Approaches to managing public drunkenness in Western Australia, 1900 to 2010

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Presented at 37th Annual Alcohol Epidemiology Symposium of the Kettil Bruun Society
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1. Introduction

The paper will describe and briefly review the mechanisms adopted in Western Australia (WA) that sanctioned and managed those adversely affected by alcohol over the period from 1900 up to 2010. The information presented should be considered of a preliminary nature and mostly concerned with the issue of public drunkenness, as data gathering for this part of the research project is further advanced than other areas being studied. When completed, the overall project aims to identify, document and explain that alcohol policies in WA, whilst largely formed and shaped by local factors, developments in jurisdictions elsewhere in Australia and overseas also impacted on policy makers and sustained community-based interest groups.

The research project will argue that an understanding of historical beliefs and values about the causation of and solutions to alcohol-related problems is relevant to contemporary alcohol related problems, such as binge drinking,[1] growing use of alcohol by women[2] and drunkenness and violence associated with the late night economy.[3] These examples illustrate an enduring quality of policies concerned with managing public drunkenness and other consequences of intoxication and mean alcohol is truly a "wicked problem".[4] This is a term reserved to describe very difficult and persistent policy issues, involving social problems such as of Indigenous child abuse,[5] as they are characterised as being highly resistant to resolution due to their complexity.

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[1] ABC News. (15 June 2008). "Binge drinking on people's minds: AMA." from www.abc.net.au/news/stories/2008/06/15/2275181.htm.; Berridge V; Herring R & Thom B (2009). "Binge drinking: a confused concept and its contemporary history." *Social History of Medicine* 22(3): 597-607.; Hayward K & Hobbs D (2007). "Beyond the binge in 'booze Britain': market-led liminalization and the spectacle of binge drinking." *British Journal of Sociology* 58(3): 437-456.; Knowles G (18 February 2008). *WA drinkers binge on 30pc more over decade*, The West Australian.; Szmigin I; Griffin C; Mistral W; Bengry-Howell A; Weale L & Hackley C (2008). "Reframing 'binge drinking' as calculated hedonism: Empirical evidence from the UK." *International Journal of Drug Policy* 19: 359-366.

[2] ABC News. (10 September 2007). "Binge drinking fuelling assaults by women." from http://www.abc.net.au/news/stories/2007/09/10/2028378.htm.; Guest D (25 June 2007). *Binge-drinking women warned of increased risk of liver disease*, The West Australian.; Johnston KL & White KM (2004). "Binge-drinking in female university students: a theory of planned behaviour perspective." *Youth Studies Australia* 23(2): 22-30.; Meyer A (2010). "'Too drunk to say no.' Binge drinking, rape and the Daily Mail." *Feminist Media Studies* 10(1): 19-34.

[3] Perham N; Morre SC; Shepherd J & Cusens B (2007). "Identifying drunkenness in the night time economy." *Addiction* 102: 377-380.; Tierney J (2006). "'We want to be more European': The 2003 Licensing Act and Britain's night time economy." *Social Policy & Society* 5(4): 453-460.; Hollands R & Chatterton P (2003). "Producing nightlife in the new urban entertainment economy: corporatisation, branding and market segmentation." *International Journal of Urban & Regional Research* 27(2): 361-385.; Hughes V & Thompson B (2009). *Is your house in order? Re-visiting liquor licensing practices and the establishment of an entertainment precinct in Northbridge*. Perth, WA, Western Australia Police.

[4] Australian Public Service Commission (2007). *Tackling wicked problems: a public policy perspective*. Canberra, ACT, Australian Public Service Commission.

[5] Hunter B (2007). "Conspicuous compassion and wicked problems: The Howard Government's National Emergency in Indigenous Affairs." *Agenda* 14(3): 35-51.

The research project will present a case study of the management of consequences of alcohol abuse in WA over a largely forgotten period up to the early 1970s when the mental health system, the courts and the prison system were key ingredients for dealing with public drunkenness and other individuals who abused alcohol. In WA between 1904 and up to early 1970s courts could order the commitment of those who abused alcohol to both psychiatric facilities and prison settings, for the ostensible benefit of the individual as well as protection of the community. The study of this forgotten era is expected to confirm research from other jurisdictions that civil commitment largely failed to achieve its objectives.[6] In the mid 1970s the management of those who have abused alcohol shifted to a specialist hospital-based detoxification and extended rehabilitation service which replaced the earlier coercive system, which in turn was supplanted from the mid 1990s by a model involving a range of short term treatments delivered by non government organisations (NGOs).

Given that the system of coercive treatment of alcohol abusers in this State was discredited and abandoned by the early 1970s, we might expect community concern and that questions should be raised if a similar approach were advocated as a 'solution' to the 'treatment' of those who abuse other substances. In fact, following the expanded role of the Commonwealth government through the National Campaign Against Drug Abuse and the National Illicit Drug Strategy, a large amount of resources has been channelled towards establishing programs which are heavily reliant on coercive measures. This has meant that since the early 1990s a raft of coercive measures have been established in all Australian jurisdictions, involving as Drug Courts, other specialist courts, referred to as problem solving courts (PSCs), the use of conditional court orders and diversion programs which target illicit drug abusers.

The scale of expenditure and the high levels of political support for compelling treatment of illicit drug abusers, suggests the experiences from the forgotten era of civil commitment and court mandated treatment of alcohol abusers is relevant to current debate about the efficacy and social benefits expected from the more recent expansion of PSCs, as a key principle of this jurisprudence is the reliance on coercion as begin justified and necessary.[7]

Just in case we might have thought civil commitment of alcohol abusers was a museum piece lying forgotten in a dusty cabinet at the Museum of Social History after becoming extinct some forty years ago, a statement in late February 2011 by a former Indigenous Affairs Minister, Mal Brough, bears reporting. (Mal Brough has been referred to as being the "Architect" of the Northern Territory Emergency Response (NTER) introduced in mid 2007 by the former Howard national government.)

> 'Mr Brough said he supported an extreme proposal for a large prison farm to be built outside Alice Springs, where drinkers could be rehabilitated through craft-learning, trade schools and manual work. He said it should be compulsory for substance abusers to be sent to such a facility, and insisted it should not be set up as a prison but as a well-funded centre that changes lives.

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[6] Leukefeld CG & Tims FM, Ed. (1988). *Compulsory treatment of drug abuse: research and clinical practice*. NIDA Research Monograph 86. Rockville, MD, National Institutes of Health, Public Health Service, US Department of Health & Human Services.; McGlothlin WH; Anglin MD & Wilson BD (1977). *An evaluation of the California Civil Addict Program*. Rockville, MD, US Department of Health, Education & Welfare.

[7] McSweeney T; Stevens A; Hunt N & Turnbull PJ (2007). "Twisting arms or a helping hand? Assessing the impact of 'coerced' and comparable 'voluntary' drug treatment options." *British Journal of Criminology* 47: 470-490.

> "The drug and alcohol dependencies need to be dealt with, but not in a voluntary way," he said. … He said that the prison farm idea was not draconian and was not about incarcerating people.'[8]

It should be noted that in the Australian context, the taxation of alcohol products is a power which rests exclusively with the Commonwealth government, as the States are not able raise revenue by imposing excise or custom duties.[9] Whilst taxing alcohol consumption is a Commonwealth responsibility, there is a large range of other regulatory matters which are the responsibility of the State and Territory governments, such as licensing of drivers, driving motor vehicles by alcohol impaired drivers, the licensing of premises and their opening hours and the minimum age to purchase alcohol.

2. Historical context

Historically laws concerned with public drunkenness can be traced to Tudor England and were one of a suite offences that targeted vagrancy, those not having a visible means of support or without a place to live.[10] The situation in WA, was similar to that noted in the report by the United Kingdom (UK) Working Party on Habitual Offenders, in that whilst drunkenness *per se* was not an offence, it became an arrestable offence when the individual was in a public place or on licensed premises. Furthermore, as the Working Party noted,

> '(i)n addition to simple drunkenness, the law provides for a miscellany of offences in which drunkenness in public is combined with other forms of antisocial behaviour, or is exhibited in circumstances which exacerbate the act of drunkenness itself. For convenience they are usually referred to collectively as "drunkenness with aggravations". The most common is that of being guilty, while drunk, of riotous or disorderly behaviour or, to use the more familiar abbreviation, "drunk and disorderly".[11]

A 1978 Scottish inquiry noted a range of social, fiscal and legal controls existed over alcohol: 'By social controls are meant the disapproval expressed by the community over certain acts, such as exhibition of drunkenness. These attitudes can be reflected in police practice and the sentencing of offenders by magistrates.'[12]

An entrenched long standing bias in managing drunkards, also referred to as chronic public inebriates, [13] was for them to be dealt with and punished in a similar manner as other individuals

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[8] Karvelas P (26-27 February 2011). *NT intervention stagnant, just another plan: Brough*, Weekend Australian.

[9] James D. (1997). "Federalism up in smoke? The High Court decision on State tobacco." *Current Issues, Brief 1, 1996-97*, from www.aph.gov.au/library/pubs/cib/1997-98/98cib01.htm, Spry M. (1997). "What is an excise duty? Ha and Hammond v NSW." *Research Note 1, 1997-98*, from www.aph.gov.au/library/pubs/rn/1997-98/98rn01.htm.

[10] Brown D (1971-1972). "Police offences." *University of Western Australia Annual Law Review* 10: 254-281.; Working Party on Vagrancy and Street Offences (1974). *Working Party on Vagrancy and Street Offences working paper*. Chairman AJE Brennan. London, UK, Her Majesty's Stationery Office..Brown D (1971-1972). "Police offences." *University of Western Australia Annual Law Review* 10: 254-281.

[11] Working Party on Habitual Drunken Offenders (1971). *Habitual drunken offenders: report of the Working Partty*. Chairman Weiler TG. London, UK, Her Majesty's Stationery Office., 15.

[12] Hamilton JR; Griffith A; Ritson B & Aitken RCB (1978). *Detoxification of habitual drunken offenders*. Scottish Health Service Studies No. 39. Edinburgh, Scotland, Scottish Home & Health Department.

[13] Cox GB; Walker RD; Freng SA; Short BA; Meijer L & Gilchrist L (1998). "Outcome of a controlled trial of the effectiveness of intensive case management for chronic public inebriates." *Journal of Studies on Alcohol* 59(5): 523-534.; Pittman DJ & Gordon CW (1958). *Revolving door: A study of the chronic police case inebriate*. New Haven, Connecticut, Yale Center of Alcohol Studies..

considered a threat to public order. Indeed, it was difficult for an intoxicated person in a public place to avoid not being arrested and charged, given they could commit a number of offences, such as resisting arrest, assaulting a police officer, failing to provide a name or address or being disorderly. This meant if someone was drunk[14] in a public place in WA, it was likely they would be charged by the police and processed through the criminal justice system either because they charged with simple drunkenness or had committed an aggravated offence.

The settlement of WA as a British colony in 1829 meant it adopted the social and legal controls that had existed at that time in the UK, until local proclamations and ordinances varied or replaced the imported colonial legislative arrangements. The salience of public drunkenness as a law and order issue was soon recognised after colonisation. For example, in a newspaper article that catalogued a long list of court cases due to alcohol abuse for the month of September 1853 dealt with by the Perth magistrates court it was observed:

> "The consumption of alcohol provided a release from the cares of everyday life for many of Western Australia's workers. The government responded not by dealing with the root problems but by closing public houses, increasing the duty on liquor and so on. But the heavy drinking went on, as evidenced by an article in the Perth Gazette.'[15]

These early concerns resulted in the imposition of greater controls over a number of years on public houses. There was also increased police powers to deal with public order offences like public drunkenness, such an ordinance issued in 1849, the *Ordinance for regulation the police in Western Australia* (12th Vict. No. 20), which provided, in Order 8, that:

> '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 the said towns at any hour of the day or night, and any loose, idle, drunken, or disorderly person whom he shall find therein disturbing the public peace, or whom he shall have just cause to suspect of any evil design, and any person whom he shall find between sunset and sunrise lying or loitering in any street, highway, yard, or other place within the said towns, and not giving a satisfactory account of himself.'

3. Criminal law & drunkenness

The relevant legislation in WA concerned with public order offences was set out in the *Police Act 1892*, which consolidated in a single statute a number of ordinances and proclamations and also replicated many of the offences and principles that had existed in UK legislation and provided a comprehensive framework of police offences.

