; Can effective police policy and practice address these issues if public drunkenness offences were decriminalised?*
- *Police have also expressed concern, officially and unofficially, that if public drunkenness offences were decriminalised, officers may have no choice but to use more serious charges to maintain public order; How should police deal with (minor) public order disturbances should public drunkenness offences be decriminalised?*
- *If public drunkenness offences were decriminalised, what safeguards would need to be initiated to ensure that both police and service providers are protected from unfair and onerous liabilities, and yet at the same time guarantee that the duty of care responsibilities to those placed in their care are still maintained?*
- *Victoria Police have stated that clear guidelines need to be put in place that delineate a police officer's responsibilities with regard to the apprehension, detention, and custody of intoxicated people, should Victoria decriminalise public drunkenness. What should be included in these guidelines? Should there be separate guidelines for service providers as recommended by the Law Reform Commission in 1990?*
- *Another major concern expressed by police, is that increasingly people ostensibly picked up for public drunkenness have in fact been using a combination of licit and illicit drugs which then make identification and monitoring of these conditions highly problematic for police; If Victoria move to a model of decriminalisation and civil detention, should the definition of intoxication include other drugs, as in other states? If so, how should problems referred to in the above statement be dealt with?*

## **Section 17. Public Drunkenness and Local Government Regulation**

- *What problems currently exist for Local Government in relation to public drunkenness?*
- *What problems would be created for local municipalities if public drunkenness offences were decriminalised?*
- *What role should local municipalities play if public drunkenness was decriminalised?*
- *Are there particular groups of offenders associated with public drunkenness that pose specific problems for local government?*
- *Should there be provision for alcohol free zones within municipal districts?*
- *What programmes, initiatives or policies can local government put in place to ameliorate problems associated with public drunkenness and alcohol related harms?*
- *What examples of partnerships or accords currently exist that effectively and efficiently deal with public drunkenness and alcohol related problems at municipal district level?*

## **18. Arguments For and Against Decriminalisation of Public Drunkenness**

- *The Committee would be interested in seeking the views of the community in relation to the above arguments. Are there any other views either for or against that need to be taken into consideration?*



## **Part G Conclusion**

There are many other areas that will be relevant to the issue of public drunkenness. Some of these have been discussed either directly or indirectly in the course of this paper.

The Committee would like to explore further the connections between public drunkenness and:

- Homelessness;
- Families, Children and Young people;
- Youth and Under Age Drinking;
- Public drunkenness and women;
- Sports and Large Crowds and Event Management;
- Educational Strategies with regard to Public Drunkenness
- Costing and resource implications of a move towards decriminalisation.

The Committee envisages developing separate position papers on these areas in preparation for its final report. The Committee therefore welcomes submissions that relate to any or all of these areas.

The Committee has visited various sites and spoken with many interested parties who are concerned about the issue of public drunkenness in Victoria, New South Wales and the Northern Territory. Its experiences reveal that whilst on the surface the issue of intoxication in public may seem a relatively straightforward problem to address, it is in fact a social issue of great complexity and difficulty. A review of the relevant literature supports this observation.

One tentative point the Committee can posit at this stage, is that the best outcomes seem to result from programmes and initiatives that are the result of truly co-operative partnership models between those parties, organisations and individuals most affected by the problem of public drunkenness and alcohol related harms and those who police and administer law and policy with regard to public drunkenness.

Furthermore, it has been impressed upon the Committee, and duly noted, that integrated prevention and treatment approaches that look at the 'whole picture' are the best way of assuring long term success in combating the social ills associated with public drunkenness. We have been urged by many of the parties we have met with, that if the Committee recommends the decriminalisation of the offence of public drunkenness, any subsequent proposals must go further than mere 'bandaid' solutions. We will certainly give these issues deep and considered attention. We welcome therefore, the views of those members of the Victorian community who are expert in this field or affected in some way by the issues.

Not everything that we have observed in our consultations, or written of in this Discussion Paper, will necessarily be relevant in the Victorian context. The experience of Night Patrols in Tennant Creek may have little bearing on the problem of policing 'drunks' in urban Melbourne. On the other hand, there are areas of regional Victoria in which the manifestation of and problems associated with public drunkenness may be quite different to that in the metropolis. By the time this Paper is published we will have consulted with interested parties in the Murray River towns. It may eventuate that the above statement is not true at all. Experience has shown the Committee that nothing is ever as straightforward with regard to this reference as it first may seem.





