

The regulation of use of alcohol by Indigenous people in Western Australia 1900 - 2010

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The Making of Victimhood

“The Australian Aboriginal has been one of the most tragic victims of white man’s penchant for self destruction through the misuse of alcohol. It did not take long for the Aboriginal population of Sydney to be infected by the drinking habits of early colonists.”

Senate Standing Committee on Social Welfare (1977). Drug problems in Australia - an intoxicated society, 57.

Popular Beliefs About Indigenous People

“To require from the ignorant hordes of savages living in Eastern or Western Australia the observance of our laws would be absurd, and to punish their non-observance of them by severe penalties would be palpably unjust.” **Parliamentary Select Committee on Aboriginal Tribes (British Settlements), 1837**

“Along the whole coastline extending south of La Grange Bay to the eastern shores of King sound, drunkenness and prostitution, the former being the prelude to the latter, with consequence loathsome disease, is rife amongst the Aborigines. This condition of affairs is mainly due to Asiatic aliens allowed into the State.” **Roth Royal Commission on Condition of the Natives, 1905**

“In our view the degradation in which many of these unfortunate people find themselves is due more to their lack of social education and the apathy of the people themselves than to the availability of alcohol.” **WA Committee of Inquiry Into Licensing Act, 1969**

“Historically, the alienation of the Australian Aboriginals from alcoholic brews have rendered them ill-equipped, socially and metabolically, to handle alcohol consumption. Their predilection for wine is attributed to the fact that it was the first type of spirit that was introduced and become available.” **WA Royal Commission Into Treatment of Alcohol & Drug Dependents, 1972**

Myths About Indigenous Alcohol Use

Myths about Indigenous people & alcohol:

- **That alcohol was not used in traditional Indigenous culture**
- **That alcohol use commenced after 1788 after arrival of First Fleet**
- **That outsiders always used alcohol to exploit Indigenous people**
- **That Indigenous people were passive recipients of alcohol & other goods**
- **That intoxicated behaviour of Indigenous people is largely due to biological rather cultural & social factors**

Maggie Brady (2008). First taste, how Indigenous Australians learned about grog. Book 4: The story of the bottle, 1.

Adaptation of Alcohol Into Indigenous Life



Skilled Aboriginal men using the pressure flaking technique produced highly prized glass spear points from the late 18th to 20th century. For example, large glass points were made from flat-sided square faced bottles.

Maggie Brady (2008). First taste, how Indigenous Australians learned about grog. Book 4: The story of the bottle, 11.

Administrative Framework: 1829 - 1925

- 1829 - 1885: **British Colonial Secretary** (who appointed Protectors)
- 1886 - March 1898: **Aborigines Protection Board** (established by statute)
- April 1898 - December 1908: **Aborigines Department**
- January 1909 - December 1919: **Department of Aborigines & Fisheries** (merger of two departments due to economic conditions)
- January 1920 - December 1925: Administration split between 2 departments - **Department of North West** (above 25 degrees latitude south) & **Department of Fisheries** (below 25 degrees latitude south)

Administrative Framework: 1926 - present

- January 1926 - December 1935: **Aborigines Department**
- January 1936 - December 1954: **Department of Native Affairs**
- January 1955 - June 1972: **Department of Native Welfare**
- June 1972 - October 1994: **Aboriginal Affairs Planning Authority**
- November 1994 - June 2001: **Aboriginal Affairs Department**
- July 2001 - present: **Department of Indigenous Affairs**

Indigenous Welfare Services

The statutory office of the **Chief Protector of Aborigines** operated from 1898 to 1936 - it was modelled on a similar approach in Queensland & some other Australian states. (In WA this was preceded by the establishment in 1886 of the Aborigines Protection Board, which appointed Local Protectors throughout the State.) The Chief Protectors in WA were:

- 1898 - 1907: Henry Prinsep
- 1907 - 1915: Charles Gales
- 1915 - 1936: AO (Auber) Neville

In 1936 title of Chief Protector was changed to **Commissioner of Native Affairs**. In June 1955 the title of Commissioner of Native Affairs was renamed the **Commissioner of Native Welfare**, until it was abolished in June 1972.

Although the power to remove Indigenous children was repealed by the **Native Welfare Act 1963**, it continued to be exercised by the Child Welfare Department, under criteria of 'neglect' in the **Child Welfare Act 1962**.