The Act provided a general power for police to apprehend someone, in Section 43:

> '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; … and shall detain any person so apprehended in custody, until he can be brought before a Justice, to be dealt with for such offence, or until he shall have given bail for his appearance before a Justice, in the manner hereinafter mentioned.'

[14] The past tense is used as the offence of public drunkenness was decriminalised in WA in April 1990.

[15] Aveling M, Ed. (1979). *Westralian voices: documents in Western Australian social history*. Perth, WA, University of Western Australia Press., 79.

A notable feature of the *Police Act 1892* was that the public order and other archaic offences remained largely unchanged from when originally passed in 1892, for more than 80 years, until the mid 1970s. Whilst a defined set of penalties applied to someone convicted of public drunkenness as a first tier offender, a system of extended and escalated penalties, depending on the circumstances, applied when an offender met the criteria for second tier consequences. This is demonstrated by the penalty for a simple offence against Section 53 compared to the penalty for repeat offenders, also variously referred to in other jurisdictions as chronic alcoholic offenders,[16] or habitual drunken offenders[17].

In its simplest form, the *Police Act 1892* in the first tier provided a scale of penalties for public drunkenness, from a fine of up to one pound for a first time offender up to a fine of up to five pounds or imprisonment for up to 21 days for someone previously convicted, as provided in Section 53:

> '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.'

The penalties of $2 and $10 remained unchanged until an amendment in November 1975, when the fine was increased to $10 and $25, for first time and repeat offenders, respectively. There was no change in the term of imprisonment that could be imposed, ie up to seven days for a first time offender or up to 21 days for repeat offenders. [18]

The second tier of offences encompasses other offences related to disorderly conduct (Section 54), being an idle and disorderly person (Section 65), being a rogue and vagabond (Section 66) and being an incorrigible rogue (Section 67); which were directly transposed from the vagrancy and public order offences established in Tudor times in England.

Substantially harsher and more serious penalties attached to second tier offences. For example, the penalties for disorderly conduct, in Section 54:

> 'Every person who shall be guilty of any disorderly conduct on any street, public place, or any passenger boat or vehicle, any Police Station, or lock-up, shall, on conviction, be liable to a penalty of not more than ten pounds for every such offence, or to imprisonment, with or without hard labour for any term not exceeding six calendar months, or to both fine and imprisonment.'

A court was required to deem someone as a "idle and disorderly person" under Section 65 if they had been previously convicted of a number of offences, which meant that they could be sentenced for up to six months imprisonment. An alternative option for a fine was not provided. There was the provision in Section 65(6) for a person to be declared a "habitual drunkard" if "thrice convicted of drunkenness within the preceding twelve months".

A Magistrate was required to deem someone as a "rogue and vagabond" under Section 66, which attracted a penalty of up to 12 months imprisonment, if they committed a number of specified

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[16] Rubington E (1958). "The chronic drunkenness offender." *Annals of New York Academy of Political & Social Science* 315: 65-72.

[17] Hamilton JR; Griffith A; Ritson B & Aitken RCB (1978). *Detoxification of habitual drunken offenders*. Scottish Health Service Studies No. 39. Edinburgh, Scotland, Scottish Home & Health Department.

[18] Australia changed from the Imperial units to decimal currency in February 1966. A penalty of £1 converted to $2: *Decimal Currency Act 1965* [Act 1965/113].

offences. As also occurred for Section 65, there was not an alternative provision for a fine instead of imprisonment. A specified offence was in Section 66(1), when a person had previously been convicted as an idle and disorderly person.

The upper end of the second tier of consequences was a declaration of being an "incorrigible rogue", resulting in imprisonment of up to 18 months. Section 67(2) provided if a person had committed any offence that resulted in them being convicted as being a rogue and vagabond, they were declared an incorrigible rogue under Section 67(2).

Whilst the amendment of November 1975 marginally increased the penalty for public drunkenness up to $10 for a first offence and $25 for repeat offenders, the penalty for disorderly conduct (Section 54), had been increased in November 1964 from $20 to $100 (but without an increase in imprisonment). A key change as a result of the 1975 amendment was that the courts could now impose a fine instead of a term of imprisonment for second tier offence.

Whilst the November 1975 amendment removed the definition of an "idle and disorderly person" and replaced it with the term of being convicted "on summary conviction", nevertheless the *Police Act 1892* continued to retain its long standing two tier structure of penalties involving public order offences. The 1975 amendment meant the penalty for a Section 65 offence was a fine of up to $500 or imprisonment of up to six months.

The provision for being declared a habitual drunkard, of being convicted three times for drunkenness in the preceding 12 months, was retained in Section 65(6) and the penalty for a Section 66 offence (now with the heading of "Subsequent offences against s. 65") was increased to a fine of up to $1,000 or imprisonment of not more than 12 months, if a person had committed an offence against Section 65.

A major reform concerning public drunkenness in WA occurred in April 1990 with passage of the *Acts Amendment (Detention of Drunken Persons) Act 1989*. This legislation repealed both Sections 53 and 65(6) of the *Police Act 1892* and added a new section, Part VA – Apprehension and detention without arrest. This spelt out how intoxicated people should be dealt with by the police and also amended the *Child Welfare Act 1947* for police to apprehend intoxicated juveniles.

The impetus for these reforms was in large part as a result of the Royal Commission Into Aboriginal Deaths in Custody (RCIADIC), which included both national and jurisdiction specific investigations.[19] Another influence was an investigation by the WA Law Reform Commission, which had been requested in 1986 to undertake an investigation of offences in the Police Act. In its 1992 report the Commission identified a range of offences, including those concerned with vagrancy and argued reform was required as the Act was seriously outdated and no longer appropriate given changes in community standards.[20]

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[19] Royal Commission Into Aboriginal Deaths in Custody (1991). *Regional report of inquiry into individual deaths in custody in Western Australia*. Commissioner DJ O'Dea. Canberra, ACT, Australian Government Publishing Service.; Royal Commission Into Aboriginal Deaths in Custody (1991). *Regional report of inquiry into underlying issues in Western Australia*. PL Dodson Commissioner. Canberra, ACT, Australian Government Publishing Service.

[20] Law Reform Commission of Western Australia (1989). *Police Act offences: Discussion paper*. Project No. 85. Perth, WA, Law Reform Commission of Western Australia.; Law Reform Commission of Western Australia (1992). *Police Act offences: report*. Project No. 85. Perth, WA, Law Reform Commission of Western Australia.

The 1989 reforms also amended Section 43 of the *Police Act 1892*, by replacing the broad power for police to apprehend a person who had been "drunk and disorderly" with that of "conducting himself in a disorderly manner". The intention of the amendment of Section 43 and the repeal of provisions concerned with drunkenness was a signal that management of drunk and intoxicated persons was to be foremost a health responsibility, as Part VA specified that such individuals were to be conveyed to an "approved hospital".

Section 43 was further amended by the *Criminal Law Amendment (Simple Offences) Act 2004*, which commenced in May 2005, to provide in Section 43(1) that:

> '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.'

The *Criminal Law Amendment (Simple Offences) Act 2004* amended the *Criminal Code* by adding Section 74A, Disorderly behaviour in public. This established a substantially higher range of penalties than when this offence existed in Section 54 of the *Police Act 1892*, when the penalty was a fine of not more than $500, or imprisonment up to six months, or both. It is worth setting out Section 74A in full as this suggests the emphasis shifted to "insulting, offensive or threatening" behaviour or language which occurred in certain types of public place:

74A. 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.

(4) It is lawful for any person to arrest without warrant any person who is, or whom the person suspects, on reasonable grounds, to be, in the course of committing an offence under this section.

In 2006 the *Criminal Investigation Act 2006* repealed Section 43 of the *Police Act 1892* and instead set out in Section 128 of the *Criminal Investigation Act 2006* the circumstances when police could arrest a person who had or was about to commit a serious offence. The intention of this provision was to curtail the use of arrest by police when dealing with those who commit non-serious offences, ie being those with a statutory penalty of less than five years imprisonment.

In November 2000 Part VA (ie concerned with apprehension and detention without arrest) of the *Police Act 1892* was repealed and its provisions were shifted to a new piece of legislation, the *Protective Custody Act 2000*.

3.1 Statistical overview

Figures 1 to 6 provide a broad overview of the pattern of the occurrence of public

drunkenness in WA over the period 1900 to 2005. The availability of data over this period was affected changes in reporting procedures and level of detail, as well as the impact of external events, like the First and Second World Wars covering the periods 1914 to 1918 and 1939 to 1945 and the Great Depression from 1929 to about 1934.

Annual reports published by the Police Department between 1900 and 1962 contained an extensive set of comprehensive appendix tables which provide remarkably detailed information of the annual number of charges involving a wide range of offences, grouped into eight classes, and broken down in each group by gender. There was a similar separate breakdown each year for offences involving Indigenous persons ("Aborigines"). Public drunkenness was a specific offence in the listing of 25 separate offences contained in Class 5 – Offences against good order.

This continuous series of annual data of arrests abruptly ceased after the 1961/1962 Annual report and was replaced by very limited summary data in subsequent annual reports. This means instead, that for the period 1962/1963 to 1988/1989 the annual number of public drunkenness offences is based on convictions not charges. The source for conviction and other criminal justice data is in Part 6 (Law, order and safety) of Chapter 5 (Social conditions), from the Year Book of Western Australia, published by the Australian Bureau of Statistics for most of the years over this period.

As public drunkenness was decriminalised in WA in April 1990, public drunkenness has been inferred from admissions to State funded sobering up centres (SUCs), contained in annual statistical reports published up to 2005. This data consists of two proxy measures – apprehensions of intoxicated persons conveyed by police to SUCs and admissions to SUCs. For simplicity the term 'charges' is used to refer these three different measures.

Overall, the data in Figures 1 and 2 of annual counts of charges for public drunkenness, also expressed as an annual rate in Figures 3 and 4, suggests that charges for public drunkenness from 1900, were most prevalent up to the 1913/1914 year (rate of 1,839 per 100,000). After 1913/1914 the annual rate declined to its lowest (398 per 100,000) in the 1932/1933 year and then climbed to 1,537 per 100,000 in the 1970/1971 year. The marked reduction in annual charges which occurred after 1970/1971 was associated with a major liberalising reform of the licensing laws, with the commencement of the *Liquor Control Act 1970* in June 1970. The declines that had previously occurred were related to external factors, such as the First and Second World Wars in 1914 to 1918 and 1939 to 1945 periods and the Great Depression from about 1929 to the early 1930s.

Since the early 1980s the annual rate for charges for public drunkenness in WA remained relatively constant, at about 1,000 up to 2005. More recent published data is at present unavailable as the agency responsible for oversight of the sobering up program ceased publishing comprehensive annual counts of admissions to sobering up centres and apprehensions of intoxicated people by the police.

The variations in the proportion of all charges involving public drunkenness in Figure 5 for the period 1900 to 1988 may indicate that public drunkenness has at different times been regarded as a more serious law and order issue which justified it being given a higher policing priority. Figure 5 shows that charges for public drunkenness up to the mid 1920s constituted about 25% of all charges processed by the police and subsequently made up about 10% of all charges up to 1987/1988, except during the World War II period when public drunkenness charges generally constituted about 15% of all charges.

The information in Figure 6, which presents a breakdown of charges for public drunkenness by Indigenous status, indicates that until about the mid 1940s, relatively few of annual charges involved Indigenous offenders. However, over the period after t World War II, from 1945 to

1960/1961 (when Indigenous status ceased to separately collated), the number and proportion of annual charges for public drunkenness involving Indigenous people steadily increased.

A striking feature of public drunkenness charges dealt with the Magistrates Courts was that between 1900 and the early 1950s, more than nine out 10 of those charged with public drunkenness were non-Indigenous persons. The steady increase which then occurred since the early 1950s in the proportion of charges for public drunkenness involving Indigenous people, as well the number of charges, will be examined with reference to reforms concerned with the rights and status of Indigenous people from the 1960s.