## References

### Legislation

- Australian Capital Territory - *Intoxicated Persons (Care and Protection Act) 1994*
- Northern Territory - *Police Administration Act 1996*  
- *Summary Offences Act (as amended 1999)*
- New South Wales - *Intoxicated Persons Act 1979*  
- *Intoxicated Persons Act 2000*  
- *Local Government Act 1993*
- Queensland - *Liquor Act 1992 (as amended)*  
- *Liquor Licensing Act 1997*
- South Australia - *Public Intoxication Act 1984*
- Tasmania - *Police Offences Act 1935*
- Western Australia - *Police Act 1892 (as amended)*
- Victoria - *Liquor Control Act 1987*  
- *Liquor Control Reform Act 1998*  
- *Local Government Act 1989*  
- *Road Safety Act 1986*  
- *Transport Act 1983*  
- *Summary Offences Act 1966*

## **Transcripts Victoria**

13<sup>th</sup> June 2000  
Melbourne

Prof. J. Van Groningen

7<sup>th</sup> July 2000  
Police Headquarters – Melbourne

Inspector Steve James, Ms Vincent  
and other officers

14<sup>th</sup> September 2000  
Swan Hill Police

Chief Inspector Ken Allen  
Senior Constable John Lyons

## **New South Wales**

19<sup>th</sup> June 2000  
NSW Police

Ms Forrel , Mr Sheridan, Mr Meredith

Proclaimed Places Senior Officer's Group

Dr McCarthy, Mr Andrew Hazen,  
Mr M. McPherson, Mr Tongs, Mr Allan Raisin

## **Northern Territory**

3<sup>rd</sup> August 2000  
Aboriginal Justice Advocacy Committee

Mr C Howse

Northern Australian  
Aboriginal Legal Aid Service

Ms J. Condon  
Ms K Gowans

Northern Territory  
Licensing Commission

Mr P R Allen – Chairman

Darwin City Council

Alderman J Bailey  
Alderman R Burridge – Chairperson  
Alderman J Collins  
Mrs D Leeder – Director Community Services

1<sup>st</sup> August 2000  
Julalikari Council

Representatives

Tangenteyere Aboriginal Council

Ms Jennifer Walker

## Submissions

Department of Justice, Victoria, Submission to the Drugs and Crime Prevention Committee of the Parliament of Victoria, Inquiry into Public Drunkenness. August 2000.

Victorian Aboriginal Legal Service Co-operative Ltd, Submission to the Drugs and Crime Prevention Committee of the Parliament of Victoria, Inquiry into Public Drunkenness. May 2000.

Victoria Police, Submission to the Drugs and Crime Prevention Committee of the Parliament of Victoria, Inquiry into Public Drunkenness. May 2000.

## Books, Articles and Reports

Aboriginal and Torres Strait Islander Commission (ATSIC) 1997, *Implementation of the Commonwealth Government responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody – Annual Report 1995-1996*, vols 1 & 2, ATSIC: Canberra.

Aboriginal and Torres Strait Islander Commission (ATSIC) 1997, *Five Years On: Implementation of the Commonwealth Government responses to the recommendations of the Royal Commission into Aboriginal Deaths in Custody: annual/five year report 1996-97. Vol 1-3*, AGPS: Canberra.

Allas, R. & James, S. 1997, *Justice Gone Walkabout – A study of Victorian Aboriginal offending 1989-90 to 1993-94*, Victorian Aboriginal Legal Service Cooperative, Melbourne.

Australia Parliament House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 1994, *Justice under scrutiny: report of the inquiry into the implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, AGPS: Canberra.

Australian Bureau of Statistics, *National Survey of Mental Health and Well Being*, 1997, Australian Government Printing Service, Canberra.

Australian Bureau of Statistics 1999, *Aboriginal and Torres Strait Islanders – A Statistical Profile from the 1996 National Population Census*. AGPS, Canberra.

