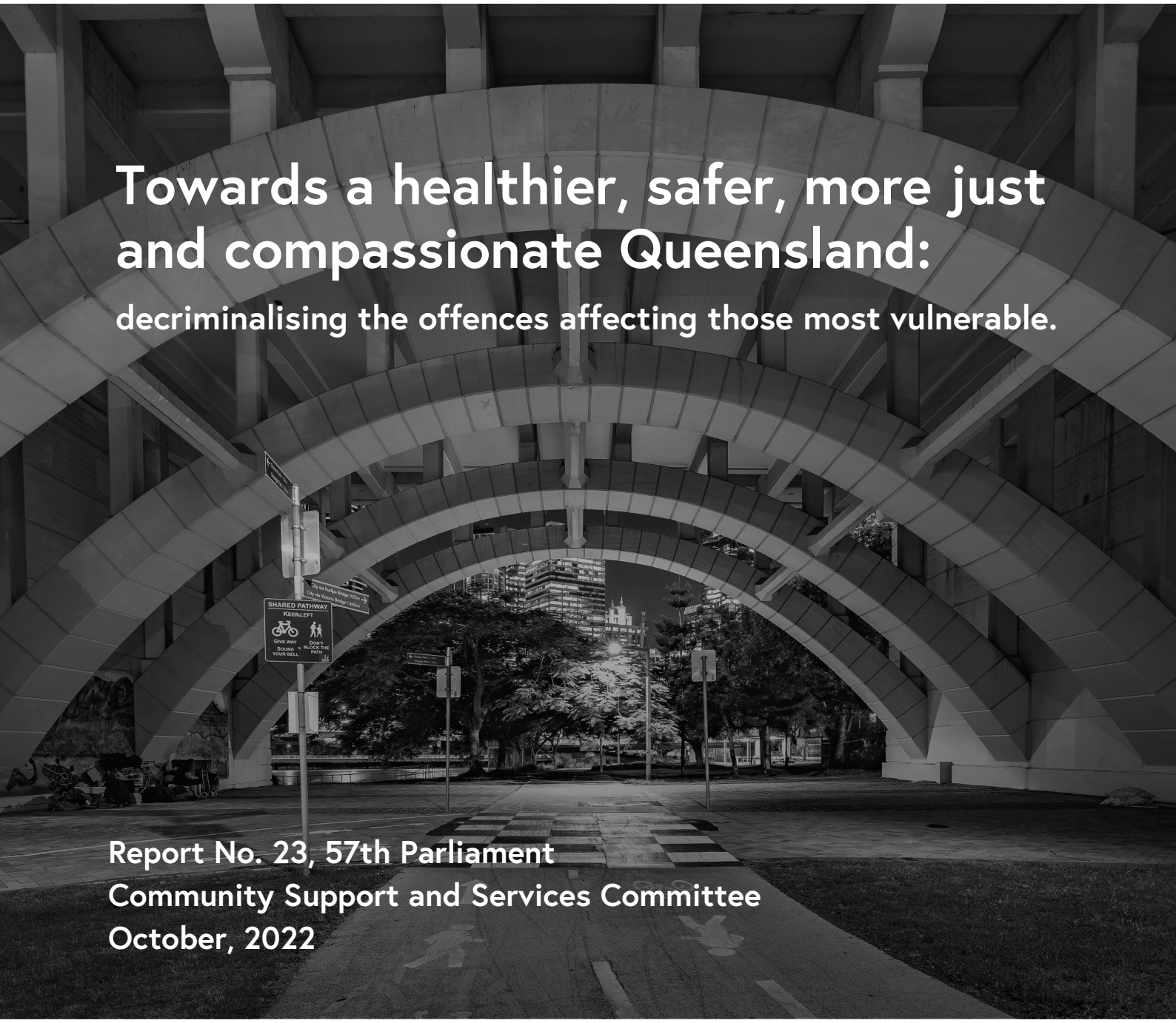
Parliamentary Committees



Towards a healthier, safer, more just and compassionate Queensland:

decriminalising the offences affecting those most vulnerable.

Report No. 23, 57th Parliament
Community Support and Services Committee
October, 2022

Community Support and Services Committee

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Acknowledgements

The committee thanks the Queensland Police Service, Queensland Health and the Department of Communities, Housing and Digital Economy for their assistance.

The committee also thanks Les Walker MP, Member for Mundingburra, and James Martin MP, Member for Stretton, for their participation and assistance at the committee's public hearings in Townsville and in Surfers Paradise respectively.