Figure 1:
Counts of charges for public drunkenness, WA, 1900/1901 – 1944/1945

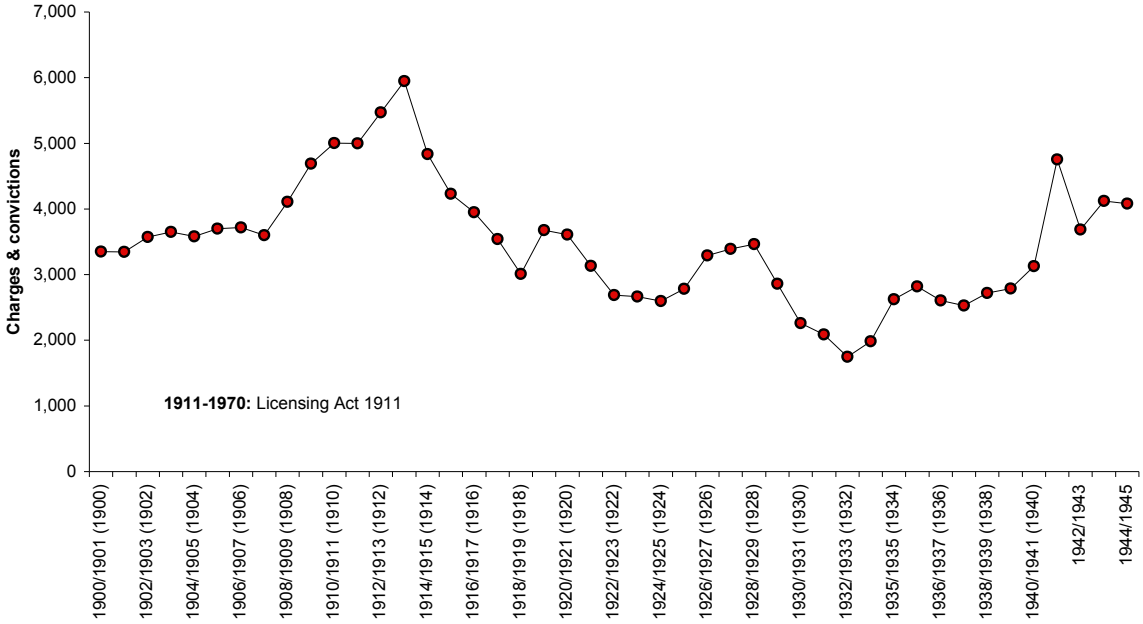


Figure 2:
Counts of charges for public drunkenness, WA, 1945/1946 – 1004/2005

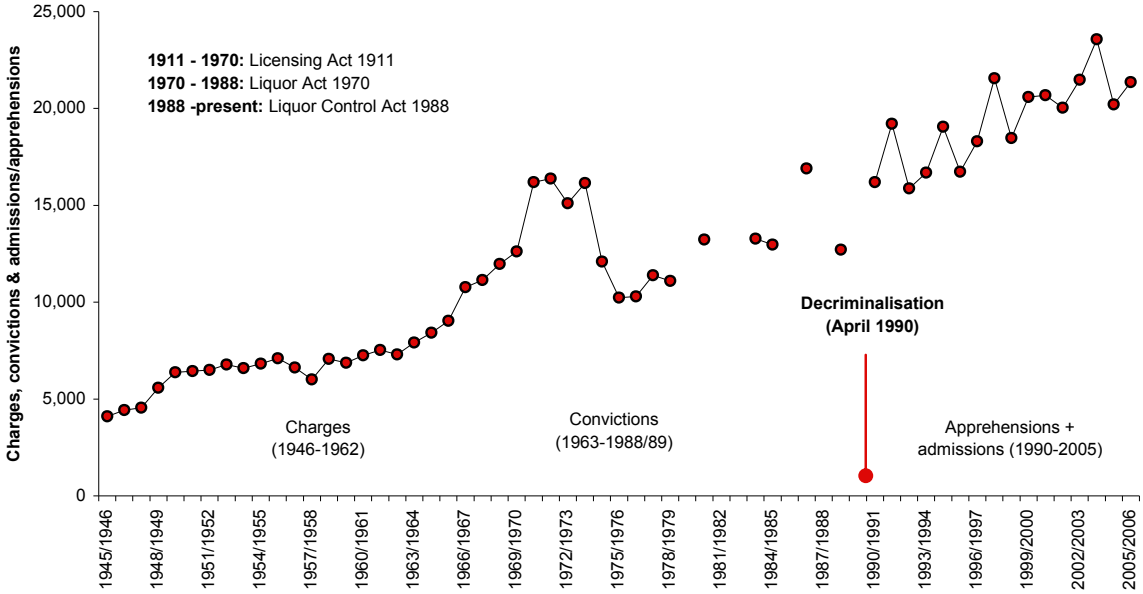


Figure 3:
Rate of charges for public drunkenness, WA, 1900/1901 – 1944/1945

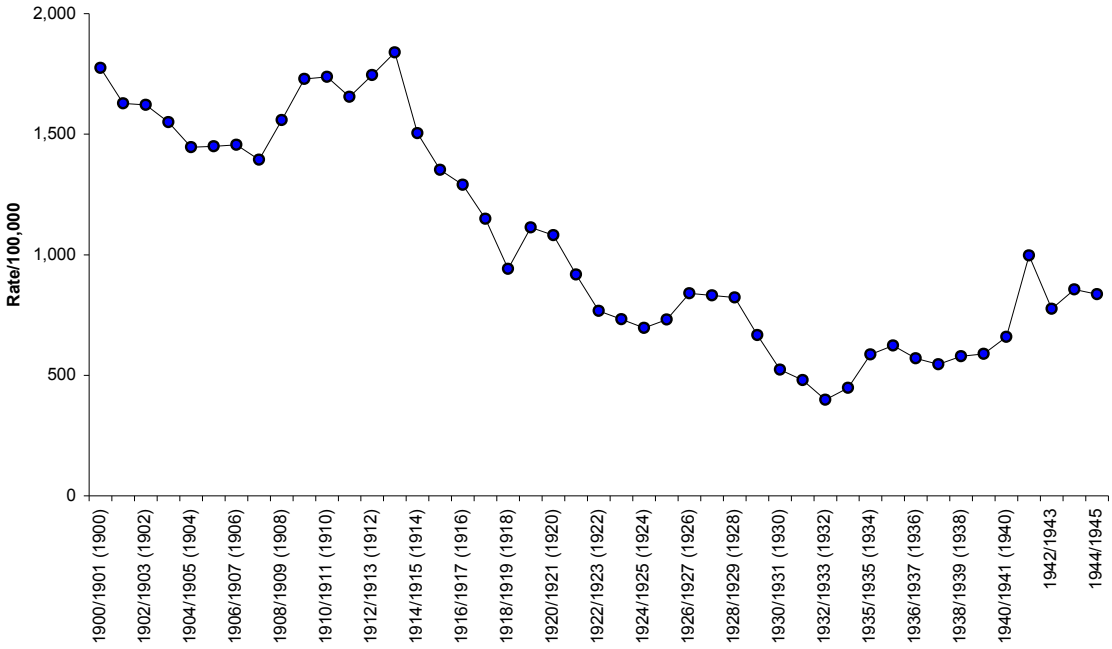


Figure 4:
Rate of charges for public drunkenness, WA, 1945/1946 – 2004/2005

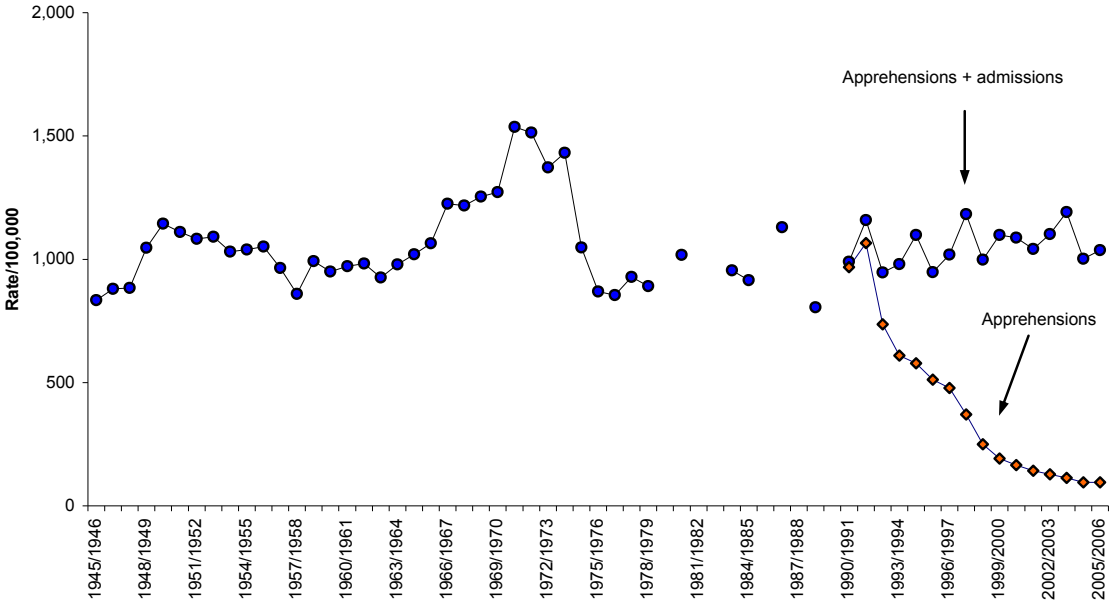


Figure 5:
Proportion (%) of public drunkenness charges of all charges, WA, 1900/1901 – 1987/1988

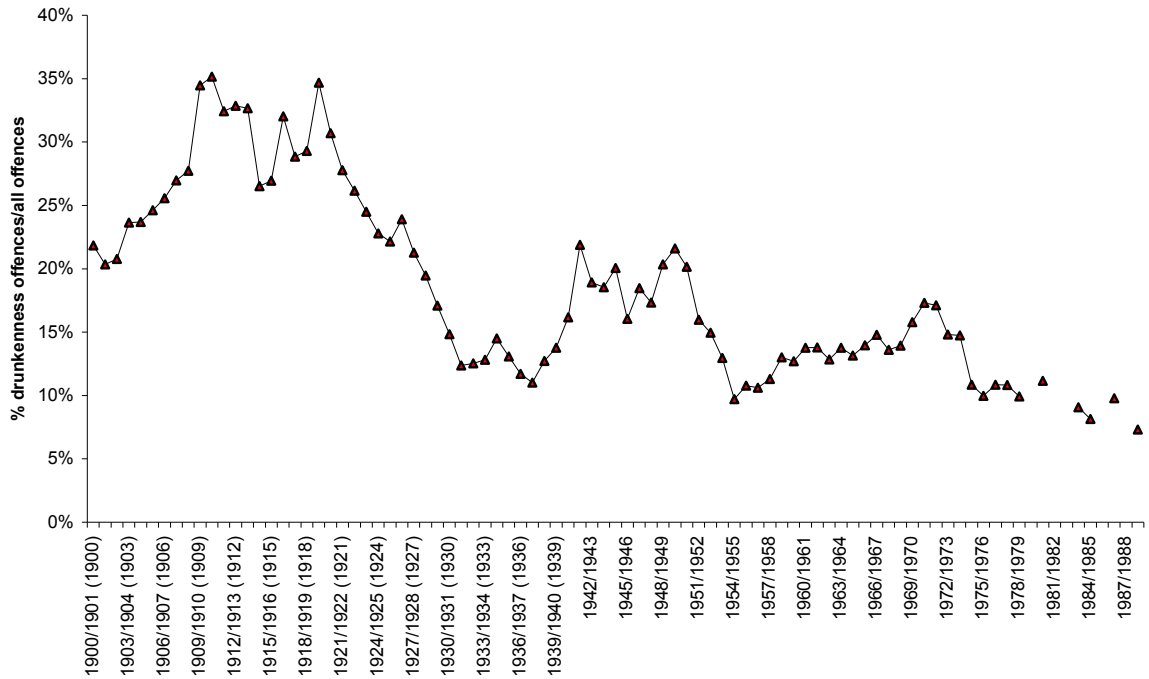
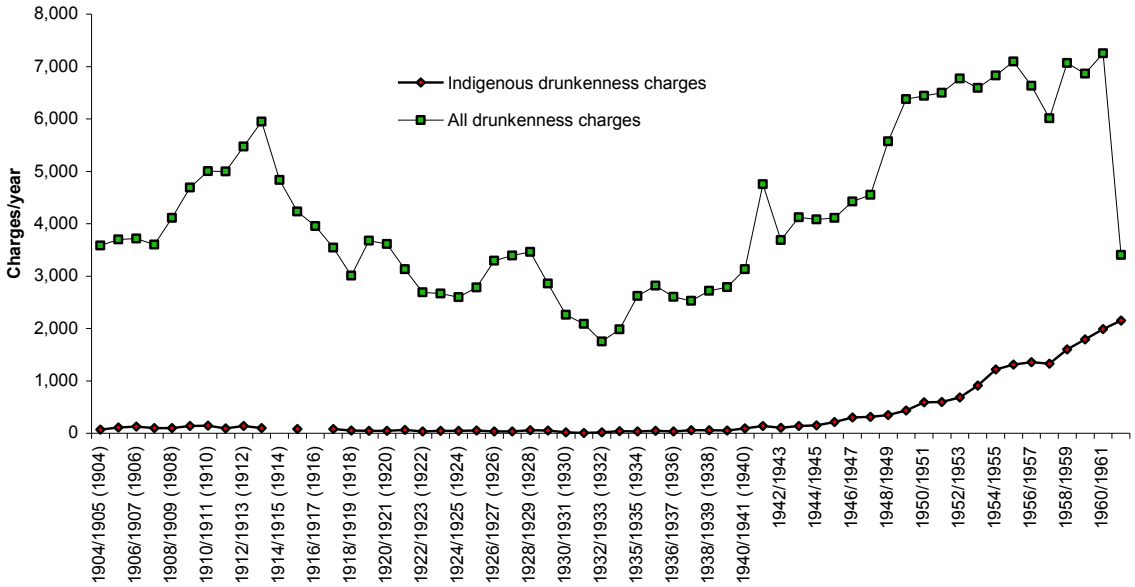