Australian Institute of Health and Welfare, 1995, *Urban Aboriginal and Torres Strait Islander Peoples Supplement 1994*. Australian Government Printing Service, Canberra.

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

Biles, D. & McDonald, D. (eds) 1994, *Deaths in Custody Australia, 1980-1989: the research papers of the Criminology Unit of the Royal Commission into Aboriginal Deaths in Custody*, Australian Institute of Criminology: Canberra.

Bourbon, D., Siggers, S. & Gray, D. 1999, *Indigenous Australians and Liquor Licensing Legislation*, National Centre for Research into the Prevention of Drug Abuse: Perth.

Bradley, D. 1994, *The Initial Police Response to Apparent and Actual Drunkenness in Public Places – Educational Implications of the Coronial Inquiry into the Deaths of Mr Wood & Mr David*, New South Wales Police Academy: Goulbourn.

Brady, M. 1998, *The Grog Book: Strengthening Indigenous Community Action on Alcohol*, Goanna Print, Canberra.

Brady, M. & Martin, D. 1998, *Dealing with Alcohol in Alice Springs: An Assessment of policy options and recommendations for action*, Report to the Northern Territory Liquor Commission from the Alcohol Reference Group and ATSIC Regional Office: Alice Springs.

Brewer, J. 1988, *Public Drunkenness – Australian law and practice*, Research Paper no.3. Royal Commission into Aboriginal Deaths in Custody: Canberra.

Brogden, M., Jefferson, T. & Walkgate, S. *Introducing Police Work*, Unwin Hyman, London.

Brown, M.K. 1988, *Working the Street: Police Discretion*, Russell Sage Foundation, New York.

City of Sydney 2000, *'Accord with Licensed Premises'*, COS: Sydney.

Clews, T. 1989, 'Alcohol, the Law and Police Discretion', in Vernon, J. (ed) *Alcohol and Crime Conference Proceedings. Australian Institute of Criminology*: Canberra, pp.149-154.

Collins, D.J., & Lapsley, H.M. 1996, *The social costs of drug abuse in Australia in 1998 and 1992* (NCADA monograph No.30). Australian Government Printing Service, Canberra.

Cornish, A. 1985, 'Public Drunkenness in New South Wales: From Criminality to Welfare', *Australian and New Zealand Journal of Criminology*, 18(2): 73-84.

Cornish, A. 1989, 'Public Drunkenness Laws in Australia', *Aboriginal Law Bulletin*, 2(41): 4-7.

Cunneen, C. 1991, 'Law, Order and Inequality', in the Social Justice Collective (ed), *Inequality in Australia*, Heinemann, Melbourne pp 315-344.

Cunneen, C. 1994, 'Enforcing Genocide? Aboriginal Young People and the Police', in White, R. and Alder, C. (eds.) *The Police and Young People in Australia*, Cambridge University Press: Melbourne, pp. 128-158.

Cunneen, C. 1999, 'Zero Tolerance Policing: Implications for Indigenous People' (found at Aboriginal and Torres Strait Islander Commission [www.atsic.gov.au/ztp/6ztp.htm](http://www.atsic.gov.au/ztp/6ztp.htm) )

Cunneen, C & Mc Donald, D, 1996, *Keeping Aboriginal and Torres Strait Islander People Out of Custody: An Evaluation of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, Office of Public Affairs, Canberra.

D'Abbs, P. 1989, 'Restricted Areas and Aboriginal Drinking', in Vernon, J. (ed) *Conference Proceedings: No. 1 - Alcohol and Crime*, Australian Institute of Criminology: Canberra.

D'Abbs, P. 1998, 'Out of Sight, Out of Mind? Licensed Clubs in Remote Aboriginal Communities', *Australian and New Zealand Journal of Public Health*, 22(6): 679-684.