- 1936 - March 1940: AO (Auber) Neville
- March 1940 - April 1947: FL (Sonny) Bray
- August 1948 - February 1962: SG (Stan) Middleton
- February 1962 - June 1972: FE (Frank) Gare

Welfare Services Framework: 1908 - 1984

1908 - January 1917: **Public Charities & State Children's Department**

January 1917 - December 1927: **State Children's Department**

December 1927 - June 1972: **Child Welfare Department**

July 1972 - December 1984: **Department of Community Welfare**

Note: In July 1972 welfare functions of both **Department of Native Welfare** & **Child Welfare Department** were merged - previously Indigenous welfare was separated from mainstream welfare services into **Department of Community Welfare**

Welfare Services Framework: 1985 - present

January 1985 - October 1992: **Department for Community Services**

October 1992 - June 1995: **Department for Community Development**

July 1995 - June 2001: **Department for Family & Children's Services**

July 2001 - June 2007: **Department for Community Development**

July 2007 - present: **Department for Child Protection**

July 2007 - present: **Department for Communities**

Note: In July 1972 welfare functions of both **Department of Native Welfare & Child Welfare Department** were merged - previously Indigenous welfare was separated from mainstream welfare services into **Department of Community Welfare**

Indigenous Related Legislation: Colonial

- Aboriginal Girls Protection Act 1844
- Destitute Persons Relief Ordinance 1844
- Aboriginal Offenders Summary Trial Ordinance 1849
- Aboriginals Evidence Ordinance 1849
- Aboriginal Employment In Pearling Act 1871
- Aboriginal Offenders Summary Trial Amendment Act 1874
- Poor Houses Discipline Act 1882
- Aboriginal Offenders Act 1883
- Aborigines Protection Act 1886
- Aborigines Act 1889
- Aboriginal Offenders Act 1892
- Aborigines Act 1897

Indigenous Related Legislation: Post Colonial

- Aborigines Act 1905
- Native Administration Act 1940
- Native (Citizenship Rights) Act 1944
- Child Welfare Act 1947
- Native Welfare Act 1954
- Welfare Assistance Act 1961
- Child Welfare Act 1962
- Native Welfare Act 1963
- Aboriginal Heritage Act 1972
- Aboriginal Affairs Planning Authority Act 1972
- Community Welfare Act 1972
- Aboriginal Communities Act 1979
- Children and Community Services Act 2004

Indigenous Related Royal Commissions

Royal Commission Into the Treatment of Aboriginal Native Prisoners 1884 (Chaired by John Forrest)

Royal Commission Into the Penal System of the Colony 1899 (Chaired by Adam Jameson)

Royal Commission on the Condition of the Natives 1905 (Chaired by Walter E Roth)

Royal Commission into the Treatment of Aborigines by the Canning Exploration Party 15 January - 5 February 1907 (Chaired by JM Finnerty, G Taylor & CF Gale)

Royal Commission Into the Killing of Aborigines in East Kimberley 1927 (Chaired by George Wood)

Royal Commission Into the Condition & Treatment of Aborigines 1935 (Chaired by Henry Moseley)

Royal Commission Into the Well Being of Persons of Aboriginal Descent in Western Australia 1974 (Chaired by LC Furnell)

Laverton Royal Commission 1976 (Chaired by GD Clarkson)

Apartheid Like Control Of Indigenous People

From the beginning of the 20th century, many aspects of the lives of Indigenous people throughout WA were tightly controlled by legislative & administrative arrangements.

This equated to a system of apartheid, ie the separate provision of schooling, hospitals, exclusion from receiving welfare entitlements available to other Australians & the denial of many other fundamental freedoms of association, movement, marriage, access to alcohol etc.

An example was the system of proclamations which prohibited any 'native' not in employment from being in a declared municipal district or town without written permission.

A total of 35 proclamations were issued between August 1906 & December 1950 under s. 39 of the **Aborigines Act 1905** & later under s. 43 of the **Native Administration Act 1940**.

All proclamations were revoked between May & November 1954.