Figure 6:
Counts of charges for public drunkenness by Indigenous status, WA, 1904/1905 – 1961/1962



4. Punishment of drunkenness

In its early colonial years in WA a punishment for failure to pay a fine for public drunkenness was to put an offender in the stocks. The limitations of this method of harsh punishment inherited from the UK was the likelihood offenders could be exposed to harsh climatic conditions with attendant risks to health, such as from being left uncovered in the full sun for some hours.[21]

The passage in 1851 of *An ordinance to provide a more suitable method of inflicting punishment for drunkenness* (14th Vict. No. 25) indicates an appreciation some 22 years after settlement in 1829, that using stocks was no longer a suitable consequence for failure to pay a fine. The ordinance stipulated that a fine of not less than five and not less than twenty shillings was to be imposed on conviction of public drunkenness, in lieu of which an offender would be jailed for a period of up to seven days if it was the first offence and for up to 14 days for subsequent offences.

An account of the proceedings of debate on legislation in the Legislative Council, published in the Perth Gazette of 25 April 1851, includes commentary about punishing those convicted of public drunkenness:

[21] Curiously the use of the stocks to punish drunkards appears to have not been considered in some of the writings about the history of the legal system in WA: Russell E; Nichols PW & Robinson FM (1980). *A history of the law in Western Australia and its development from 1829 to 1979*. Nedlands, WA, University of Western Australian Press.

> 'The Bill to provide a more suitable mode of inflicting punishment for drunkenness was read a second time. Mr Mackie observed that, after 20 years' experience, he did not know of more than two or three cases where the fine was not paid, and the stocks awarded as a punishment. The Governor said such was not the case at Fremantle, the Resident Magistrate having informed him that he could not get delinquents to pay the fine, and had not the power to imprison.
>
> Mr Sansom asked why the stocks could not be used. By having a shed over them the culprits could be defended from the suns' rays. The Governor considered that six hours in the stocks was not sufficient punishment.
>
> Some conversation ensued as to the policy of imprisoning instead of fining, in some cases; and further consideration of the Bill was adjourned to Wednesday, 30th inst., when we believe a clause will be inserted, giving magistrates the option of imprisoning or fining.'

However, the 1851 Ordinance was apparently considered an insufficient deterrent in relation to repeat offenders, as in 1854 a further proclamation was made, *An Ordinance for the more effectual suppression of Drunkenness* (17th Vict. No. 8), which increased the term of imprisonment for habitual offenders, as it provided:

> 'that on conviction for drunkenness before a Justice of the Peace of a person who has been previously convicted of the like offence, it shall be lawful for such Justice to sentence at his discretion the person so repeatedly convicted, to imprisonment, with or without hard labour, at the discretion of the said Justice, for a period not exceeding twenty-one days.'

The well established history of opprobrium which attached to public drunkenness meant managing afflicted individuals was a core role for the police, because of the need to maintain public order and provide a degree of safety for other members of the community using streets, parks and other public places.

As can be seen, public drunkenness was considered from the earliest colonial times as a pervasive significant social problem in WA, with profound and deleterious impacts on the individual drinker, as well as their families and significant others. A particular concern was because Indigenous people consumed alcohol in public places, as they were excluded from public houses and hotels, alcohol *per se* was regarded as being responsible for adverse public order as well as other social and health consequences for this group. (See below for discussion of policies directed at the use of alcohol by Indigenous people.)

The abuse of alcohol by non-Indigenous members of the community, when manifested as public drunkenness, was regarded a public order issue because it resulted in significant negative social and economic impacts in small communities engaged in mining, forestry, pastoral, farming and other productive activities. Although regarded by the community as a major social problem, nevertheless public drunkenness was treated as a minor offence out of the pantheon offences dealt with by the courts. Paradoxically, this meant that public drunkenness for most of the history of WA was one of the most frequent matters dealt with by the Magistrates Courts up to the time when it was decriminalised in WA in April 1990.

As those repeatedly convicted for public drunkenness were imprisoned either on the basis of their status or as fine defaulters, the prison system performed a role of enforced short term periods of detoxification. However, on release from prison this group of offenders cycled

between the criminal justice system, hospital emergency departments and welfare agencies in a similar fashion of a 'revolving door' as other jurisdictions.[22]

The administrators of the prison system were increasingly frustrated with their inability to manage this group, as can be found in comments in annual reports of the difficulties experienced in managing the relatively high proportion of offenders with alcohol related problems in the WA prison system. A shift in community attitudes started to occur in the early 1960s based on an appreciation that prisons should provide a greater rehabilitative compared to punitive function in relation to a range of incarcerated offenders, including those imprisoned for public drunkenness:

> 'The Board desires again to bring to notice the incidence of alcoholism in its relation to the community in general and in particular its effect in the penelogical field. It would direct attention to its comments over a number of years and again stress its conviction for the need for an inter-Departmental investigation and report on the whole question as it affects the State. The Board notes with considerable pleasure the progress being made in the establishment of the new rehabilitation centre at Karnet Brook, where alcoholics will receive specialised treatment under ideal conditions.'
>
> Annual report, Prisons Department, 1 July 1961 to 30 June 1962

The Karnet Rehabilitation Centre was opened in March 1963 and operated as a farm based prison facility for young offenders as well as a separate section for inebriates who had been ordered detention under the *Inebriates Act 1912*. However, due to concerns over a number of years that the inebriates section contained both convicted prisoners and those detained as an inebriate, a separate institution for solely detained inebriates, the Byford Inebriates Centre, was established in April 1972. This was a farm oriented facility which operated as a prison and was the destination for inebriates committed by court orders under the *Convicted Inebriates Rehabilitation Act 1963*, which commenced in July 1966 and had replaced the *Inebriates Act 1912*.[23] The Byford Inebriates Centre was operated by the Department of Corrections until May 1975.

4.1 Statistical overview

Figures 7 and 8 present data extracted from detailed tables in annual reports of the Prisons Department[24] to illustrate the impact of the prison system of those convicted and imprisoned for public drunkenness between 1950/1951 and 1987/1988.

Annual reports covering the years 1971/1972 to 1976/1977 excluded a breakdown of the prison population by Indigenous status. However, the separate counting of Indigenous status

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[22] Pittman DJ & Gordon CW (1958). *Revolving door: A study of the chronic police case inebriate*. New Haven, Connecticut, Yale Center of Alcohol Studies, Lovald K & Stub HR (1968). "The revolving door: reactions of chronic drunkenness offenders to court sanctions." *Journal of Criminal Law, Criminology & Police Science* 59(4): 525-530, Saeta PM & Smiland WM (1970). "Public inebriate health: the legislature and the revolving door." *Pacific Law Journal* 1: 65-96, Fagan RW & Mauss AL (1978-1979). "Padding the revolving door: an initial assessment of the Uniform Alcoholism and Intoxication Treatment Act in practice." *Social Problems* 26: 232-246.

[23] The *Inebriates Act 1912* was repealed by the *Mental Health Act 1962*.

[24] There have been a number of changes in name: Goals Department (1 January 1890 to 31 December 1946), Prisons Department (1 January 1947 to 31 December 1970), Department of Corrections (1 January 1971 to 31 July 1982), Prisons Department (1 August 1982 to 2 April 1987), Department of Corrective Services (3 April 1987 to 31 December 1992), Ministry of Justice (1 January 1993 to 30 June 2001), Department of Justice (1 July 2001 to 31 January 2006) and Department of Corrective Services (1 February 2006 to present).

was restored in annual reports from 1977/1978, to enumerate Indigenous incarceration, as Indigenous people were over-represented in the prison system.

Figure 7 is concerned with the issue as to the extent to which management of public drunkenness was assumed by the correctional system and confirms in the early 1950s about 40 per cent of all commitments were as a result of a conviction for public drunkenness. The proportion of public drunkenness commitments declined to about 25% up 1970/1971 and except for a subsequent spike to 35% in the following year, by the late 1970s commitments for public drunkenness had fallen to just 5%.

However, a somewhat different situation existed in relation to Indigenous commitments, as it can be seen in Figure 8 that from 1950/1951 to 1970/1971 about half of all Indigenous commitments were due to a conviction of public drunkenness. Over the period from the 1970s up to 1987/1988 the proportion of commitments due to public drunkenness, declined to just under 10% by the end of the period.

A notable trend over the period is a marked growth in the annual number of total commitments of Indigenous people, increasing from 504 in 1950/1951 to 7,913 in 1987/1988. When expressed as a proportion of all commitments, the representation of Indigenous people in the prison system in WA increased - from 14.2% of the total of 3,548 commitments in 1950/1951 to 7,913 (35.1%) of the total of 22,562 commitments in 1987/1988.

Figure 7:
All commitments to prisons – all offences & % drunkenness offences, WA, 1950/1951 – 1987/1988