- Dalton, V. 2000, 'Australian Deaths in Custody and Custody-related Police Operations 1999', *Trends and Issues in Crime and Criminal Justice no.153*, Australian Institute of Criminology: Canberra.
- Daly, A. & Gvozdenovic, A. 1994, *Evaluation of the impacts of public drunkenness decriminalisation legislation and the establishment of sobering up facilities on Aboriginal People in Northern Western Australia*, Volumes One and Two. Unpublished Report.
- Daly, A. & Maisey, G. 1993, *Police Officers Perceptions of Decriminalisation of Public Drunkenness and Sobering Up Centres in Western Australia*, Western Australian Alcohol and Drug Authority.
- Daly, A., Midford, R., & Wilkinson, C. 1991, *A Survey of Twenty Seven Sobering Up Centres in Australia*, Western Australian Alcohol and Drug Authority Technical Report no.1.
- Department of Human Services and Health, 1994, *Statistics on Drug Abuse in Australia*: Commonwealth of Australia, Canberra.
- Department of Justice Victoria, Criminal Justice Statistics and Research, 1998, *Analysis of Persons Held in Custody, January -June 1997*. Unpublished Report, Melbourne.
- Department of Justice, Victoria, Submission to the Drugs and Crime Prevention Committee of the Parliament of Victoria, Inquiry into Public Drunkenness. August 2000.
- Douglas, M. 1998, 'Restriction of the hours of sale of alcohol in a small community: a beneficial impact' *Australian and New Zealand Journal of Public Health*, Volume 22, No 6. Pp. 714 – 719.
- Drug and Alcohol Policy Co-ordination Unit 1995, *Public Drunkenness – The relevant legislation in each states and territory of Australia*, Victoria Police: Melbourne.
- Drug Programs Co-ordination Unit 1997, *Harm Minimisation and Practical Policing Solutions* New South Wales Police Service: Darlinghurst.
- Egger, S., Cornish, A., & Heilpern, H. 1983, 'Public Drunkenness: a Case History in Decriminalisation' in Findlay, M., Egger, S., and Sutton, J. (eds) *Issues in Criminal Justice Administration*, Allen and Unwin.
- Findlay, M., Odgers, S. & Yeo, S. 1994, *Australian Criminal Justice*, Oxford University Press, Melbourne.
- Gardiner G & Mackay M, 1997, *Arresting Koories: A Review of Victoria Police Statistics 1995/96*, Koorie Research Centre, Discussion Paper 7/1997, Koorie Research Centre, Clayton.
- Gardiner G, 1998, *Indigenous Men and Criminal Justice: Arrest and over-representation for arrests in Victoria, 1996/97*, Koorie Research Centre, Discussion Paper 10/1998, Koorie Research Centre, Clayton.
- Gibson, B. 2000, *Newcastle Adult Accommodation Support Service*, Paper presented at the Innovation in SAAP Forum, Sydney 29 August 2000.

Gray, D., Drandich, M., Moore, L., Wilkes, T., Riley, R., & Davies, S. 1995, 'Aboriginal wellbeing and liquor licensing legislation in Western Australia', *Australian Journal of Public Health*, 19(2): 177-185.

Gray, D., Sagers, S., Atkinson, D., Sputore, B. & Bourbon, D. 2000, 'Beating the grog: an evaluation of the Tennant Creek liquor licensing restrictions', *Australian and New Zealand Journal of Public Health*, 24(1): 39-44.

Gray, D., Sagers, S., Sputore, B. & Bourbon, D. 2000, 'What works? A review of evaluated alcohol misuse interventions among Aboriginal Australians', *Addiction* 95(1): 11-22.

Hall, W., Hunter, E., & Spargo, R. 1994, 'Alcohol use and incarceration in a police lockup among Aborigines in the Kimberley region of Western Australia', *Australian and New Zealand Journal of Criminology*, 27(1): 57-73.

Hanlin, K, Cvetkovski, S, Dietze, P, Laslett, A. & Rumbold, G. 1999, *The Victorian Alcohol Statistics Handbook: Alcohol consumption and alcohol related hospital admissions in Victoria 1994/95 – 1995/96*, Turning Point Monograph Series No. 1. Victoria: Turning Point Alcohol and Drug Center Inc.

Hauritz, M., McIlwain, G., & Finnisson, F. 2000, *Dollars Made from Broken Spirits: Alice Springs – Determining its Well Being and Responsible Management As Part of Everyday Life*. Hauritz and Associates, Brisbane.