Proclaimed Prohibited Areas: 1906 - 1950

Northampton	3-Aug-1906
Broome	6-Dec-1907
Meekatharra townsite	24-Jan-1908
Fitzroy Crossing	25-Sep-1908
La Grange Bay	28-May-1909
Hall's Creek	13-Aug-1909
Trapper's Inlet (near Beagle Bay Mission)	10-Sep-1909
Derby	10-Sep-1909
Wyndham (Three Mile Camp)	19-Jan-1923
Land surrounding Reserve 16833 (Aborigines)	26-Aug-1932
Naretha	30-Jun-1933
Jimble Bar	7-Feb-1934
Bamboo Creek	30-Aug-1935
Kalgoorlie - 6 mile radius	31-Jan-1936
Walebing	30-Oct-1936
Koolan & Cockatoo Islands	12-Nov-1937
Beria	26-Nov-1937
Carnarvon Townsite	5-Jul-1940

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Laverton	19-Jul-1940
Cox's Find	19-Jul-1940
Freeney Oil Bore	29-Nov-1940
Gnowangerup	20-Dec-1940
Karonie	31-Jan-1941
Ida H	13-Feb-1942
Burtville	13-Feb-1942
Kookynie	11-Sep-1942
Linden	11-Sep-1942
Yarri	11-Sep-1942
Murrin Murrin	11-Dec-1942
Malcolm	29-Jan-1943
Mount Magnet Townsite	27-Apr-1945
Northam	27-Mar-1947
York	29-May-1947
City of Perth	18-Mar-1927
Mount Lawley	8-Dec-1950

Access to Alcohol by Indigenous People - Colonial Legislation

Prevention of Drunkenness Ordinance 1855

An Ordinance for the better observance of the Lord's Day, and the more effectual prevention of Drunkenness [18th Vict No. 11, 1855]

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.

Wine, Beer & Spirits Sales Act 1880

An Act to consolidate and amend the Laws relating to the Licensing of Public Houses and the Sale of Fermented and Spirituous Liquors. [44th Vict, Number 9, 1872] [Assented 6 September 1880]

57. As to allowing natives to loiter around public houses

57. Any person holding a publican's general license, a wine and beer license, or a wayside house license under this Act, who shall, knowingly or wilfully permit any Aboriginal Natives to remain on or loiter about his licensed premises, shall on conviction thereof forfeit and pay for the first offence the sum of Two pounds, and for every subsequent offence the sum of Five pounds.

Access to Alcohol by Indigenous People

Licensing Act 1911

118 Penalty for supplying liquor to Aborigines

No person, whether licensed or unlicensed, shall sell, supply, or give any liquor, in any quantity whatsoever, either alone or mixed with water or any other liquid, to any aboriginal native for himself or for any other person.

Penalty: One hundred pounds or imprisonment for six months, or both.

Offence for a publican to permit any 'Aboriginal native' to remain on or loiter about licensed premises. Penalty: £10 (s. 119)

Note: s.118 renumbered s. 150 in 1923 reprint of the **Licensing Act 1911**.

150 Penalty for supplying liquor to aborigines

150. No person, whether licensed or unlicensed, shall sell, supply, or give any liquor, in any quantity whatsoever, either alone or mixed with water or any other liquid, to any aboriginal native for himself or for any other person, or solicit or receive from an aboriginal native an order for the supply or delivery of liquor.

Penalty: One hundred pounds or imprisonment for six months, or both.

Access to Alcohol by Indigenous People

A number of provisions in Indigenous-specific legislation & the liquor licensing laws controlled access by Indigenous people to alcohol:

Aborigines Act 1905

Offence to sell or supply liquor to 'Aboriginal or half caste'. Penalty: £10 (s. 45)

Note: Penalty increased in 1911 to a maximum of £100 or 6 months imprisonment or both & with minimum penalty that was one fifth of the maximum penalty. (s. 45(1))

Offence for an 'Aboriginal or half caste' to receive or have possession of liquor. Penalty: £5 or 1 month imprisonment or both (s. 45(2))

Native Administration Act 1936

Offence for publican to permit any 'native' to remain in or loiter about licensed premises (s. 45A)

Offence for a 'native' to receive liquor. Penalty: £5 or 1 month imprisonment or both (s. 48 (2))

Licensing Act 1911 - Section 150

Section 150 was amended in 1963 (commenced July 1964) -

'Any native who knowingly receives or is in possession of any liquor commits an offence.' Penalty: Five pounds, or imprisonment for one month or both (s. 150(2))

Exclusion of Indigenous People

In 1963 a legislative framework was developed to exclude Indigenous people from licensed premises based on geographical area by proclaiming parts of the State in which Indigenous people were not permitted to drink alcohol.

Licensing Act 1911 - Section 150

Section 150 was amended in 1963 so that particular parts of the State could be proclaimed to be exempt from the prohibition for a 'native' to use alcohol (s. 150(4))

Proclamation 26 June 1964

Excluded South West Land Division from Section 150 - in remainder of State offence for Indigenous people to use alcohol

Proclamation 28 October 1966

Expanded area exempted from prohibition in Section of 150 - still applied to municipal districts of Kalgoorlie & Boulder, Shires of Broome, Coolgardie, Dundas, Esperance, Halls Creek, Kalgoorlie, Laverton, Menzies, West Kimberley, Wiluna and Wyndham - East Kimberley & areas east of No. 1 Rabbit Proof Fence.