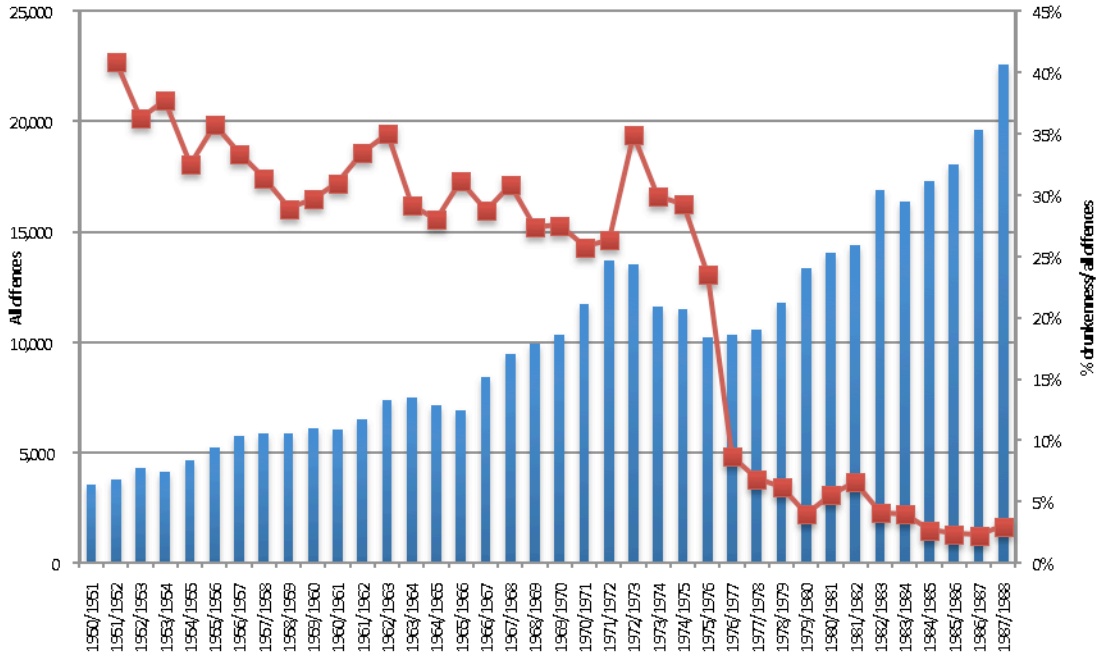
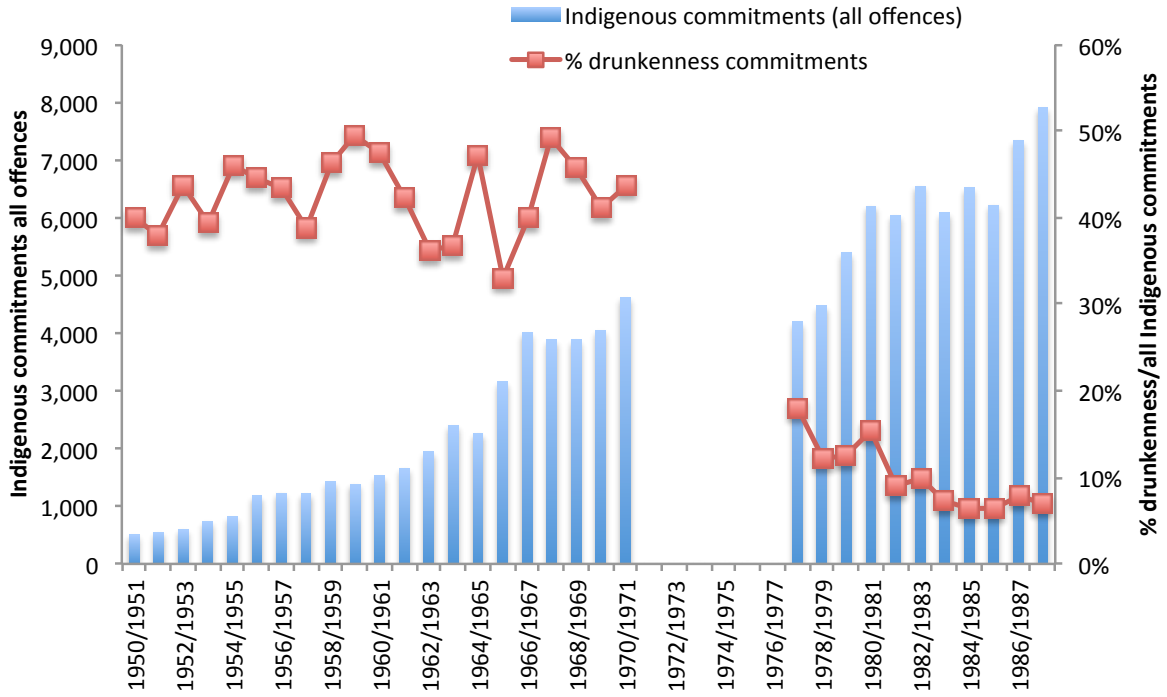


Figure 8:
Indigenous commitments to prisons – all offences & % drunkenness offences, WA, 1950/1951 – 1987/1988



5. Civil commitment

There have been a number of identifiable eras for managing public drunkenness, in addition to the *Police Act 1892* which established public drunkenness as a public order issue. The acknowledgement that the reliance on a law and order response meant that habitual drunkards (ie repeat offenders) cycled in and out of prisons and often had a life of destitution and hopelessness. This problem of the "revolving door" resulted in the use of considerable resources on the part of the police, the courts, hospital emergency departments and welfare organisations.

There was also group of alcohol abusers, who whilst they did not come to official attention due to a public order issue, could be detained in an "asylum" by court order under the *Lunacy Act 1903* as an "inebriate" between January 1904 and December 1912 and subsequently between December 1912 and June 1966 under the *Inebriates Act 1912*, following the repeal of Part IV of the *Lunacy Act 1903* in 1912.

After the introduction of the *Inebriates Act 1912*, inebriates could be placed under a court order in one of the small number of "inebriates homes" which received government funding that were run between 1920 and 1930 by the Salvation Army in Perth. After the closure of the woman's inebriate home in early 1930, an inebriate under a court order could only be confined in one of the public psychiatric hospitals, such as Claremont Asylum. Admission in this fashion resulted in the person being declared insane under the *Lunacy Act 1903*.

An amendment in November 1927 to the *Mental Treatment Act 1917*, provided a different avenue for those with a mental disorder to be admitted to a psychiatric hospital and thereby avoid the stigma of being declared insane under the mental health legislation. This legislation encompassed inebriates, as at that time "intemperance" was also regarded as a mental

disorder and meant a number of hospitals (eg Greenplace and Heathcote Reception Home), as well as wards in public general hospitals, were proclaimed to receive and treat such individuals. This meant in effect there was a two tier inpatient mental health system in WA for treating those with mental disorders - Claremont Asylum for those declared insane and which operated under a rigorous custodial system that restrained people and those not declared to be insane and treated in facilities under the *Mental Treatment Act 1927*, which were not operated per se as lock up facilities.

The *Mental Treatment Act 1917* had originally been passed 1971 to specifically ensure soldiers who had returned from the First World War and required psychiatric treatment for "mental disorders arising from wounds, shock and other causes" were hospitalised separately from those declared to be "insane". A separate facility, Stromness in Cottesloe, was established in 1917 by the Commonwealth and transferred to the WA Government in 1919 to exclusively treat ex-servicemen. In 1927 Stromness ceased to function for this purpose and patients were transferred to the purpose built Lemnos Hospital for Soldiers in Shenton Park.

5.1 First era: 1904 - 1966

The first era, covered the period from 1904 until the mid 1960s and involved an application by either a person themself or close relatives of a person, for them to be declared a habitual drunkard and committed to a psychiatric facility for treatment. The first piece of legislation which applied to inebriates was the *Lunacy Act 1903* which operated from January 1904 until it was replaced in December 1912 by the *Inebriates Act 1912*. This meant that between 1904 and 1962 alcohol, as well as other drug abusers, could be committed under a court order to a facility that operated under with the Lunacy Act or the Mental Treatment Act. The *Lunacy Act 1903*, which commenced in January 1904, provided in Section 26, for an order to be obtained:

> ***Section 26: Application for detention may be made***
> APPLICATION may be made to a Judge for an order of Application for detention by the following persons and in the following cases:-
>
> (1) By the habitual drunkard himself declaring that he is willing to submit to curative treatment under the order or the Court; or
>
> (2) By the parent, husband, wife, child, or friend of such habitual drunkard, in cases-
>
> (a) Where such person is suffering or has been recently suffering from delirium tremens or other dangerous physical effects or habitual drunkenness; or
> (b) Where such person, through habitual drunkenness, has recently been wasting his means and been neglecting his business or insufficiently providing for his family, or a wife has been wasting the means of her husband; or
> (c) Where such person has recently, under the influence of drink, used or threatened violence towards himself or any member or his family.

An order from a judge was a preliminary step, as the legislation stipulated that the person was to be first examined by two medical practitioners, whose advice would determine whether to order commitment for up to 12 months. It should be noted there was some concern that a "habitual drunkard", even though detained in an asylum or other psychiatric facility, was not to be regarded as mentally ill, as a habitual drunkard was, if confined to

> 'any hospital for the insane, (to be kept) in a ward, division, or compartment thereof in which lunatics are not detained for curative treatment, or in a licensed house in which habitual drunkards only are received … until rescinded by a Judge' (Section 27)

However, whilst a farm based residential psychiatric facility, Whitby Falls, had been

gazetted under the *Lunacy Act 1903*, its designated inebriates section closed in July 1918 following mounting complaints about the suitability of generally treating such individuals in the mental health system:

> 'The average number of inebriate patients under treatment at Claremont during the year was 5, at Whitby 12 and Greenplace 7. 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 felt myself in an awkward position, as neither the Act nor Regulations vest me with the power to enforce the necessary discipline.'
>
> Annual Report of Inspector General of the Insane, year ended 30 June 1918
>
> 'As provisions of the Inebriates Act were found in practice to be inadequate in many respects to deal successfully with those persons committed under Sections 7 and 8 – who could not be compelled to undergo medical treatment, and who in most instances refused to accept any treatment – it was decided in July, 1918 to close Whitby for this class of patient. Patients committed under the sections referred to invariably regarded their incarceration as a period of rest, refused to do any work, and at release were at liberty but a short while before being recommitted. The fact of their being sent to an institution like Whitby did not in my opinion act in any way as a deterrent.'
>
> Annual Report of Inspector General of the Insane, year ended 30 June 1919

This meant that after mid 1918 inebriates were admitted under an order to Claremont Asylum or otherwise to one of the inebriates homes, depending on whether the facility was operated under the lunacy legislation or under the Mental Treatment Act legislation. However, as the inebriates homes did not have a lock up capability, this option did not always prove acceptable to family members or Magistrates and meant that inebriates could be admitted to the Claremont Asylum when all other options had failed. The *Inebriates Act 1912*, which commenced in December 1912, remained in operation until it was repealed by the *Mental Health Act 1962* – which did not commence until July 1966.

It would seem that there was an inflated and optimistic expectation that the State would be able to establish a system for treating "inebriates", as the legislation included the creation of the position of Inspector General of Institutions for Inebriates, the licensing of facilities operated by charities etc. The key provision, in Section 6 of the Act, meant a medical practitioner could certify that an individual was an "inebriate" and be committed for a period of up to 12 months in an approved institution:

> 6. (1) It shall be lawful for a Judge or a Magistrate, on the application of -
>
> (a) an inebriate, or any person authorised in writing in that behalf by an inebriate; or
>
> (b) the husband, or wife, or a parent, or a brother, sister, son, or daughter of full age, or a partner in business of an inebriate; or
>
> (c) a member of the police force of or above the rank of sub-inspector acting on the request of a duly qualified medical practitioner in professional attendance on the inebriate, or on the request of a relative of the inebriate, or at the instance of a justice, and on proof to the satisfaction of the Judge or Magistrate, that the person in respect of whom the application is made is an inebriate, to order that the inebriate be placed in an institution for such period not exceeding twelve months, as may be mentioned in the order:

There was a further provision contained in Section 7, which meant that an individual convicted of an offence where drunkenness was an element or contributing cause of the offence, that a court could remand the offender for a Section 6 assessment:

> 7. (1) Where a person is convicted summarily or on indictment of an offence, and drunkenness is an element, or was a contributing cause of such offence, and on inquiry it appears that the offender is an inebriate, the Court may, in its discretion, order the offender to be placed, for a period of not exceeding twelve months, in an institution established for the reception of convicted inebriates:
>
> Provided that such order shall only be made on the production of such certificate and on such evidence and inspection as in the case of an order made under section six.

5.2 Second era: 1966 - 1974

The second era, from 1966 to 1974, was established by the *Convicted Inebriates' Rehabilitation Act 1963* (CIRA). This legislation commenced in July 1966 and meant someone who had committed a summary offence, where drunkenness was an 'element or contributory cause' of their offence, could be declared a 'convicted inebriate' by a court and imprisoned. This era of coerced rehabilitation within the prison system, overseen by the Convicted Inebriates Board, meant a convicted inebriate could be sentenced for a term of up to twelve months at Karnet prison farm, where an Inebriates Section was established.

The CIRA replicated a key provision that had existed in the previous legislation since 1912, which was triggered if an offender had been convicted of an offence where alcohol was a contributing or causative factor. Although the CIRA era did not entirely supplant the option of committal via the *Mental Health Act 1962*, committal on the grounds of suffering from a mental illness nevertheless was available on a limited basis as a vehicle to achieve either voluntary or involuntary detention in a psychiatric hospital.

However, following the reforms from the mid 1960s for deinstitutionalisation and the establishment of community based mental health care in preference to hospitalisation, this also resulted in major changes for managing dependence on alcohol and other drugs outside of the institutional framework that had operated since 1904.

By the 1970s there was a consensus by mental health professionals that alcoholism and drug dependence were not mental illnesses and accordingly treatment for dependent individuals should be undertaken through specialised detoxification and treatment services, which were either attached to a general hospital or by a stand alone agency, involving multi-disciplinary approaches.