Hawks, D., Rydon, P., Stockwell, T., White, M., Chikritzhs, T., & Heale, P. 1999, *The Evaluation of the Fremantle Police – Licensee Accord: Impact on serving practices, harm and the wider community*. National Drug Research Institute

Hazelhurst, K. 1992, 'The context and future of Aboriginal and police relations' in Moir, P. and Eijkman, H. (eds), *Policing Australia: Old Issues, New Perspectives*, Macmillan, Melbourne, pp 236-265.

Hamel, R., Hauritz, M., McIlwain, G. Wortley, R. & Carvolth, R. 1998, 'Preventing Drunkenness and Violence around Nightclubs in a Tourist Resort', In Clarke, R. (ed) *Situational Crime Prevention: Successful Case Studies* 2<sup>nd</sup> Edition, Harrow and Heston: New York.

Inciardi, J. 1997, *Criminal Justice, 5<sup>th</sup> Edition*, Harcourt Brace, Fort Worth

Ireland, S. 1995, '*PLEBS – Police, Licensed Premises, Excessive Consumption, Blokes and Strategies to Reduce Alcohol Related Violence, Crime and Anti-Social Behaviour*', A paper prepared for the Premier's Seminar on Alcohol and the Community; Misuse, Effects and Solutions. Parliament House: Sydney.

James, S. 1992, '*We Don't Have The Aboriginal Problem: Local Responses to Public Drunkenness*', Unpublished thesis. Department of Criminology, University of Melbourne.

James, S. 1993, 'Aboriginal People and Public Drunkenness in Victoria', *Aboriginal Law Bulletin*, 3(65): 12-13.

James, S. 1994, 'Aboriginal People, Local Government, and Public Drunkenness in Victoria', *Humanity and Society*, 18(1): 39-52.

- James, S. 1996, 'Aboriginal People, Local Government and Public Drunkenness in Victoria', *Humanity and Society*, 18(1):
- James, S. & Polk, K. 1989, 'Policing youth : Themes and directions', in *Australian Policing Contemporary Issues*, eds D. Chappell and P. Wilson, Butterworths, Sydney.
- Jochelson, R. 1997, 'Aborigines and Public Order Legislation in New South Wales', *Crime and Justice Bulletin no. 34*, NSW Bureau of Crime Statistics and Research: Sydney.
- Johnston, P. 1997, *Police and Society*, Deakin University Press, Geelong.
- La Fave, W.R. 1965, *Arrest*, Little Brown , Boston.
- Lane, D. 1991, 'Public Drunkenness in Victoria', *Aboriginal Law Bulletin*, 2(5): 21-22.
- Law Reform Commission of Victoria, 1989, *Public Drunkenness, Report No.25*, Victorian Government Printing Service, Melbourne
- Law Reform Commission of Victoria, 1990, *Public Drunkenness, Supplementary Report No.32*, Victorian Government Printing Service, Melbourne
- Lippmann, B. 1999, *Breaking the Mould: Anti Institutional Services Housing and Care Services for the Disenfranchised*. Paper presented at the Aged Services Association of New South Wales Conference. 20 May 1999.
- Mackay, M 1996, 'The Offence of Public Drunkenness', *Humanity and Society*, 21(3): 141-144.
- Mackay, M, & Munro, T, 1996, *Aborigines and Good Order Offences: The Case of Victoria*, Koorie Research Centre Discussion Paper 3/1996, Koorie Research Centre, Clayton.
- Makkai, T. 1997, 'Alcohol and Disorder in the Australian Community: Part 1 – Victims', *Trends and Issues in Crime and Criminology*, no. 76, Australian Institute of Criminology: Canberra.
- Makkai, T. 1998, 'Alcohol and Disorder in the Australian Community: Part II – Perpetrators', *Trends and Issues in Crime and Criminal Justice*, no. 77, Australian Institute of Criminology: Canberra.
- Makkai T, & McAllister, I. 1998, *Patterns of Drug Use in Australia; 1998, Report No. 2205*. Commonwealth Department of Health and Family Services, Canberra.
- Midford, R. 1993, 'Decriminalisation of Public Drunkenness in Western Australia: The process explained', *Australian Journal of Social Issues*, 28(1): 62-78.
- Midford, R. & Wilkinson, C. 1990, 'The Decriminalisation of Public Drunkenness and the Establishment of Sobering Up Centres in Western Australia – A review of the development process', *Professional Education Newsletter*, 2: 7-14.
- Midford, R., Daly, A. & Holmes, M. 1994, 'The Care of Public Drunks in Halls Creek: A Model for Community Involvement', *Health Promotion Journal of Australia*, 4(1): 5-8.