The committee is grateful for the people throughout Queensland who took the time to speak to and inform the committee, setting aside their essential work to share their opinions, experiences and ideas on matters relating to the Inquiry.

All web address references are current at the time of publishing. Maps were created in datawrapper and Mapchart.

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Chair's foreword

In 2017 Ms Tanya Day, mother, grandmother and a proud Yorta Yorta Victorian woman, was arrested for being drunk in public on a train and detained in custody. She sustained a serious head injury after falling in a police cell and died 17 days later, on 22 December 2017.[1]

On 24 June 2022, the Legislative Assembly referred to the Community Support and Services Committee an Inquiry into decriminalising public intoxication, begging and public urination offences, and health and social welfare-based responses.

This report presents a summary of the committee's Inquiry into the decriminalisation of public intoxication, begging and public urination in the *Summary Offences Act 2005*, and available health and social welfare responses required to support decriminalising these offences in Queensland's communities.

During the Inquiry the committee met with police, people supporting persons experiencing homelessness, people assisting in safe night precincts and urban entertainment districts, people working in diversionary centres and detoxification centres, as well as advocates for First Nations Peoples, local council representatives and community members. The committee witnessed the great work of many people in programs and services throughout Queensland that make a real difference in people's lives, often working throughout the night and in challenging conditions.

The issues that create problematic public intoxication, begging and urination are complex, and multi-faceted. It is clear that a health and welfare response needs to strike a balance between community safety and people's enjoyment of public spaces, and the need to ensure vulnerable people who are not acting aggressively or in a threatening manner are not charged with these minor offences, committed because they suffer from chronic ill health, poverty or homelessness. They have no realistic prospect of paying their fines, nor should they be put at risk by being incarcerated.

Research shows a strong correlation between intoxication and higher risk a person will die in custody. In the 30 years since the Royal Commission into Aboriginal Deaths in Custody made its recommendations addressing the overrepresentation of First Nations People in custody and dying in custody, statistics still show an overrepresentation of First Nations Peoples among those charged with these offences in Queensland. These statistics are deeply concerning.

The committee's report takes into account the path taken in other Australian jurisdictions to decriminalise, including the model proposed in the more recent Report to the Victorian Attorney-General, *Seeing the Clear Light of* Day*: Expert Reference Group on Decriminalising Public Drunkenness*. The Victorian report recognised that places of safety are essential to ensuring the health and welfare of intoxicated people, and a range of services must be supported to meet the decriminalisation reforms.

As well as saving lives, there are great benefits to society by diverting people from the criminal justice system onto a pathway to wellbeing, with greater use of diversionary approaches. A response to the problems that the committee identified require a wrap-around of services with police, health and welfare services all having a role to play, one that is both community-led and trauma-informed.

The committee recommends that public intoxication, begging and public urination be decriminalised, subject to appropriate community-based health and social welfare responses being in place.

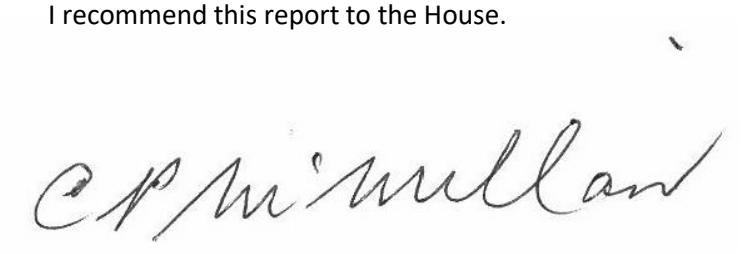
[1] Report to the Victorian Attorney-General: *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness*, p 19.

Should the Committee's recommendations be accepted by the Palaszczuk Government, Queensland will be the last jurisdiction in the Nation to decriminalise the offences that affect those experiencing periods of vulnerability and our most marginalised Queenslanders. As Queensland embarks on a journey to a Path to Treaty, a momentous occasion and a highly significant moment in Queensland's history, we must address Recommendations 79 to 91 of the Royal Commission into Aboriginal Deaths in Custody Report handed down in 1991. This is an essential first step to right the wrongs of our past, an essential first step towards a fairer, more just and compassionate Queensland.

On behalf of the committee, I would like to thank the many people who took the time to meet with the committee, to share their experiences honestly and frankly, setting aside time from their essential work to address this important issue.

