

A study of the use of the criminal law & other sanctions to manage public drunkenness in Western Australia 1900 - 2010

Murdoch Law School Research Day, 6 May 2009

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Management of Public Drunkenness

Study of legal mechanisms that sanctioned punitive & custodial consequences for managing public drunkenness & those convicted of an offence where abuse of alcohol was a contributory factor.

Approaches adopted in different periods to be studied:

- committal and/or admission of alcohol abusers from 1904 - 1966 to mental health facilities under the **Lunacy Act 1903 & Inebriates Act 1912**
- civil commitment of offenders from 1966 - 1974 under the **Convicted Inebriates Rehabilitation Act 1963**
- admission of alcohol abusers to health services from November 1974 under the **Alcohol & Drug Authority Act 1974**

Review operation of legal frameworks concerned with:

- public drunkenness as a criminal offence (1900 - 1989) & the apprehension & detention without arrest of intoxicated persons in sobering up centres (since 1990)
- systems to control alcohol use by Indigenous people (1900 - present)
- the regulation of access to alcohol & its availability through liquor licensing laws (1900 - present)

Note: Lunacy Act 1903 operated from January 1904 to December 1912 then repealed by Inebriates Act 1912. Inebriates Act 1912 operated from December 1912 to June 1966, when repealed by Mental Health Act 1962.

Note: Convicted Inebriates Rehabilitation Act 1963 repealed in November 1989

Note: Public drunkenness ceased to be an offence in WA from May 1990

Legislation - Police

Police & Law enforcement

- Court General Sessions Ordinance 1845
- Summary Procedures Justices Ordinance 1845
- Police Ordinance 1849
- Justices Summary Offences Ordinance 1850
- Drunkenness Punishment Ordinance 1851
- Shortening Ordinance 1853
- Drunkenness Suppression Ordinance 1854
- Police Ordinance 1861
- Police Act 1892
- Criminal Code Act 1902
- Convicted Inebriates Rehabilitation Act 1963
- Protective Custody Act 2000
- Children and Community Services Act 2004
- Criminal Investigation Act 2006

Legislation - Prisons

Prisons

- Rottnest Island Prison Act 1840
- Regulation of Gaols, Prisons and Houses of Correction Ordinance 1850
- Fremantle Prison Ordinance 1851
- Regulation of Gaols, Prisons and Houses of Correction Ordinance 1858
- Industrial Schools Act 1874
- Gaols Amendment Act 1902
- Prisons Act 1903
- Prisons Act 1981
- Court Security and Custodial Services Act 1999
- Protective Custody Act 2000

Legislation - Liquor Licensing (pre 1900)

- Liquor Sales Act 1832
- Sale of Spirituous Liquors Act 1832
- Sale of Fermented Spirituous Liquors Act 1833
- Licensing of Public Houses Act 1833
- Liquor Licensing Duty Exemption Act 1833
- Licensing Sales of Liquor Act 1834
- Liquor Distillation Act 1840
- Liquor Licensing Act 1841
- Licensing of Boarding Houses Liquor Sales Act 1844
- Customs Duties Wines Regimental Officers Ordinance 1846
- Boarding Eating Houses Ordinance 1854
- Liquor Licensing Ordinance 1854
- Liquor Licensing Sundays Ordinance 1855
- Liquor Sales Ordinance 1856
- Public House Ordinance 1856
- Total Abstinence Society Act 1856
- Liquor Distillation Ordinance 1859
- Liquor Sales Colonial Wine Ordinance 1863
- Vineyard Distillation Ordinance 1863
- Liquor Sales Act 1871
- Distillation Act 1871
- Wines Beer Spirit Sale Act 1872
- Wines Beer Spirit Sale Act 1880
- Goldfields Licensing Act 1888
- Beer Duty Act 1898

Legislation - Liquor Licensing (1900 +)

- Distillation Act 1900
- Licensing Act 1911
- Illicit Sale of Liquor Act 1913
- Local Option Continuance Act 1913
- Local Option Continuance Act 1914
- Sale of Liquor Regulation Act 1915
- Sale of Liquor and Tobacco Act 1916
- Sale of Liquor Regulation Act Continuation Act 1917
- Local Option Continuance Act 1918
- Sale of Liquor Regulation Act Continuation Act 1919
- Liquor Act 1970
- Liquor Licensing Act 1988
- Liquor Control Act 1988

Note: In July 2007 the **Liquor Licensing Act 1988** was renamed the **Liquor Control Act 1988**.