Note: The area of the State where s. 150 of the **Licensing Act 1911** still applied was continued after October 1966 under the **Liquor Act 1970** (commenced 19 June 1970) until revoked in June 1971 (commenced 1 July 1971).

Access to Alcohol by Indigenous People

'The Natives (Citizenship Rights) Act, has been used, mainly, by those Aborigines who wished to avail themselves of the right to drink alcohol in those proclaimed areas - the Kimberleys and the Eastern Goldfields - where there are restrictions imposed on Aborigines in regard to drinking, either at home or in hotels. These restrictions applied right to the end of the period under review, but were lifted on 1 July 1971.'

Source: Annual report, Commissioner of Native Welfare, 1970/1971

A number of Indigenous-specific provisions in the Licensing Act 1911 were continued in the **Liquor Act 1970**:

Liquor Act 1970

- Offence to sell or supply alcohol to any 'native' in proclaimed area. Penalty \$200 or 6 months imprisonment or both (s. 130(1))
- Any 'native' who received or was in possession of alcohol: Penalty: \$10 or imprisonment for 1 month or both. (s. 130(2))

Note: The **Licensing Act 1911** was repealed & replaced by the **Liquor Act 1970**, which commenced in June 1970.

Note: Section 130 of **Liquor Act 1970** was repealed in November 1972.

Note: The **Liquor Act 1970** was repealed & replaced by the **Liquor Licensing Act 1988**, which commenced July 1992.

Alcohol Use in Public Places

An amendment to the **Licensing Act 1911** made it an offence from January 1952 to drink or have possession of alcohol in a public place, ie unlicensed premises. This provision had particular impact on Indigenous people drinking in parks etc, even though the 1951 amendment had general application.

Licensing Act 1911

Amendment in 1951 which made it an offence for any person to drink alcohol in public place (commenced January 1952) Penalty: £20 (s. 134A)

Liquor Act 1970

Offence to consume in a road reserve, within a sports ground, public place etc. Penalty: \$100. (s. 46)

Liquor Control Act 1988

Offence to consume or bring liquor in any public place (eg sports ground, road, park, street etc). Penalty: \$2,000 (s. 119)

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

Aboriginal Communities Act 1979

Aboriginal communities given power to make by-laws for a variety of purposes, including the 'prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances'. (s. 7)

Renunciation of Indigenous Status

An object of the **Aborigines Act 1905** & subsequent legislation was an underlying concern about miscegenation, reflected in policies to segregate 'half-castes' from 'full-bloods' through forced removal of Indigenous children, controls over marriage & the establishment of missions.

A system was created in November 1938 through the **Native Administration Regulations 1938**, for Indigenous people to in effect renounce their status under the Act by seeking a 'Certificate of Exemption.' This involved an applicant meeting onerous conditions, for example:

A Certificate of Exemption will not be issued in favour of any native who lives with or associates with natives who are not exempted. (Reg. 141) [Disallowed January 1939]

A Certificate of Exemption will not be issued to a native living in conjugal relationship with another native of the opposite sex to whom such native is not legally married. (Reg. 142) [Revoked May 1955]

Whenever a Certificate of Exemption held by a native is revoked by the Minister, the native shall be so advised by the Commissioner, who at this discretion may or may not indicate the reason for such revocation. (Reg. 146)

A total of 2,085 applications for Certificates of Exemption were received between November 1938 & 30 June 1961, of which 1,382 still remained in force. No further applications were received after this date.

Note: The system of 'Certificates of exemption' ceased in June 1964, when the **Native Welfare Regulations 1964** were proclaimed.

Renunciation of Indigenous Status

Another system commenced in December 1944, under the **Natives (Citizenship Rights) Act 1944**, for Indigenous people to renounce their status was to apply for a 'Certificate of Citizenship', depending on whether they were able to satisfy a variety stringent conditions, viz -

Natives (Citizenship Rights) Act 1944

A Certificate of Citizenship required an applicant to prove they had 'dissolved tribal & native associations except (for) lineal descendants or native relations of the first degree' and that had either 'served in the Naval Military or Air Force of the Commonwealth and has received or is entitled to receive an honourable discharge; or that he is otherwise a fit and proper person to obtain a Certificate of Citizenship.'