Morris, N. & Hawkins, G. 1970, 'The Overreach of the Criminal Law' in *The Honest Politician's Guide to Crime Control*, University of Chicago Press.

Mueser, K., Drake, R & Miles, K. 1997, 'The course and treatment of substance use disorder in persons with severe mental illness', in Onken, L., Blaine, J., and Genser, S. (eds) *Treatment of drug dependent individuals with co-morbid mental disorders*, Research Monograph 172. Department of Health and Human Services; pp. 86-110.

National Expert Committee on Alcohol 2000a, 'Alcohol in Australia: Issues and Strategies, Consultation Draft', NEACA Canberra.

National Expert Committee on Alcohol 2000b, 'National Alcohol Action plan 2000-2001 to 2002-2003, Consultation Draft', NEACA Canberra.

New South Wales Crime Prevention Division 2000a, 'Partners in Crime Prevention: From Brewarrina to Bondi – Community Crime Prevention in New South Wales', New South Wales Attorney General's Department: Sydney.

New South Wales Crime Prevention Division 2000b, 'Fact Sheet – Strengthening Communities, Bondi at Christmas: an example of government and community partnerships', New South Wales Attorney General's Department: Sydney.

Palmer, D. 1991, 'Local Government and Public Space', *Socio-Legal Bulletin*, 5:18-19.

Paul's Summary and Traffic Offences 5<sup>th</sup> ed, 1999, Storey, H (ed), Law Book Company, Sydney.

Pike, M.S. 1985, *The Principles of Policing*, Macmillan, London.

Royal Commission into Aboriginal Deaths in Custody , 1988, *Interim Report*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody, 1989, *National Police Custody Survey, Research Paper No 8*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody , 1991a, *National Report: Overview and Recommendations*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody , 1991b, *National Report, Volume 1*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody , 1991c, *National Report, Volume 2*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody , 1991d, *National Report, Volume 3*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody , 1991e, *National Report, Volume 4*, Australian Government Printing Service, Canberra.

Royal Commission into Aboriginal Deaths in Custody , 1991f, *National Report, Volume 5*, Australian Government Printing Service, Canberra.

- Royal Commission into Aboriginal Deaths in Custody, 1991g, *National Report*, Appendix D(I), *Too much sorry business* – The report of the Aboriginal Issues Unit of the Northern Territory.
- Royal Commission into Aboriginal Deaths in Custody, 1996/1997, *Victorian Government Implementation Report*, AGPS, Canberra.
- Rumbold, G., Malpass, A., Lang, E., Cvetkovski, S. & Kelly, K. 1998, *An Evaluation of the Geelong Local Industry Accord, Final Report*, Turning Point Drug and Alcohol Centre and Victoria Police, Melbourne.
- Rumbold, G., Dietze, P., Jonas, H., Cvetkovski, S., Laslett, A. & Hanlin, K. 1998, 'Patterns of Alcohol Consumption in Victoria: Regional differences and the impact of changes in the differences and the impact of changes in the regulation of the liquor industry', Paper presented at the 2<sup>nd</sup> International Conference on Drinking Patterns and their Consequences, Perth, Western Australia, 1-6 February 1998.
- Saggers, S., & Gray, D. 1997, 'Regulating the drinking environment: local level supply and promotion of alcohol to Aboriginal people in rural Western Australia', Paper presented at the annual meeting of the Australian Sociology Association, Sydney NSW, 9<sup>th</sup>-12<sup>th</sup> December 1997.
- Saggers, S., Gray, D., Atkinson, D., Sputore, B. & Bourbon, D. 1998, 'Aboriginal Autonomy and Economic Development: community use of alcohol restrictions', Paper presented at the national conference on 'Economic Prospects for the Northern Territory Leading to the 21<sup>st</sup> Century', Tennant Creek NT, 16<sup>th</sup>-17<sup>th</sup> September 1998.
- Senna, J. & Siegel, L. 1993, *Introduction to Criminal Justice*, 6<sup>th</sup> Edition, West Publishing, Minneapolis.
- Sheppard, S. 1994, 'Public Drunkenness in Queensland: Decriminalisation vs Diversion', *Aboriginal Law Bulletin*, 3(68): 16-17.
- Skene, L. 1987, 'An Evaluation of a Victorian Scheme for Diversion of Alcohol and Drug-Dependent Offenders', *Australian and New Zealand Journal of Criminology*, 20: 247-268.
- Smith, D., & Klein, J. 'Police Control of Interpersonal Disputes', *Social Problems* 31(4): 468-481.
- Stockwell, T., Lang, E., & Rydon, P. 1992, 'Paving the Way for Social Change: A research program designed to stimulate prevention activity and policies which impact on licensed drinking settings', National Centre for Research into the Prevention of Drug Abuse, Curtin University: Western Australia.
- Stockwell, T., Lang, E., & Rydon, P. 1993, 'High risk drinking settings – the association of serving and promotional practices with harmful drinking.' *Addiction* 88 (11): 1519-1526
- Swift, W., Hall, W., & Copeland, J. 1998, 'Characteristics of long term cannabis users in Sydney, Australia. *European Addiction Research*, 4(4): 190-197.