> 'Like drug dependency, alcoholism is a community social problem, and cannot be considered solely on a medical basis. The cooperation between medical, social, legal, correction, voluntary and research agencies.'[25]

5.3 Third era: 1974 - 1990

The third era, from November 1974 to early 1990, occurred after the passage of the *Alcohol and Drug Authority Act 1974*, which abolished the Convicted Inebriates Board and the establishment of the WA Alcohol and Drug Authority (ADA). The reform resulted in the creation of a health oriented system for alcohol dependent persons to voluntarily attend specialist inpatient and

[25] Ellis AS (1984). *Eloquent testimony: The story of the mental health services in Western Australia 1830-1975*. Perth, WA, University of Western Australia Press., 169.

outpatient facilities operated by the ADA and a number of non government organisations (NGOs) that were substantially funded by government.

At the time of its commencement in November 1974 the ADA did not operate any treatment facilities, but by the beginning of 1975 had established key treatment programs in leased buildings in West Perth; Carrellis Centre, an outpatient assessment and treatment facility and in the adjoining building a short term rehabilitation facility for alcohol dependents, Ord Street Hospital.

In July 1975 the former Byford Inebriates Centre was transferred to the ADA, which it transformed into Quo Vadis Hospital, to provide a longer stay residential rehabilitation facility for detoxified alcohol dependents. Quo Vadis Hospital was closed in mid 1984 and its patients transferred to a residential program operated by the Salvation Army.

In February 1977 the ADA opened a special purpose renovated inpatient facility, Aston Hospital in West Perth, which provided a medical oriented service to detoxify ("dry out") adults dependent on either alcohol or other drugs. The ADA's West Perth based treatment facilities were over a number of years were amalgamated and relocated to other parts of the Perth metropolitan area.

In June 1982 the Authority's methadone clinic was relocated to William Street Clinic in the Northbridge (Perth) area. Aston Hospital was relocated to a purpose built facility, the Central Drug Unit, in East Perth in May 1986 and both the alcohol related assessment and short stay programs were amalgamated into one facility, with the relocation of Carrellis Centre to a refurbished former small hospital in Mount Lawley in March 1986. This service was specifically designated as to only provide services to those with licit drug related problems as a result of strong opposition by residents in the area to illicit drug users attending the facility for treatment. In June 1991 the licit drug residential detoxification program was relocated from the Mount Lawley site and incorporated into the Central Drug Unit into East Perth. In April 1999 the Central Drug Unit was renamed Next Step Specialist Drug and Alcohol Services.

It should be noted that whilst alcohol dependent persons were no longer admitted to a psychiatric facility for detoxification and as public drunkenness remained an offence, the criminal justice system continued to be a destination for those who were arrested for public drunkenness. Of particular interest, post November 1974 is:

- the extent to which the treatment system that subsequently evolved was an improved and effective method for voluntarily managing chronic public inebriates previously dealt with by the prisons system under the CIRA between 1963 and 1974 or
- whether in the alternative, the prison system again became a destination for those convicted of public drunkenness.

5.4 Fourth era: 1990 - present

The fourth era commenced in April 1990 following the repeal of the CIRA and the passing of the *Detention of Drunken Persons Act 1989*.

Although the power to obtain a court order to sentence an inebriate under the CIRA was transferred in 1974 to the Director of the ADA, this power was apparently never used and was also repealed in November 1989. The decriminalisation of public drunkenness in April 1990 was a recommendation of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). This reform was a key determinant of change in managing Indigenous people with alcohol related problems in WA, as it resulted in the establishment of sobering up centres (SUCs). The

existence of SUCs mean that police operating in the centre's catchment area have an alternative to lockups as a place to provide short term protective care of alcohol intoxicated people.

Up until early 1990, from the preliminary data obtained so far, it would appear that the treatment system established and provided by the WAADA and the relatively small number of NGOs after 1974 had been accessed rarely, if at all, by Indigenous people. It was not until after the decriminalisation of drunkenness in 1990 and the establishment of SUCs over a number of the following years, the majority of which are based in the North West of the State, that Indigenous people began utilising this service which specifically targets those affected by alcohol.

5.5 Statistical overview

The data in Figures 9 and 10 provide partial information to determine the possible impact from the establishment and expansion of specialised drug and alcohol services in WA since the formation of the ADA in 1974. Surprisingly, the agency seems to have invested few resources in establishing data systems to determine utilisation of services, compared to Mental Health Services which at the same time had over a number of years developed both inpatient and outpatient treatment data systems.

As the agency has ceased to the routine publication of data on utilisation of its services, data for the 2007/2008 year onwards is from the annual series published by the Australian Institute of Health and Welfare (AIHW). The AIHW reports are designed to provide general high level jurisdictional level summary data with limited detail for each jurisdiction published as the annual reports of alcohol and other drug treatment services, from the National Minimum Data System (NMDS).

The data covering the period from 1974 to 2004 contains a number of gaps and is based on different measures over the period – of annual counts of new admissions to ADA programs from November 1974 to 1982/1983, new admissions to ADA programs from 1988 to 1997, annual counts of all episodes at all programs in WA operated by the WAADA or NGOs funded by the WAADA from 1999 to 2006 recorded by the PICASO data system operated by the ADA and from 2007/2008 from the NMDS operated by the AIHW.

Figure 9:
Annual admissions/episodes for all causes & alcohol admissions/episodes to treatment services, WA, 1974 – 2006

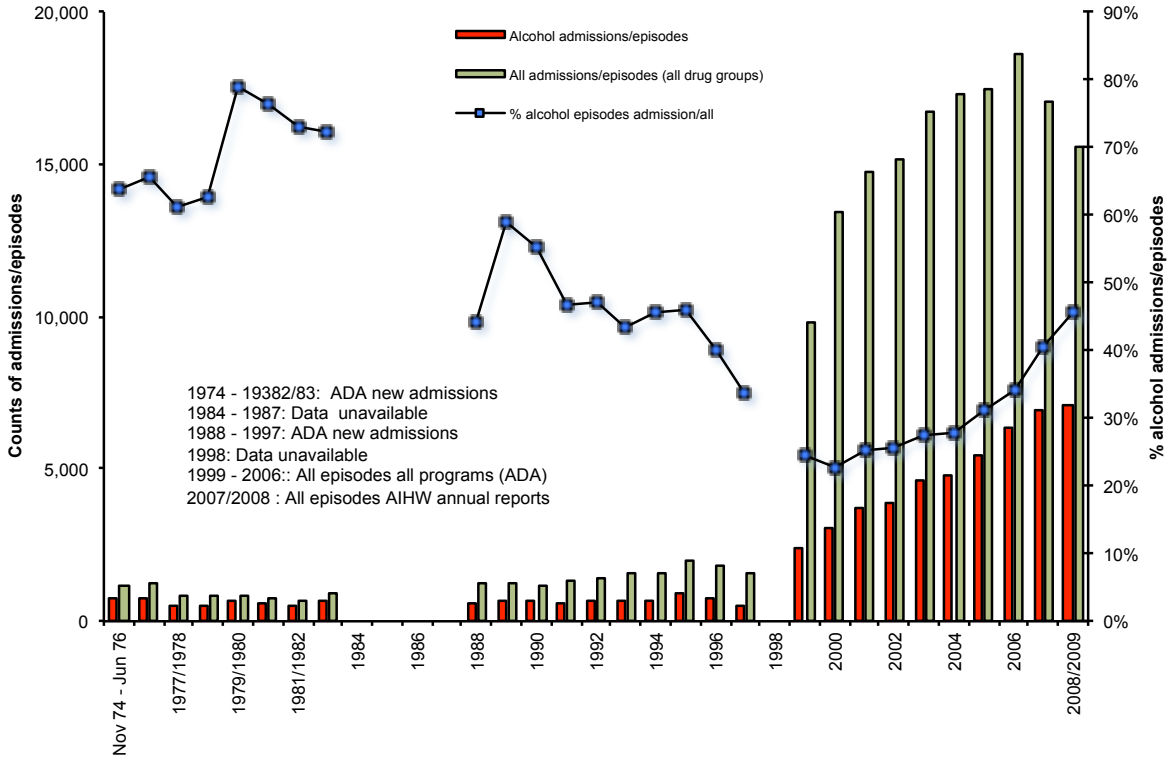


Figure 9 suggests that in the mid 1970s, when the ADA commenced and developed a combination of assessment and outpatient services, short term inpatient detoxification, a short term residential program and a longer term "therapeutic community" oriented program at Quo Vadis Hospital at Byford (the former inebriates centre operated by the Prisons Department), that about three quarters of admissions involved those with an alcohol related problem.

The proportion of annual alcohol related admissions of all admissions declined to about one fifth by 2000 and has since has apparently increased, to just under half of all admissions in 2008/2009.

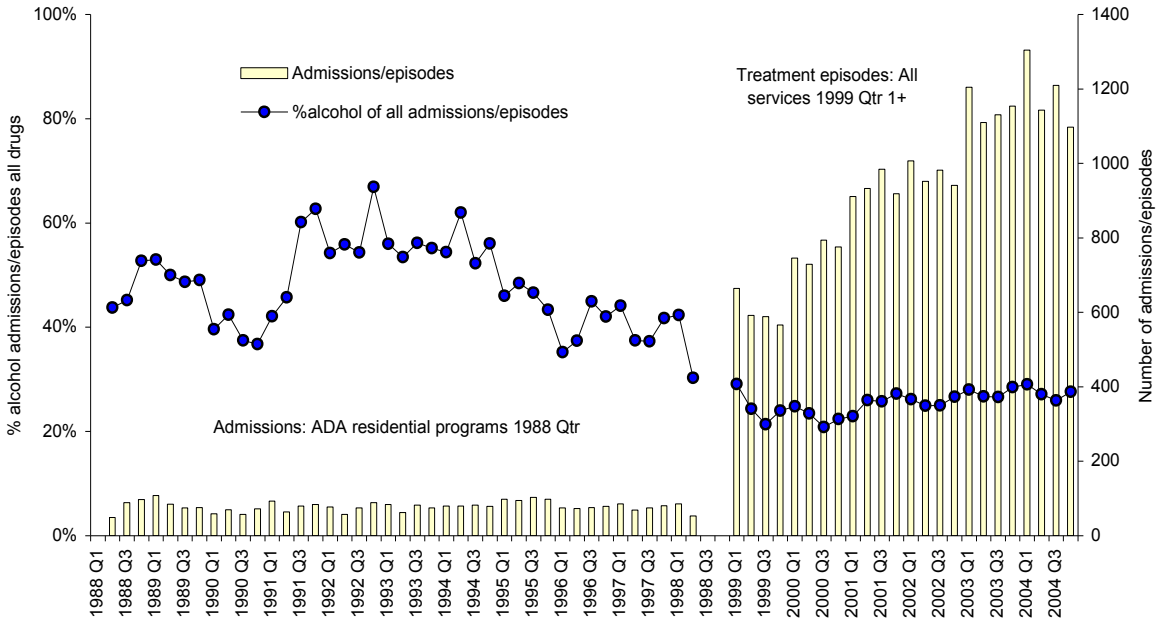
Figure 10 provides a quarterly count of episodes at treatment services covering the period from the March quarter 1988 to December quarter 2004. The period up to the June quarter 1998 refers to counts of all episodes to WAADA residential programs, whereas the period from the March quarter 1999 is a count of all treatment episodes at all treatment programs.

This data indicates that at WAADA programs the proportion of alcohol related episodes was at around 40%, whereas with the inclusion of data for all treatment services from the beginning of 1999, overall about 20% of episodes in the drug and alcohol specialist treatment system were alcohol related. However, it should be noted that this data does not include counts of attendances at SUCs, which are prima facie alcohol related, as only individuals who are alcohol intoxicated are admitted.

For example, in the December quarter 2004 there was a total of 3,971 episodes at all treatment

services in WA, of which 1,097 (27.6%) involved alcohol as the principal problem. In the same quarter there was a total of 4,533 attendances at SUCs, which when combined alcohol attendances at all other treatment agencies recorded by the AIHW, resulted in a total of 5,630 alcohol related attendances – which meant out of the total of 8,504 attendances/episodes (ie 3,971 + 4,533), almost two thirds (66.2%) were principally concerned with the management of those who have a principal problem involving alcohol abuse.

Figure 10:
Quarterly admissions/episodes & alcohol admissions/episodes to treatment services, WA, 1988 - 2004



6. Liquor licensing

A number of the provisions that were integral parts of the State's first major piece of legislation, the *Licensing Act 1911*, but subsequently became redundant, have recently been resurrected. Key features of earlier measures, such as prohibition orders, which were designed to exclude inebriates from licensed premises, have been reintroduced with the expectation they will manage anti-social behaviour occurring at licensed premises.