Legislation - Other

- Lunacy Act 1871
- Poor Houses Discipline Act 1882
- Health Act 1898
- Lunacy Act 1903
- Health Act 1911
- Inebriates Act 1912
- Mental Treatment Act 1917
- Electoral Districts Act 1922
- Health Education Council Act 1958
- Mental Health Act 1962
- Convicted Inebriates Rehabilitation Act 1963
- Alcohol and Drug Authority Act 1974
- Mental Health Act 1981
- Health Legislation Administration Act 1984
- Mental Health Act 1996

Administrative Framework

Central administrative agencies

- December 1828 - 16 April 1924: **Colonial Secretary's Office**
- 16 April 1924 - 23 March 1983: **Chief Secretary's Department**
- 23 March 1983 - 23 December 1983: **Department of Employment & Administrative Services**
- 23 December 1983 - 14 December 1984: **Department of Administrative Services**
- 14 December 1984 - 30 June 2001: **Office of Racing, Gaming & Liquor**
- 1 July 2001 - present: **Department of Racing, Gaming & Liquor**

Liquor licensing

- 21 February 1911 - 15 August 1923: **Licensing Court Districts**
- 16 August 1923 - 30 June 1970: **State Licensing Court & Licenses Reduction Board**
- 1 July 1970 - 31 January 1987: **Licensing Court of WA**
- 1 February 1987 - 6 May 2007: **Liquor Licensing Court of WA**
- 7 May 2007 - present: **Liquor Commission**

Note: Department of Administrative Services abolished in 1984 & some functions transferred to Office of Racing and Gaming

Administrative Framework

Health & treatment related agencies

- November 1886 - 31 May 1911: **Central Board of Health**
- 1 January 1850 - 1 October 1906: **Medical Department**
- 1 January 1956 - 1 January 1979: **Medical Department**
- 1 January 1950 - 31 December 1953: **Mental Hospitals Department**
- 30 April 1911 - 30 June 1984: **Department of Hospital & Allied Services**
- 1 June 1911 - 30 June 1984: **Public Health Department of WA**
- 1 January 1954 - 30 June 1984: **Mental Health Services**
- 1 July 1984 - present: **Health Department of WA**
- 1 January 1974 - present: **WA Alcohol & Drug Authority**

Note: Health Department of WA formed 1 July 1984 from amalgamation of Public Health Department, Department of Hospital & Allied Services & Mental Health Services

Administrative Framework

Law enforcement

- 5 March 1853 - 31 May 1995: **Western Australian Police Department**
- 1 June 1995 - present: **Western Australia Police Service**

Prisons & Corrections

- 1 January 1890 - 31 December 1946: **Gaols Department**
- 1 January 1947 - 31 December 1970: **Prisons Department**
- 1 January 1971 - 31 July 1982: **Department of Corrections**
- 1 August 1982 - 2 April 1987: **Prisons Department**
- 3 April 1987 - 31 December 1992: **Department of Corrective Services**
- 1 January 1993 - 30 June 2001: **Ministry of Justice**
- 1 July 2001 - 31 January 2006: **Department of Justice**
- 1 February 2006 - present: **Department of Attorney General**
- 1 February 2006 - present: **Department of Corrective Services**

Note: WA Police Service adopted name of Western Australia Police from mid 2006

Royal Commissions & Inquiries

Royal Commission on Licensing Act 1922 (Chaired by HW Mann)

Parliamentary Committee Into the Liquor Licensing Act 1911-1956 1958 (Chaired by EM Heenan)

Committee of Inquiry Into the Licensing Act 1911 1969 (Chaired by Phillip Adams)