Taylor, B. 1995, 'Offensive Language: A Linguistic and Sociolinguistic Perspective', in D.Eades (ed.), 1995, *Language in Evidence: Issues Confronting Aboriginal and Multicultural Australia*, University of New South Wales Press, Sydney.

Teeson, M., Gallagher J., & Ozolo, S. 1998, *The Gemini Project: An evaluation of a treatment programme for persons with serious mental illness and substance misuse*. National Drug and Alcohol Research Centre, Report No 53.

Tunks, J. 1988, 'Decriminalisation of Drunkenness', *National Police Research Unit Review*, 4(2): 20-30.

Tunks, J. 1989, 'Decriminalisation of Drunkenness', in Vernon, J. (ed) *Australian Institute of Criminology Conference Proceedings No. 1: Alcohol and Crime*, 4-6 April 1989.

Van-Groningen, J. 1989, *Background paper summary offences public drunkenness – Draft recommendations*, unpublished paper.

Victoria Police, 1999, *Drug and Alcohol Achievements 1993-1999*, Victoria Police Melbourne.

Victoria Police, 2000, *Victoria Police Manual*, Victoria Police, Melbourne

Victoria Police, 2000, *Victoria Police Crime Statistics, 1998/1999*, Victoria Police Melbourne.

Wallace, A. 1986, *Homicide: The Social Reality*, New South Wales Bureau of Crime Statistics and Research, Attorney General's Department, Sydney.

White, J. 1997, 'Power/Knowledge and Public Space: Policing the 'Aboriginal Towns'', *The Australian and New Zealand Journal of Criminology*, 30(3): 275-291.

White, R. 1994, 'Street Life: Police Practices and Youth Behaviour', in White, R. and Alder, C. (eds.) *The Police and Young People in Australia*, Cambridge University Press: Melbourne, pp. 102-127.

Wilkie, M. 1991, 'Aborigines, Alcohol and Crime', in *Aboriginal Programs in Western Australia*, University of Western Australia Crime Research Centre – Research Report no.5.

Wilkie, M. 1998, 'Human Rights in Private', *Alternative Law Journal* Volume 23, No 3 June, 121-124.

Williams, P 1999, 'Alcohol-related Social Disorder and Rural Youth: Part 1-Victims', *Trends and Issues in Crime and Criminal Justice*, no. 140, Australian Institute of Criminology: Canberra.

Williams, P. 2000, 'Alcohol-related Social Disorder and Rural Youth: Part 2 – Perpetrators', *Trends and Issues in Crime and Criminology*, no. 149, Australian Institute of Criminology: Canberra.

Wooten, J. H. 1990, *Report of the Inquiry into the Death of Clarence Alec Nean*, AGPS, Canberra.