The committee also acknowledges the tireless work of the Committee Secretariat for their patience, endurance and for their commitment to ensuring that this report accurately captures the views of our vast, decentralised and diverse Queensland community.

I recommend this report to the House.



Ms Corrine McMillan MP

Chair

Recommendations

Report Summary

On 24 June 2022, the Legislative Assembly agreed to a motion that the Community Support and Services Committee inquire into and report on changes to legislation and operational policing responses to decriminalise or repeal public intoxication, begging and public urination, and consider the necessary health and welfare responses to support legislative reform.

Current offences relating to public intoxication, begging and public urination

The *Summary Offences Act 2005* criminalises public intoxication. In certain locations, the possession or consumption of alcohol is also prohibited or restricted in public spaces. Across Queensland it is an offence to beg for money or goods, and it is an offence to urinate in a public place. In some contexts, such as Safe Night Precincts, police have powers to respond to people other than through arrest, for example giving a person a direction to leave or prohibit them from re-entering the area.

The *Police Powers and Responsibilities Act 2000* provides police with several ways in which they can discontinue the arrest of an intoxicated person and avoid detaining the person in police custody. A police officer can release a person who has been arrested without issuing an infringement notice or charging them if they are satisfied that it is more appropriate for an intoxicated person to be taken to a place, other than police custody, where they can receive the treatment or care necessary to recover safely from being intoxicated.

Disproportionate impact on vulnerable people and communities

Queensland Police Statistics relating to the frequency of offences of public intoxication, begging and public urination indicate a substantial geographic variation in offence frequency, but overall, an over-representation of First Nations Peoples among those charged. Queensland Police clearly expressed that their current capacity to arrest was considered a last resort, but also that their available powers allowed them to guide people at risk to a place of safety.

Stakeholders strongly expressed concern for the health and welfare of those charged, who may be offending as a result of a complex combination of poverty, ill-health, homelessness or past trauma.

Stakeholders also strongly expressed concern for community safety, and the potential for a decriminalisation process to negatively impact on businesses and public spaces.

Health and welfare responses

A range of health and welfare services are available to people throughout Queensland, including alcohol and other drug treatment services, diversion, detoxification and rehabilitation centres, and crisis accommodation and supported accommodation services.

Stakeholders expressed the view that those services contributed to numerous longer-term benefits, including reducing recidivism, improving people's health and wellbeing, and generating savings in public expenditure. Stakeholders were unanimous that those services be better resourced, especially in rural and remote regions, to appropriately respond to people who would otherwise be charged with these offences.

The Community Support and Services Committee recommends public intoxication, begging and public urination be decriminalised, subject to appropriate community-based health and social welfare responses being in place.

1 Introduction

On 24 June 2022, the Legislative Assembly agreed to a motion that the Community Support and Services Committee (committee) inquire into and report on changes to legislation and operational policing responses to decriminalise the public intoxication and begging offences in the *Summary Offences Act 2005* (Summary Offences Act), and other related matters set out in 9 terms of reference. The committee subsequently determined to examine the terms of reference as part of an inquiry into the decriminalisation of certain public offences, and health and welfares responses (the Inquiry).

The committee is required to report to the Legislative Assembly by 31 October 2022.

Following the commencement of the Inquiry, and in recognition of the wide-ranging impact of potential reforms the committee determined to undertake consultation with key stakeholders and community in South East Queensland, key tourist precincts in regional and metropolitan areas, and rural and remote communities in Queensland. The committee met with key stakeholders including first responders, community service providers, local council representatives, and individual community members. The committee's role, inquiry terms of reference, consultation process and review of relevant government reports and academic literature is provided in the Appendices of this report.

The committee's first recommendation is that the Legislative Assembly note the contents of the committee's report.

Recommendation 1

The committee recommends the Legislative Assembly note the report.

1.1 Existing offences relating to intoxication, begging and urination

Existing offences relating to intoxication, begging and urination share a common characteristic: they criminalise that behaviour only when it occurs in a public place.

1.1.1 Intoxication

Existing laws criminalise intoxication in certain locations. It is an offence to be intoxicated in a public place.[2] It is also an offence to enter a major event area while drunk.[3]

A **public place** is a place that is open to or used by the public, for free or on payment of a fee. This is a broad definition, and includes parks and reserves.[4]

Major event areas are prescribed by regulation, and can include associated places, such as a place where the event will be screened for public viewing.[5] Examples of major events include the Gold Coast 2018 Commonwealth Games and the 2015 Asian Cup. Major events include directly associated events – such as a music concert held alongside a major event.[6]

2 *Summary Offences Act 2005,* s 10(1).