A total of 2,472 Certificates of Citizenship were granted over the period between December 1944 & November 1971, of which 1,803 involved children.

Note:

Natives (Citizenship Rights) Act 1944 was repealed in November 1971.

Aborigines Act 1905 was renamed the **Native Administration Act** in 1936.

Native Administration Act 1905-1936 was repealed & replaced by the **Native Welfare Act 1954** (commenced December 1954).

Native Welfare Act 1954 was repealed & replaced by the **Native Welfare Act 1963** (commenced July 1964).

Native Welfare Act 1963 was repealed & replaced by the **Aboriginal Affairs Planning Authority Act 1972** (commenced June 1972).

Renunciation of Indigenous Status

The **Natives (Citizenship Rights) Act 1944** set out a number of criteria that constituted the definition of an applicant being a 'fit and proper' person:

5. (1) Before granting any application brought under the provisions of the preceding section, the magistrate shall be satisfied that-
- (a) for the two years immediately prior the applicant has adopted the manner and habits of civilised life;
 - (b) the full rights of citizenship are desirable for and likely to be conducive to the welfare of the applicant;
 - (c) the applicant is able to speak and understand the English language;
 - (d) the applicant is not suffering from active leprosy, syphilis, granuloma or yaws;
 - (e) the applicant is of industrious habits and is of good behaviour and reputation;
 - (f) the applicant is reasonably capable of managing' his own affairs.

The **Natives (Citizenship Rights) Act 1944** also set out when a Certification of Citizenship could be cancelled or suspended:

7. (1) Upon complaint of the Commissioner of Native Affairs or any other person, a magistrate may suspend or cancel a Certificate of Citizenship if he is satisfied that the holder-
- (a) is not adopting the manner and habits of civilised life; or
 - (b) has been twice convicted of any offence under the Native Administration Act, 1905-1941, or of habitual drunkenness; or
 - (c) has contracted leprosy, syphilis, granuloma or yaws.

Note: In 1951 the legislation was amended to set up Boards instead of Magistrates to consider applications & in 1958 the infectious disease criteria was removed.

Definition of Indigenous Status

Aborigines Act 1905

3. Every person who is -

(a) an aboriginal inhabitant of Australia; or

(b) a half-caste -who lives with an aboriginal as wife or husband; or

(c) a half-caste who, otherwise than as wife or husband, habitually lives or associates with aborigines; or

(d) a half-caste child whose age apparently does not exceed sixteen years,

shall be deemed an aboriginal within the meaning of this Act, and of every Act passed before or after this Act, unless the contrary is expressed.

... the term half-caste includes any person born of an aboriginal parent on either side, and the child of any such person.

Definition of Indigenous Status

Native Administration Act 1936

'Native' means

- (a) any person of the full blood descended from the original inhabitants of Australia;
- (b) subject to the exceptions stated in this definition any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, excepting however any person who is-
 - (i) a quadroon under twenty-one years of age who neither associates with or lives substantially after the manner of the class of persons mentioned in paragraph (a) in this definition unless such quadroon is ordered by a magistrate to be classed as a native under this Act;
 - (ii) a quadroon over twenty-one years of age, unless that person is by order of a magistrate ordered to be classed as a native under this Act, or requests that he be classed as a native under this Act; and
 - (iii) a person of less than quadroon blood who was born prior to the 31st day of December, 1936 unless such person expressly applies to be brought under this Act and the Minister consents.

'Quadroon' means a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original full blood.

Definition of Indigenous Status

Native Welfare Act 1963

'Native' means -

(a) any person of the full blood descended from the original inhabitants of Australia; and
(b) any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, except a person so descended who is only one-fourth or less than one-fourth of the original full blood; but notwithstanding the provisions of this interpretation, any person of the full blood or of less than the full blood descended from the original inhabitants of Australia who-

(i) has served in the Territory of New Guinea or beyond the limits of the Commonwealth as a member of the Naval, Military or Air Forces of the Commonwealth; or
(ii) has served a period of not less than six months' full time duty as a member of the Naval, Military or Air Forces of the Commonwealth,

and has received or is entitled to receive an honourable discharge, has all the rights, privileges and immunities and is subject to the duties and liabilities of a natural born subject of Her Majesty who is of the same age;'

Aboriginal Affairs Planning Act 1972

'Aboriginal means pertaining to the original inhabitants of Australia and to their descendants;'

Charges For Public Drunkenness: Total Charges & % Indigenous of Total Charges: 1905-1962

Annual charges for public drunkenness & % Indigenous charges, WA, 1905-1962