Royal Commission Into Treatment of Alcohol and Drug Dependents 1973 (Chaired by Richard Williams)

Select Committee Into Alcohol and Other Drugs 1984 (Chaired by Gordon Hill)

Liquor Laws in WA Royal Commission 1984 (Chaired by John Syme)

Liquor Act 1970 Review 1987 (Conducted by Office of Racing & Gaming)

Independent Review Committee on Liquor Licensing in WA 1994 (Chaired by KV Mattingley)

Task Force on Drug Abuse 1995 (Chaired by Mike Daube)

Independent Review Committee on Liquor Licensing Act 1988 2005 (Chaired by Jim Freemantle)

Assessment of Impacts of Liquor Licensing Reforms 2005 (Prepared for Department of Racing, Gaming & Liquor by Allen Consulting Group)

Public Drunkenness

Ordinance For Regulating Police (1849)

'... it shall be lawful for any constable to apprehend without warrant any person whom he shall find drunk in any street or public place in any of said towns at any hour of the day or night...'

Police Act 1892

Powers of apprehending offenders

'Any officer or constable of the Police Force without any warrant other than this Act, at any hour of the day or night, may apprehend any person whom he may find drunk, or disorderly, or using profane, indecent, or obscene language, or who shall use any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace, in any street, public vehicle or passenger boat;' (s. 43)

Penalty on drunkards

'Every person who shall be found drunk in any street, public place, or in any passenger boat or vehicle, shall for the first offence be liable on conviction to a penalty not exceeding one pound, or to imprisonment, with or without hard labour, for any term not exceeding seven days, and for any second or subsequent offence to a penalty not exceeding five pounds, or to imprisonment, with or without hard labour, for any period not exceeding twenty-one days.' (s. 53)

Note: Penalty of \$2 (first offence) and \$10 (second & subsequent offence) in 1967 - decimal currency conversion.

Public Drunkenness

Police Act 1892

November 1975: Increased penalties

s. 53 penalties increased up to \$10 (first offence) or imprisonment up to 7 days and \$25 or imprisonment not exceeding 21 days

April 1990 amendments: Decriminalisation of drunkenness

s. 53 repealed

Powers of apprehending offenders

'Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night may apprehend any person whom he may find conducting himself in a disorderly manner, or using profane, indecent, or obscene language, or who shall use any threatening, abusive, or insulting words or behaviour, with intent or calculated to provoke a breach of the peace, in any street, public vehicle, or passenger boat;' (s. 43(1))

Disorderly conduct

Every person who shall be guilty of any disorderly conduct on any street, public place, or in any passenger boat or vehicle, and Police Station, or lock-up, shall, on conviction, be liable to a penalty of not more than \$500 for every such offence, or to imprisonment for any term not exceeding 6 calendar months, or to both fine and imprisonment. (s. 54)

May 2005 amendment:

Police may arrest suspects without warrant

Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night may apprehend any person whom he shall have just cause to suspect of having committed or being about to commit any offence. (s. 43(1))

Public Drunkenness

Police Act 1892 Section 43 repealed

From July 2007 police powers of arrest contained in Criminal Investigation Act 2006

Criminal Investigation Act 2006

Arrest power for offences

A police officer or a public officer may arrest a person for an offence that is not a serious offence if the officer reasonably suspects —

(a) that the person has committed, is committing, or is just about to commit, the offence; and

(b) that if the person is not arrested —

(i) it will not be possible, in accordance with law, to obtain and verify the person's name and other personal details;

(ii) the person will continue or repeat the offence;

(iii) the person will commit another offence;

(iv) the person will endanger another person's safety or property;

(v) the person will interfere with witnesses or otherwise obstruct the course of justice;

(vi) the person will conceal or disturb a thing relevant to the offence; or

(vii) the person's safety will be endangered. (s. 128(3))

Disorderly Behaviour in Public

Criminal Code

May 2005: Section 74A added to Criminal Code

Disorderly behaviour in public

(1) In this section - “behave in a disorderly manner” includes –

- (a) to use insulting, offensive or threatening language; and
- (b) to behave in an insulting, offensive or threatening manner.