3 *Major Events Act 2014*, s 18(3).

4 *Summary Offences Act 2005*, Schedule 2.

5 *Major Events Act 2014*, s 9.

6 *Major Events Act 2014*, s 7.

These offences are not limited to intoxication caused by alcohol. They also capture people who are adversely affected by drugs.[7]

The penalty for entering a major event area while drunk is significantly higher than for being intoxicated in a public place. The former offence can attract a fine of up to 20 penalty units ($2,875.00) while fines for public intoxication are limited to 2 penalty units ($287.50).

In Queensland, many local governments have criminalised the possession or consumption of alcohol in public spaces. For example, some local governments prohibit the possession or consumption of alcohol on roads or in a park – unless the council has authorised it as a park in which alcohol may be taken and consumed.[8] Several Indigenous Local Government Areas restrict the volume of alcohol that a person or vehicle can carry within their boundaries, while others prohibit alcohol entirely.[9]

1.1.2 Begging

In a public place, it is an offence to:

- beg for money or goods
- cause, procure or encourage a child to beg for money or goods
- solicit donations for money or goods, unless a person is authorised to do so by a registered charity or is a busker authorised by local government.[10]

The maximum penalty for this offence is 10 penalty units ($1,437.50) or 6 months imprisonment.

1.1.3 Public urination

It is an offence to urinate in a public place.[11] The penalty for this offence depends on where it occurs. If a person urinates in public within, or in the vicinity of, licensed premises the maximum penalty is 4 penalty units ($575.00). Elsewhere, the maximum penalty is 2 penalty units ($287.50)

1.2 Police powers to deal with people who are intoxicated in public

The extent of police powers to deal with people who are intoxicated in public depends on where that behaviour occurs and whether or not police have first arrested the person. Some of these powers can also be used to deal with people who engage in other anti-social behaviour, including public urination.

1.2.1 Police powers to deal with people other than through arrest

In some contexts, such as in safe night precincts (SNPs), police have powers to deal with intoxicated people, and those who urinate in public, other than through arrest. This typically takes the form of a power to give people a direction to leave a certain area, and to prohibit them from re-entering for a set period of time, if certain conditions are met.

Safe night precincts exist in key entertainment areas across Queensland, such as Fortitude Valley, Surfers Paradise and Cairns. Safe Night Precincts are prescribed by regulation[12] and are designed to reduce late-night drug and alcohol-related violence.

7 *Summary Offences Act 2005*, s 10(2); *Major Events Act 2014*, s 18(3).

8 For example, see Townsville City Council – Local Law No. 51 (Control of Intoxicating Liquor).

9 For details and examples see https://www.qld.gov.au/firstnations/community-alcohol-restrictions/remote-discrete-communities.

10 *Summary Offences Act 2005,* s 8.

11 *Summary Offences Act 2005,* s 7.

12 *Liquor Act 1992*, s 173NC.

Queensland Police Service (QPS) can issue a banning notice to a person who behaves in a disorderly, offensive, threatening or violent way if:

- their behaviour occurs at, or in the vicinity of, a public place in an SNP, or a public place in which an event is being held and alcohol is being sold, and
- the person's continued presence poses an unacceptable risk of violence, impacting the safety of others, or disrupting or interfering with the peaceful passage or reasonable enjoyment of other people.[13]

The relevant law expressly identifies both public intoxication and public urination as examples of offensive, threatening or violent behaviour that can form the basis of a banning notice.[14]

A **banning notice** can prohibit a person from entering or remaining in a public place within a safe night precinct, or attending or remaining at an event, held in a public place, where alcohol is sold.[15] A banning notice can also prohibit a person from entering or remaining in a stated area that is a reasonable distance from such places.

Contravening a banning notice without reasonable excuse is an offence, and is subject to a fine of up to 60 penalty units ($8,625.00).[16] An initial banning notice can last for up to 1 month, and may be extended to 3 months under certain circumstances.[17]

At major events, police may direct a person who is drunk to immediately leave the major event area and not re-enter for a period of up to 24 hours.[18] If a person fails to comply with such a direction, they can be fined up to 60 penalty units ($8,625.00)[19] and police may use reasonable force to remove them from the major event area.[20]

For further discussion on SNPs and banning notices, refer to section 2.2.1.2 below.

