

Submission  
No 8

## INQUIRY INTO ALCOHOL CONSUMPTION IN PUBLIC PLACES (LIBERALISATION) BILL 2024

**Organisation:** Aboriginal Legal Service (NSW/ACT) Limited

**Date Received:** 19 July 2024

---

19 July 2024

The Hon. Jeremy Buckingham MLC  
Committee Chair  
Portfolio Committee 1  
Legislative Council  
NSW Parliament  
By email: [Portfoliocommittee1@parliament.nsw.gov.au](mailto:Portfoliocommittee1@parliament.nsw.gov.au)

Dear Mr Buckingham,

**Re: Alcohol Consumption in Public Places (Liberalisation) Bill 2024 Inquiry**

Thank you for the opportunity to provide comment on the *Alcohol Consumption in Public Places (Liberalisation) Bill 2024* Inquiry.

The Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander people in NSW and the ACT. More than 280 ALS staff members based at 27 offices across NSW and the ACT support Aboriginal and Torres Strait Islander adults and children through the provision of legal advice and court representation in criminal law, children's care and protection law, and family law.

The ALS broadly supports law reform to ameliorate the harms caused to members of under-serviced communities by outdoor alcohol restrictions in the form of alcohol-free zones (**AFZs**) and alcohol-prohibited areas (**APAs**) in NSW. These laws have contributed for many years to the over-policing and mass criminalisation of Aboriginal and Torres Strait Islander people, as well as young people, people experiencing homelessness and other marginalised groups who use public space. We recommend that this be pursued in a targeted manner through amendment to the *Local Government Act 1993* (NSW). We support calls from local councils for review of this legislation.

**No Evidence of Efficacy of APAs and AFZs**

There is no evidence that AFZs and APAs are an effective response to the behaviour they are intended to target. Conversely, there is abundant evidence that APAs and AFZs have historically been used to target marginalised and under-serviced groups who use public space in urban areas, such as in the City of Sydney Local Government Area.

The lack of publicly available data about police interactions with members of the public and the use of statutory powers under the Local Government Act in alcohol restricted areas makes it particularly difficult to assess their effectiveness. A recent review of outdoor alcohol restrictions commissioned by the City of Sydney recommended greater transparency and sharing of information about the efficacy of outdoor alcohol restrictions to allow informed decision-making about their appropriateness.<sup>1</sup>

AFZs and APAs also risk shifting the behaviours targeted out of public view and into less conspicuous places where vulnerable people are at greater risk of harm and which are less visible and accessible to

---

<sup>1</sup> [City of Sydney Outdoor Alcohol Restrictions Review](#) (Recommendations Report, May 2024).

vital support services, including services providing food and shelter. The Office of Local Government acknowledges that, “[u]sed in isolation, AFZs and APAs may simply move a problem from one place to another. They are likely to be more effective when they form part of a broader strategy including things like education, community programs and public place design.”<sup>2</sup> This is reiterated in the Ministerial Guidelines,<sup>3</sup> which instead encourages councils to consider the range of strategies that may be implemented to address problems associated with alcohol consumption in public places.<sup>4</sup>

### **Adequate Police Powers under Other Legislation**

There is no legal need for outdoor alcohol restrictions. Police have sweeping powers to regulate the use of public space under the *Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)* and Regulations, the *Crown Land Management Act 2016* and Regulations, and various other pieces of legislation.

For example, police are empowered under LEPRA to issue a move-on direction to a person who is intoxicated and disorderly in a public space, and, if they return within 6 hours, to charge them with a criminal offence under the *Summary Offences Act 1988* (maximum penalty \$1650).<sup>5</sup> Police are also able to detain persons who are intoxicated in public if they are behaving in a disorderly manner which could cause injury to a person or property or are in need of physical protection due to their state of intoxication.<sup>6</sup>

If a person is not visibly intoxicated, police are empowered to issue a move-on direction if the person’s presence or behaviour in the place is obstructing another person or traffic, constitutes harassment or intimidation, is likely to cause fear to another person, or is supplying or procuring drugs.<sup>7</sup> A failure to comply can result in a fine.<sup>8</sup>

### **Exacerbation of Over-policing and Criminalisation of Aboriginal People and Other Groups**

Young people; people experiencing homelessness; people with disability, including mental illness and cognitive impairments; and people from cultures which prioritise communal space over private space, including Aboriginal and Torres Strait Islander peoples, are at higher risk of being proactively approached by police by virtue of their visibility in public spaces, including in parks.

Aboriginal and Torres Strait Islander communities have experienced disproportionate targeting and surveillance by police over multiple generations which has negatively impacted police–community relations, and which persists to the present day. We routinely appear for clients charged with low-level ‘street’ offences arising out of interactions pre-empted by police proactively approaching a client in a public place, particularly in proximity to social housing.

Our experience as a legal service is supported by NSW Government and NSW Police data which shows that Aboriginal people are disproportionately subject to powers of stop and search, issued with move-on directions, and charged with criminal offences, including for conduct such as offensive language or resist arrest, arising out of police-initiated interactions in public spaces. Outdoor alcohol restrictions can act as a catalyst for police to approach someone that appears to be in possession of alcohol on a public street or park. This can include circumstances where the officer “has reasonable cause to

---

<sup>2</sup> NSW Office of Local Government, ‘[Alcohol free zones and alcohol prohibited areas](#)’ (Web Page, 2024).

<sup>3</sup> Ministerial Guidelines 5.

<sup>4</sup> Ministerial Guidelines 12.

<sup>5</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (‘LEPRA’) s 198; *Summary Offences Act 1988* (NSW) s 9.