(2) A person who behaves in a disorderly manner –

- (a) in a public place or in the sight or hearing of any person who is in a public place; or
 - (b) in a police station or lock-up,
- is guilty of an offence and is liable to a fine of \$6,000.

(3) A person who has the control or management of a place where food or refreshments are sold to or consumed by the public and who permits a person to behave in a disorderly manner in that place is guilty of an offence and is liable to a fine of \$4,000.

Public Drunkenness - Law & Order Views

'Since the outbreak of war there have been a number of cabarets or night clubs opened in the metropolitan area, where liquor is brought to the premises by the patrons. The evil effects of this uncontrolled drinking has been very apparent, and in numerous instances disastrous to young females.

Recommendations were made by me some time ago for effective means to control some, either by State legislation, or an amendment of the National Security Order respecting the sale and consumption of liquor.'

Source: Annual report, Police Department, 1941/1942

'It is to be hoped that the present 6 o'clock closing of licensed premises will be continued after the cessation of hostilities. There is no doubt that this early closing has had a very beneficial effect on the community as a whole.

Strict supervision has been maintained over licensed premises throughout the year. Special attention has been given to persons under age frequenting hotels and being supplied with liquor. Constant check has also been made on young women found in hotel lounges. Very few person under age have been located. Three hotels have their lounges for ladies only. This has proved effective in stopping women of low repute from loitering in hotel lounges with men.

Generally speaking, lounges are fully patronised by women, some of whom spend considerable time in them, but in most cases they are wives of servicemen and draw allotments.'

Source: Annual report, Police Department, 1943/1944

Public Drunkenness - Health Views

'During the year the Whitby Falls Asylum was opened as a Male Inebriates Home for convicted inebriates under Section 7 of the Inebriates Act 1912.'

Source: Annual report, Inspector General of the Insane, 1914/1915

'Those at Whitby, who were committed Under Sections 7 and 8 of the Act, usually adopt an attitude of passive resistance, refuse treatment, and, generally speaking, are subordinate, and I have throughout found myself in an awkward position.'

Source: Annual report, Inspector General of the Insane, 1917/1918

'On the 31st December 1923, there were seven male inmates resident in the Salvation Army Home at Claremont and 10 females in the Inebriates Home, Lincoln Street, Perth. During the year there were 49 admissions to Claremont and 33 to Perth.'

The above figures disclose a very marked increase in the number of inebriates treated at the Salvation Army Homes. The admissions at the Claremont Home show an increase of 123 per cent, and the Perth Home 175 per cent. This increase is entirely due to the magistrates sending to the homes persons for only quite short periods.

The Inebriates Homes were provided for the treatment of inebriates and the object has largely been defeated by the short periods ordered, and it is obviously impossible to treat an inebriate for a short period of time, say three weeks. It is very evident that a period of three weeks by any stretch of imagination cannot be considered as treatment, but is intended as a punishment.'

Source: Annual report, Inspector General of the Insane, 1925/1926

Public Drunkenness - Citizen Local Option Polls

'The woman's vote has naturally been largely cast for "No license'. Woman in politics is apt to be swayed by her emotions, which is perhaps well, but her enfranchisement is of so recent origin that lack of experience tends, possibly, to accentuate her natural impulse to seek short cuts to those social reforms which appeal to her highest instincts, undaunted, because unmindful, of the possibility of the danger of substituting, in the process, one evil for another. The evils of the public house are patent to her, and for the most part she votes "No license," not stopping to ponder over the question whether "No license" may not mean in the end more drinking in the home, and more drinking in secret, or involve other practises equally mischievous.'

Source: Operation of the liquor laws of New South Wales, Victoria and New Zealand by Alfred Carson. Report to Premier of WA Newton Moore, 9 January 1909

'A perusal of the evidence will disclose that a strong prejudice against (gallon licenses) is held by a large section of the community. The main argument advanced by these persons for the elimination of this license was that under its provisions women were enabled to obtain liquor surreptiously.'

Source: Report of Commission on Licensing 1922