Another feature of the *Licensing Act 1911* was the adoption of voting through prohibition and local option polls to reduce liquor licenses,[26] for citizens to sign petitions for increases in licenses, the establishment of a small number of State-owned hotels and the granting of wide discretionary powers to Licensing Courts to curb the availability of alcohol. Over recent years there has again been growing interest in establishing mechanisms for facilitating greater input

[26] In WA two local option polls were conducted – in April 1911 and in April 1921, which were replaced by a new provision in the Licensing Act 1911, for the holding of State-wide prohibition polls – in April 1925 and December 1950. The 1921 local option poll resulted in a limited reduction in the number licenses in a small number of districts which had achieved a majority vote for license reduction. In 1922 the Licensing Act was amended for state-wide polls to be conducted – arguably to make it particularly difficult to reduce licenses compared to if voting was based on separate electoral districts and not aggregated for the whole State.

into licensing decisions from the community, interest groups and local government to more directly influence decisions to renew, revoke or issue liquor licenses.

6.1 Prohibition orders

The *Licensing Act 1911*, which commenced in April 1911, provided in Section 128 that an order could be issued which prohibited an inebriate from being supplied with or receiving alcohol.

Whilst the option of a prohibition order being granted remained in the *Liquor Act 1970* (which repealed the *Licensing Act 1911*), it is believed that the provision fell into disuse well before its eventual repeal in 1988, with the passage of the *Liquor Licensing Act 1988,* which did not commence until July 1992.

As can be seen in Section 128, the legislation provided a fine of five pounds (ie $10) – which was well above the fine of one pound (ie $2) for someone convicted of public drunkenness. A similar penalty also applied to the licenses of licensed premises if they supplied alcohol to a prohibited person. There was also an offence (Section 129), which made it an offence for someone to procure alcohol for an inebriate.

Section 128: Justices may prohibit supply of liquor to inebriates
(1) Upon proof being given to the satisfaction of any two justices of the peace that an person, by excessive drinking of liquor, is likely to impoverish himself to such a degree as to expose himself or his family, to want, or to seriously impair his health, such Justices may order that no licensee shall sell or, supply such inebriate ,with any liquor for not exceeding the space of one year.

(2) Any two justices of the, peace may in like manner renew such order from time to time as to
all such persons as have not, in their, opinion reformed.

(3) No licensee, after notice of such prohibition, shall sell or deliver to any such inebriate any liquor.
Penalty: Five pounds.

(4) No person so prohibited as aforesaid shall loiter about or enter any licensed premises for the purposes of obtaining liquor.
Penalty: Five pounds, or imprisonment for seven days.

(5) An order made under this section maybe revoked by any two justices of the peace.

(6) All proceedings. under subsection (1) of this Section shall be heard in camera.

The provision in Section 146 of the *Liquor Licensing Act 1988* for prohibition orders closely resembles the repealed provision in the *Licensing Act 1911*.

Section 146: Prohibition of supply of liquor to inebriates
146. (1) Upon proof being given to the satisfaction of justices that a person, by reason of excessive drinking, is likely to impoverish himself to such an extent as to expose himself or his family to want, or seriously to impair his health, the justices may order that a licensee or other person is not to sell or supply liquor to that person, for any period not exceeding one year from making of the order.

(2) Justices may, for cause shown, extend or revoke an order made under subsection (1) of this section.

(3) All proceedings commenced under this section shall be heard and determined in camera.

(4) Where justices have, in exercise of the powers conferred on them by this section, prohibited the sale or supply of liquor to a person, a person having knowledge of the prohibition shall not sell, supply, give, purchase or procure liquor for, or on behalf of, the person to whom the prohibition relates.
Penalty - Forty dollars.

However, prohibition orders were restored to the *Liquor Control Act 1988.* The *Liquor Licensing Act 1988* had been renamed in 2006, as a result of the *Liquor and Gaming Legislation Amendment Act 2006*, which commenced 13 December 2006.

However, compared to the earlier approach of prohibition orders, which had an underlying purpose to deny access to alcohol as means to prevent the person harming themselves, by comparison the 2006 provision had an explicit law and order objective. In Part 5A the *Liquor Control Act 1988* sets out the elements of prohibition orders, which can be sought by the Commissioner for Police on very broad grounds and are issued by the Director of Liquor Licensing. The penalty for contravention of the terms of a prohibition order is a fine of $10,000. Key sections of Part 5A are reproduced below.

152B. Commissioner of Police may apply for prohibition orders
The Commissioner of Police may apply in writing to the Director in a form approved by the Director for an order to be made in respect of a person that —
(a) prohibits the relevant person from being employed by a licensee at specified licensed premises, licensed premises of a specified class or any licensed premises;
or
(b) prohibits the relevant person from entering specified licensed premises, licensed premises of a specified class or any licensed premises.

152C. Evidence in support of application
(1) An application under section 152B is to —
(a) set out the reasons why the Commissioner of Police considers a prohibition order should be made in respect of the relevant person; and
(b) set out any other information and be accompanied by any document that the Commissioner of Police considers relevant to the application.
(2) Without limiting subsection (1), the Commissioner of Police is authorised to include in or with the application —
(a) details of any criminal convictions of the relevant person for offences under the law of the Commonwealth or a State or Territory; and
(b) any information that the Commissioner of Police has regarding any involvement, or suspected involvement, of the relevant person in serious and organised crime.

7. Indigenous people and alcohol

The use of alcohol by Indigenous people had been was a matter of concern from the earliest years of the colony. For instance, *An Ordinance for the better observance of the Lord's Day, and the more effectual prevention of Drunkenness* (18th Vict No. 11, 1855) included -

II. THAT if any licensed person shall sell, give, or deliver to any Aboriginal native of this colony, any quantity whatever of spirituous or fermented liquor, whether for the use of such native, or that of any other person, he shall, upon conviction thereof before any one or more Justices of the Peace, forfeit and pay a sum not exceeding £5 sterling.

A more far reaching approach to controlling the use of alcohol by indigenous people evolved through a combination of provisions in the *Police Act 1892*, which focussed on public order consequences of alcohol use, the inclusion of Indigenous alcohol-specific provisions in liquor licensing laws and by making regulation of alcohol a cognate part of the apartheid-like system of controls contained in the *Aborigines Act 1905* and subsequent pieces of "native welfare" legislation.

The *Aborigines Act 1905* was renamed the *Native Administration Act in 1936*, which in turn was renamed the *Native Welfare Act in 1954*, which was repealed and re-enacted as the *Native Welfare Act 1963*. The repeal in June 1972 of the *Native Welfare Act 1963* was linked to the absorption of the functions of two formerly separate organisations, the Native Welfare Department and the Child Welfare Department into a single organisation, the Department of Community Welfare, in June 1972.

The use of term "apartheid" is not intended to be used in a superficial and glib manner, but as a considered response based on the complex system of discriminatory laws that existed in WA from the beginning of the twentieth century up until the early 1970s, which created the separate provision of health, education and welfare services to the Indigenous population, apart from the remainder of the community. In addition to the complex structure of administrative controls established through the native welfare legislation, separate hospitals for Indigenous people existed in a number of the regional areas of the State, as also occurred in relation to schooling for Indigenous children, which was not provided for some years through the mainstream education system.

This system of apartheid-like controls in the various native welfare acts specifically acted to confine and circumscribe the rights and freedoms of Indigenous people in the State. The system of restrictions were multi-layered, covering matters such as permission to marry, consorting offences in relation to intimate relationships between Indigenous and non-Indigenous males and females, delineating a wide range of areas by proclamation from which Indigenous people could be excluded unless they had a permit and the granting of citizenship certificates (which could be revoked) for Indigenous people to be exempt from the oppressive native welfare legislation. It should be noted that "Certificates of citizenship" could be revoked at any time as they were conditional on observance of acceptable standards of conduct and also required the holder to renounce ties with traditional Indigenous practices and lifestyles.

A further layer of legislative and administrative control over Indigenous people, with respect to access to and use of alcohol, existed in the various iterations of the State's system of liquor licensing laws, extending from the *Licensing Act 1911*, the *Liquor Act 1970* and up to the *Liquor Licensing Act 1988*.

7.1 Licensing acts

When originally passed the *Licensing Act 1911* set out in Section 118 that it was an offence for any person to "sell, supply or give" any alcohol to an "aboriginal native", the penalty for which was a fine of one hundred pounds or imprisonment for six months, or both. This offence was expanded by amendment in 1923 and renumbered as Section 150, to make it an offence to "solicit or receive from an aboriginal native an order for the supply or delivery of alcohol".

The *Licensing Act 1911* was repealed and Section 150 was re-enacted as Section 130 in the *Liquor Act 1970*, continuing the same provisions and penalties related to the prohibition of the sale or supply of or receival of alcohol by Indigenous people. It is worth reproducing Section 130 of the *Liquor Act 1970*, given it was a long standing provision which targeted Indigenous people for the past six decades:

Section 130: Supply of liquor to natives in proclaimed areas
130. (1) A person who, whether the holder of a licence or not, sells, supplies or gives liquor, either alone or mixed with any other liquid, to any native to whom this section applies, for the native or for any other person, or solicits or receives from any such native an order for the supply or delivery of liquor, commits an offence.

Penalty - Two hundred dollars, or imprisonment for six months, or both.

Another key provision contained in the licensing legislation was a system of proclaimed areas, which had been added as an amendment to Section 150 of the *Licensing Act 1911* and commenced in July 1965. The 1965 amendment meant that the blanket prohibition on Indigenous people receiving or obtaining alcohol could be varied, depending on where they lived. The Governor was able to issue an proclamation to "declare any portion or portions of the State to be an area or areas for the purposes of this section and thereupon the provisions of this section shall apply to each area so proclaimed."

Two proclamation were made. The first was that from 1 July 1964 all areas of the State outside the South West Land Division were still subject to the general prohibition in Section 150 (Government Gazette, 26 June 1964, 2526). The second was that from 1 November 1996 (Government Gazette, 28 October 1966, 2811) the following areas in the State were still subject to Section 150-

(a) each of the municipal districts of the towns of Kalgoorlie and Boulder;
(b) each of the municipal districts of the shires of Broome, Coolgardie, Dundas, Esperance, Halls Creek, Kalgoorlie, Laverton, Leonora, Menzies, West Kimberley, Wiluna and Wyndham-East Kimberley;
(c) so much of the municipal district of the shire of Marble Bar as is situate east of the route of No. 1 Rabbit Proof Fence; and
(d) so much of the municipal district of the shire of Nullagine as is situate east of the route of No. 1 Rabbit Proof Fence,

In November 1972 Section 130 of the *Liquor Act 1970* was repealed. This marks the date from when Indigenous people where ostensibly able to access and use alcohol under the same provisions as applied to all other West Australians.

7.2 Native welfare acts

Section 45 of the *Aborigines Act 1905* created an offence to supply alcohol to aborigines, which was expansive in its description of elements of the offence as compared to the *Licensing Act 1911*, as it referred to selling, supplying or giving to "any aboriginal or half caste". It also referred to "any fermented, spirituous or other intoxicating liquor, in any quantity whatsoever, either alone or mixed with any other substance, or any opium". The penalty was a fine of 20 pounds.

Although it may be a hypothetical question, it is arguable that this provision would have encompassed the consumption of Indigenous customary fermented or intoxicating substances.

'It is a surprise to some people to realise that in the past, some Aboriginal groups were making and drinking their own, Indigenous, fermented drinks. It is usually taken for granted that Indigenous Australians had NOT tasted any alcohol before the white man's poison arrived from overseas. Australia has been described as the world's only 'dry' continent. This is often used as an explanation for present-day troubles with alcohol abuse – the idea that people were not familiar with alcohol and with the effects that has on peoples' moods and behaviour. Some use this argument to back up the idea that because there was no alcohol before, Aboriginal people must have some biological 'weakness' that makes them more

vulnerable to its effects, and to addiction itself." [27]

An amendment made in 1911 (in conjunction with passage of the *Licensing Act 1911*), included a substantial increase in the penalty of a fine of not more 100 pounds or imprisonment of up to six months, or both, for anyone who supplied, sold or gave alcohol. A new sub-section 45(2), was added, which made it an offence for any aboriginal or half caste to receive alcohol (or opium), with a penalty of a fine of not more than five pounds or imprisonment of not more one month.