<sup>6</sup> LEPRA s 206.

<sup>7</sup> LEPRA s 197.

<sup>8</sup> LEPRA s 199.

believe that the person is about to drink, or has recently been drinking, alcohol in the alcohol-free zone.”<sup>9</sup>

**Case Study: Alex**

‘Alex’ is a resident of the City of Sydney area. Alex was in an AFZ in Waterloo, alone and drinking from a bottle in a brown paper bag, when police driving past stopped and approached her. A verbal altercation ensued during which Alex made clear that she felt that police were interfering with her liberties. Police issued Alex with a move-on direction because of ‘her language and drinking in an alcohol-free zone’. When Alex failed to comply, police arrested her and ultimately charged her for alleged offences of resist arrest, assault police, offensive language (colloquially known by those working in Aboriginal and Torres Strait Islander legal services as the police ‘trifecta’), as well as failing to comply with a move-on direction.

Alex defended the alleged offences at court. In evidence, police conceded that they did not have the power to issue a move-on direction for drinking in an AFZ. It was also conceded that the language used by Alex in response to police approaching her was not so offensive as to constitute an offence. All charges were dismissed at court, however Alex had already been subjected to the humiliation and trauma of being arrested and charged by police in a visible public place, along with the stress and uncertainty of going through the criminal court process for several months.

**Case Study: John**

John is a middle-aged Aboriginal man who is well-known to police in the inner Sydney area. He is a survivor of significant childhood trauma and has been dependent on alcohol for the entirety of his adult life. John is regularly seen drinking in public places, including in AFZs and APAs. He has been subject to court orders on numerous occasions with conditions to abstain from consuming alcohol, but he is unable to comply because of his Alcohol Use Disorder, a chronic clinical condition.

Police recently noticed John sitting alone on a bench in the city, speaking in a raised voice. Police approached him and asked whether an empty bottle of wine nearby belonged to him. John denied that it did and swore at police. Police told John to stop swearing and issued him move-on direction. John was ultimately arrested, taken to the nearest police station and charged with resisting arrest. These charges added to his already lengthy criminal history for similar, low-level ‘street’ offences arising out of interactions initiated by police. This interaction did not lead to any therapeutic interventions facilitating John’s access alcohol and other drug treatment or other support services.

Aboriginal and Torres Strait Islander people are more likely to be subjected to punitive ‘proactive’ policing practices in public places than non-Aboriginal people, and are over-represented at every stage of the criminal process in NSW.<sup>10</sup> NSW Police officers are more likely to conduct strip searches of

---

<sup>9</sup> Local Government Act 1933 (NSW) s 642.

<sup>10</sup> See, eg, NSW Bureau of Crime Statistics and Research, [Aboriginal over-representation in the NSW Criminal Justice System quarterly update December 2023](#) (Report, April 2024) which found that the rate of imprisonment of Aboriginal imprisonment in NSW is nearly 10 times the rate of imprisonment for non-Aboriginal people and that the rate of bail refusals by police for Aboriginal adults and young people continues to increase at a faster rate than court bail refusals.

Aboriginal people,<sup>11</sup> use force against Aboriginal people,<sup>12</sup> and more likely to charge Aboriginal adults and young people with criminal offences than to utilise diversionary options,<sup>13</sup> including charging for conduct such as offensive language or resist arrest arising out of police-initiated interactions in public spaces.

These structural and systemic failures to divert Aboriginal people from criminalisation contribute to the mass incarceration of Aboriginal and Torres Strait Islander adults and children in NSW. In March 2024, the number of Aboriginal adults in prison in NSW reached an all-time record, with Aboriginal and Torres Strait Islander adults making up 31% of all people in prison – meaning 1 in 29 Aboriginal men in NSW are currently incarcerated.<sup>14</sup> Aboriginal children now make up two-thirds of all children in prison, with nearly 80% on remand.<sup>15</sup>

We recommend reform to legislation enabling the creation of outdoor alcohol restrictions and conferring associated powers on police and local council officers to minimise the harms outlined above, and that the NSW Government prioritise investment in harm minimisation and public health approaches to alcohol-related harms.

If you would like to discuss this submission further, please contact

Sincerely,

Nadine Miles  
Principal Legal Officer  
Aboriginal Legal Service (NSW/ACT) Limited

---

<sup>11</sup> “[Data shows] Aboriginal people are disproportionately represented – making up 14% of all searches but 3.4% of the state’s population”: Tamsin Rose, [‘NSW police strip-searches of Indigenous people rose 35% in past 12 months and included 11 children, data reveals’](#) (*The Guardian*, online, 17 October 2023).

<sup>12</sup> Christopher Knaus, [‘NSW police use force against Indigenous Australians at drastically disproportionate levels, data shows’](#) (*The Guardian*, online, 31 July 2023).

<sup>13</sup> Caitlin Fitzsimmons, [“‘Like a snare’: Indigenous young offenders more likely to be prosecuted for same crimes’](#) (*Sydney Morning Herald*, online, 30 November 2022); Adam Teperski and Sara Rahman, [‘Why are Aboriginal adults less likely to receive cannabis cautions?’](#) (Bureau of Crime Statistics and Research, Crime and Justice Bulletin No CJB258, June 2023).

<sup>14</sup> NSW Bureau of Crime Statistics and Research, *NSW Custody Statistics: Quarterly Update March 2024* (Report, May 2024) [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2024/mr-custody-Mar2024.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2024/mr-custody-Mar2024.aspx)

<sup>15</sup> Ibid.