1.2.2 Police powers to deal with people after arrest

After police arrest a person for public intoxication, existing laws provide them with several ways in which they can discontinue the arrest and avoid detaining the person in police custody. A police officer can release a person who has been arrested without issuing an infringement notice or charging them if:

- they consider it more appropriate for the person to be dealt with other than by charging them with an offence – for example, by issuing them with a caution,[21] or, if the person is a child, by taking no action[22]

13 *Police Powers and Responsibilities Act 2000* (PPRA), s 602C.

14 PPRA, s 602C(3)(a).

15 PPRA, s 602B.

16 PPRA, s 602Q.

17 PPRA, s 602F.

18 *Major Events Act 2014,* s 26(2). Under the *Major Events Act 2014*, an 'authorised person' includes a police officer.

19 *Major Events Act 2014,* s 26(3).

20 *Major Events Act 2014,* s 26(6).

21 PPRA, s 377(4).

22 PPRA, s 380(3)(a).

- they are satisfied that it is more appropriate for an intoxicated person to be taken to a place (other than police custody) where they can receive the treatment or care necessary to recover safely from being intoxicated – provided certain conditions are met.[23]

The Police Powers and Responsibilities Act 2000 provides several examples of alternative places of safety: [24]

A hospital – if the person needs medical attention.

A vehicle used to transport them to another place of safety – under the control of someone other than police.

A place other than a hospital that provides care for intoxicated people – such as a sobering up or diversionary centre.

The person's home, or the home of a relative or friend – provided there is no risk of domestic violence.

If a police officer is satisfied that it would be more appropriate for an intoxicated person to be taken to an alternative place of safety, the police officer has a duty to take the person to that place of safety and release them there at the earliest reasonable opportunity.[25]

There are some situations in which the duty to transfer an intoxicated person to an alternative place of safety does not apply. This includes where:

- there is no one at the place of safety who is able to care for the intoxicated person[26]
- the intoxicated person's behaviour may put others at the place at risk of harm, including at risk of domestic violence.[27]

Where a person has been arrested for public intoxication, police are legally required to consider discontinuing the arrest and diverting the person to an alternative place of safety as soon as is reasonably practicable.[28] However, this obligation only arises *after* the person has been arrested and delivered into custody at a police station, police establishment or watch-house.[29]

Police powers to pursue alternatives to custody for intoxicated people are found in the provisions of the Police Powers and Responsibilities Act that deal with the discontinuation of an arrest. This means that police do not have the power to transport an intoxicated person to a place of safety unless they arrest them first.

In contrast, police powers to deal with people adversely affected by other potentially harmful substances (including volatile substances such as glue, paint or solvents) do not require a person to be arrested first.

If a police officer is satisfied that a person is affected by the ingestion or inhalation of a potentially harmful substance, they may detain them for the purpose of taking them to a place of safety.[30] If this

23 PPRA, s 378(1).

24 PPRA, s 378(1)(b).

25 PPRA, s 378(2).

26 PPRA, s 378(3).

27 PPRA, s 378(3).

28 PPRA, s 394(2).

29 PPRA, s 394(1)(a).

30 PPRA, s 604.

iis not possible, either because no place of safety is available or because of risks associated with the person's behaviour, the person must be released.[31]

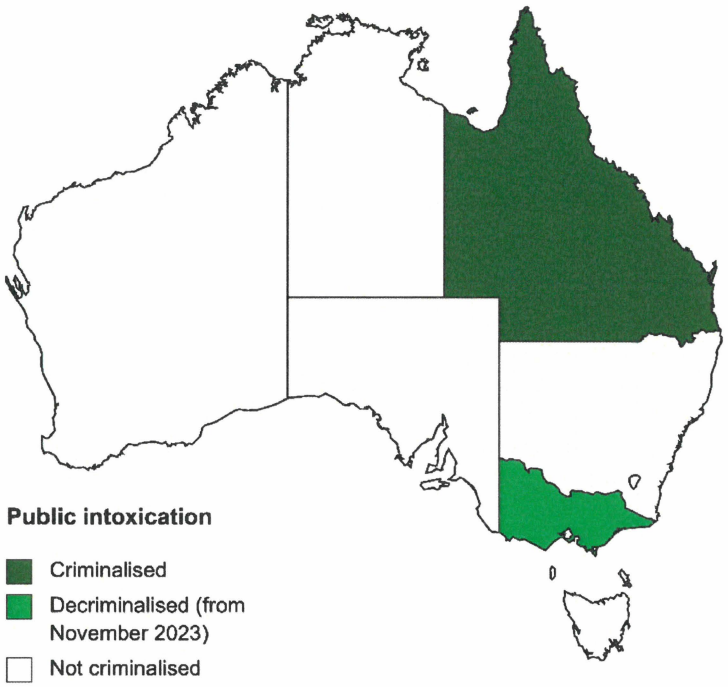
1.3 Decriminalisation of similar offences in other Australian jurisdictions