This provision remained in re-enactments contained in subsequent versions of native welfare legislation until the repeal in 1972 of the *Native Welfare Act 1963*.

In 1936 Section 45A was added to the *Native Administration Act 1936*, which made it an offence for a licensee of a hotel or similar outlet to permit "any native not exempted from the provisions of this Act to remain in or loiter about his licensed premises." The reference in Section 45A to someone being exempt from the Act, pre-dates the introduction of the Natives (Citizenship Rights) Act 1944, which purported to provide a pathway for "the acquisition of full rights of citizenship by aborigine natives".

It should be noted there were provisions in this licensing legislations concerned with drinking in parks or other public places which arguably had a particular impact on Indigenous people. In 1954 the *Licensing Act 1911* was amended to add Section 134A, which made it an offence to consume alcohol in a number of defined public places, such as on or in a roadway or within a park or reserve or to abandon any bottle that had contained or contained alcohol in such a public place. The fine for an offence against this section was 20 pounds.

The *Liquor Act 1970* expanded the ambit of this section by the concept that consuming alcohol in a public place would constitute an offence as it occurred because the place was unlicensed premises or occurred without the authority of the person who controlled the premises. The penalty was increased to 100 dollars.

Of interest, the *Liquor Control 1988* further increased the penalty for the offence of consuming alcohol on unlicensed premises (which as noted includes any park or reserve), such that under Section 119, the penalty was also substantially increased:

> ***119. Limitations as to liquor on unlicensed premises etc.***
> (1) A person who consumes liquor in any place or on any premises, including any park or reserve, without the consent of the occupier, or of the person or authority having control, of that place or those premises commits an offence.
>
> Penalty: $2,000.

However, another provision in the *Liquor Control Act 1988*, which is applicable to Section 119 as well as a number of sections, permitted the issuing of infringement notices from February 1989. In particular sub-section 119(3) states that if an infringement is issued, that "the modified penalty specified in an infringement notice shall be 10% of the maximum fine for that offence under this Act, as at the time the alleged offence is believed to have been committed."

Whilst the *Liquor Control Act 1988* clearly makes it an offence to consume alcohol in a park, a recent amendment which came into effect in January 2011, now means police can also seize and dispose of any unopened containers of alcohol in the possession of someone found consuming

[27] Brady M (2008). *First taste - how indigenous Australians learned about grog: Book 2 - The first taste of alcohol*. Deakin, ACT, Alcohol Education & Rehabilitation Foundation., 2.

alcohol in a park. This amendment appears may have particular application to the situation of where Indigenous people are found drinking in parks:

> 'Port Hedland police Acting Sergeant Dan Allen said the measure would hopefully act as a deterrent for people continuing to break the law. "It's a huge problem in town for us at the moment with people drinking in parks in particular," he said. .. "this new amendment will allow us to deal with situations right there and then and will act as a huge deterrent for people drinking in parks."'[28]

7.3 Proclaimed areas

In the *Aborigines Act 1905* and in subsequent re-enactments of native welfare legislation had a range of options to control Indigenous people, such as the power in Section 38 to be able to order an Indigenous person to leave a town:

> ***38. Justices may order Aborigines out of town***
> 38. Any justice of the peace or police officer may order any aboriginal found loitering in any town or municipal district, or being therein and not decently clothed, forthwith to leave such town or municipal district .
>
> Any aboriginal neglecting or refusing to obey such order shall be guilty of an offence against this Act.

Another provision was contained in Section 39, which meant proclamations could be issued with prohibited an Indigenous person in a designated place unless they had written permission:

> ***39. Prohibited areas***
> 39. The Governor may, by proclamation, whenever in the interest of the aborigines he thinks fit, declare any municipal district or town or any other place to be an area in which it shall be unlawful for aborigines or half-castes, not in lawful employment, to be or remain; and every such aboriginal or half-caste who, after warning, enters or is found within such area without the permission, in writing, of a protector or police officer, shall be guilty of an offence against this Act.
>
> Penalty: Twenty pounds or imprisonment for one month, or both.

A 1936 amendment to the *Native Administration Act 1936* included a scale of escalated significant penalties for repeat offenders in relation to repeated breaches of the prohibition orders in Section 70:

> ***70. Penalties***
> Such regulations may impose for any breach thereof-
> (a) for a first offence, a fine not exceeding twenty pounds or imprisonment for any period not exceeding three months, or both;
> (b) for a second offence, a fine not exceeding fifty pounds or imprisonment not exceeding six months, or both.
> (c) for a third or subsequent offence, a fine not exceeding one hundred pounds or imprisonment for twelve months, or both.

It is worth listing the proclaimed areas, to provide a picture of the scale of this system of control over Indigenous people, which meant with respect to alcohol, that if they did consume alcohol, it

[28] Dawson L (26 January 2011). *Police set to clean-up park drinkers*, North West Telegraph.

would have occurred outside of the formal and informal framework that applied to the remainder of the community.

Northampton Police Station – three mile radius(3 August 1906)
Broome Townsite (31 May 1907)
Meekatharra Townsite (24 January 1908)
Fitzroy Crossing (25 September 1908)
La Grange Bay (28 May 1909)
Three Mile Camp – One mile radius from Government well on Reserve 7134 (near Wyndham) (4 June 1909)
Halls Creek (13 August 1909)
Beagle Bay Mission (10 September 1909)
King River near Wyndham (7 February 1919)
Wyndham (19 January 1923)
City of Perth - whole municipality (18 March 1927)
Koolan and Cockatoo Islands (12 November 1931)
Land surrounding Native Reserve 16833 – Moore River Native Settlement (26 August 1932)
Naretha Station (on Trans Continental Railway) – Fifteen mile radius (30 June 1933)
Jimble Bar mining holdings 9 February 1934)
Bamboo Creek Townsite – 15 mile radius (30 August 1935)
Kalgoorlie Town Hall – Six mile radius (31 January 1936)
Water Reserve No. 248, Walebing (30 October 1936)
Beria Townsite (26 November 1937)
Karonie (on Trans Continental Railway) – Five mile by ten mile area (31 January 1941)
Carnarvon Townsite (5 July 1940)
Laverton townsite (19 July 1940)
Freney Oil Bore Lease (29 November 1940)
Gnowangerup Townsite (20 December 1940)
Karonie on Trans Continental Railway - Proclaimed area by description (31 January 1941)
Broome Townsite (13 February 1942) (Revoked and replaced 1907 proclamation).
Ida H - Three mile radius from seven mile post on Laverton-Burtville (13 February 1942)
Burtville - Seven mile radius from 17 mile peg on Laverton-Burtville Road (13 February 1942)
Hotel at Yarri Town Lot 33 – Five mile radius (11 September 1942)
State Battery at Linden – Five mile radius (11 September 1942)
Kookynie Post Office– Five mile radius (11 September 1942)
Murrin Murrin Post Office – Five mile radius (11 December 1942)
Malcolm Post Office – Five mile radius (29 January 1943)
Mount Magnet Townsite – Five mile radius (27 April 1943)
Mount Magnet Townsite (27 April 1945)
Northam Municipal District and Northam Road District (28 March 1947)
York Townsite (6 June 1947)
City of Perth - Revoked and replaced 1927 proclamation) (24 September 1948)
Mount Lawley (8 December 1950)

All of these proclamations were revoked between April and November 1954.

7.4 Postscript

It is argued that the historical situation in which substantial number of Indigenous people were socially marginalised and subject to a system of apartheid like controls, created a set of conditions that fostered a culture of excessive and problematic alcohol use.[29]

[29] Fitzgerald T (2001). *Cape York justice study*. Brisbane, QLD, Department of Premier & Cabinet.; Brady M (2007). "Equality and difference: persisting historical themes in health and alcohol policies affecting Indigenous Australians." *Journal of Epidemiology & Community Health* 61: 759-763, Douglas H (2007).

> 'Liquor has often proved attractive to native peoples, and wherever Europeans live alongside them in a position of political dominance it is likely to assume a special and heightened significance. … The prohibition on aborigines' drinking in New South Wales, for example, was repealed as late as 1962. The subject peoples themselves, as equality becomes a realizable objective, tend to regard prohibition as simply one part of the apparatus maintaining inequality.'[30]

Whilst there is clearly a need for a wide range of supports and services in relation to the consequences of problematic alcohol use in Indigenous communities,[31] there is also a compelling case for resources to be directed into other types of programs relevant to Indigenous persons embracing components of traditional lives, to focus on developing the foundations of Indigenous health. The limited description that follows of these parallels developments, which lie outside of the conventional health oriented framework, would also provide a means to reconcile and address critiques about some of the issues and response to Indigenous alcohol abuse which have been raised.[32]

Paradoxically, these programs are not accounted for in the plethora of funded health programs, as they are conducted under the auspices of other types of non-health identified organisations and departments. Examples of these types of preventive programs are to be found if one looks at work being undertaken by the Department of Environment and Conservation (DEC), in conjunction with Indigenous organisations, to establish innovative land management projects. An example to illustrate the scale and complexity involved in being able to create workable approaches to sustain Indigenous can be found in the report which sets out the components of the Miriuwung-Gajerrong cultural planning framework established in 2008:

> 'We keep our Ngarranggarni strong through story, painting, song and dance, through visiting our country and our Dreaming places and tracks. Our Dreaming tracks link us up to each other and to other Aboriginal groups through wirnan, our ceremonial exchange cycle and trade system. Law lines also extend across the Kimberley through the country of other Aboriginal people, and our traditional governance system in the Kimberley includes a network of collaborative and intricately overlapping leadership responsibilities.' [33]

For instance, in 2009 with Commonwealth assistance, a two year project was funded – the *Managing biodiversity on Martu lands in the Western Desert* – to enable the Martu to "look after

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"The curse of 'white man's water': Aboriginal people and the control of alcohol." *University of New England Law Journal* 4: 3-33.

[30] Beckett J (1964). Aborigines, alcohol and assimilation. *Aborigines now: New perspectives in the study of Aboriginal communities*. Reay M. Syndye, NSW, Angus & Robertson.

[31] Saggers S & Gray D (1998). *Dealing with alcohol: Indigenous usage in Australia, New Zealand and Canada*. Cambridge, UK, Cambridge University Press.; Alati R; Pterson C & Rice PL (2000). "The development of Indigenous substance misuse services in Australia: beliefs, conflicts and change." *Australian Journal of Primary Health* 6(2): 49-62.

[32] Giesbrecht N & MacDonald S (1982). "Alcohol problems in conjunction with resource development in northern Canada: control issues and research policies." *Contemporary Drug Problems* 11: 421-453, Weibel-Orlando J (1990). "American Indians and prohibition: effect or affect? Views from the reservation and the city." *Contemporary Drug Problems* 17: 293-322, Brady M (1995). "Culture in treatment, culture as treatment. A critical appraisal of developments in addictions programs for Indigenous North Americans and Australians." *Social Science & Medicine* 41(11): 1487-1498.

[33] Hill R; Miriwung and Gajerrong peoples; Hill DG & Goodson S (2008). *Miriuwung-Gajerrong cultural planning framework*. Miriuwung & Gajerrong Peoples' guidelines for developing management plans for conservation parks and nature reserves under the Ord Final Agreement. Perth, WA, Department of Environment and Conservation., 13.

their country" which in turn will provide substantial health benefits.[34] Examples of "caring for country" activities and trips, including photos, videos and descriptive text are available from the Central Desert Native Services website [http://www.centraldesert.org.au].

In WA the Conservation Legislation Amendment Bill 2010 is currently being considered before the Parliament, which if passed, will enable DEC to enter into management plans and related joint management agreements that will substantially increase the role and authority of Indigenous communities in managing their traditional areas. If amended by the Bill, the *Conservation and Land Management Act 1984* potentially could perform a major role in sustaining Indigenous health, because of the adoption of an expansive definition of "Aboriginal customary purpose" to enable Indigenous people to manage customary lands. There has been some recognition of the potential for this approach and its linkage to improving health and well-being, including the possibility of ameliorating problematic use of alcohol.

> 'The association between Indigenous Australians and country and emerging literature on the importance to well-being of maintaining that association suggests that dislocation from country may have significance for treatment and rehabilitation of problematic alcohol drinking.'[35]

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[34] McGilvray A & Kendrick P (2010-11). "Biodiversity of the Western Desert: looking after country with the Martu traditional owners." *Landscope* 26(2): 33-39.

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