Queensland is the only Australian jurisdiction in which specific offences criminalise all three of the acts examined by this inquiry: public intoxication, begging and public urination. While other states and territories have removed specific offences criminalising some, or all, of these acts, most maintain more general public order offences that can criminalise such behaviour in certain circumstances.

1.3.1 Public intoxication

As of October 2022, Queensland and Victoria were the only states to maintain specific offences that criminalise public intoxication, as Figure 1 illustrates.[32]

Figure 1 Public intoxication in Australia



The Victorian Parliament passed legislation to repeal the relevant offence in 2021, which was due to come into effect in November 2022.[33] However, the Victorian Government later deferred the decriminalisation of public intoxication to November 2023 due to the impact of the COVID-19 pandemic on establishing the necessary health model as planned.[34]

The states and territories that have removed specific offences criminalising public intoxication have done so over an extended period. New South Wales (NSW) decriminalised public intoxication in 1979,

31 PPRA, s 605.

32 *Summary Offences Act 2005*, s 10; *Summary Offences Act 1966* (Vic), s 13.

33 *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic). Minister for Crime Prevention, Minister for Corrections, Minister for Youth Justice, Minister for Victim Support The Hon Natalie Hutchins advised the Victorian Legislative Assembly that the impact of the COVID-19 pandemic delayed implementation, 23 June 2022, p 2,642.

34 The deferral was enacted in the *Crimes Legislation Amendment Act 2022* (Vic).

the Australian Capital Territory (ACT) decriminalised public intoxication in 1983, Western Australia (WA) did so in 1990, and South Australia (SA) followed more recently in 2016.[35]

In some states, it is an offence to drink alcohol in certain public places despite the decriminalisation of public intoxication. In WA, drinking without a permit is prohibited in public places,[36] while in Tasmania it is an offence to consume alcohol on public streets or in other public places prescribed by regulations.[37]

In other Australian jurisdictions, public intoxication remains criminalised in certain circumstances. Most notably, in NSW, public intoxication forms part of a criminal offence if a person remains intoxicated and disorderly in a public place after having been issued with a notice to move on by police.[38]

With the exception of NSW, where public intoxication has been decriminalised, the police have generally retained – or been granted – powers to detain those intoxicated in public where this is necessary to protect them or others from harm. The details of these protective custody regimes vary between different states and territories.

The most important points of variation between these regimes concern the limits placed on the powers of police to detain intoxicated people in protective custody, in particular:

- *whether the legislation expressly provides that detention on the grounds of public intoxication must be a last resort.* For example, in the ACT, police can only detain an intoxicated person if they are satisfied that there is no other reasonable alternative for the person's care and protection.[39]
- *the extent to which police have a positive obligation to seek alternatives to police custody when they detain someone who is intoxicated in public.* For example, in Tasmania police are required to make reasonable inquiries to find a place of safety (other than police custody), or a responsible person willing to take the intoxicated person in to care.[40]

In most cases, protective custody regimes limit the length of time that an intoxicated person can be detained in police custody to 12 hours. For example, in SA, police must either discharge a person from their custody or transfer them to a sobering-up centre (SUC) within 12 hours.[41]

1.3.2 Begging

Several Australian jurisdictions maintain specific offences that criminalise begging. As illustrated in Figure 2, this includes Queensland, Victoria, SA, Tasmania and the Northern Territory (NT).[42]

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35 Department of the Prime Minister and Cabinet, *Review of the implementation of the Royal commission into Aboriginal Deaths in Custody*, October 2018, chapter 6; Commonwealth Ombudsman, *Australian Federal Police: Use of Powers Under the Intoxicated People (Care and Protection) Act 1994,* October 2008, p 8.

36 *Liquor Control Act 1988* (WA), s 119(1).

37 *Police Offences Act 1935* (Tas), s 35(2).

38 *Summary Offences Act 1998* (NSW), s 9(1).

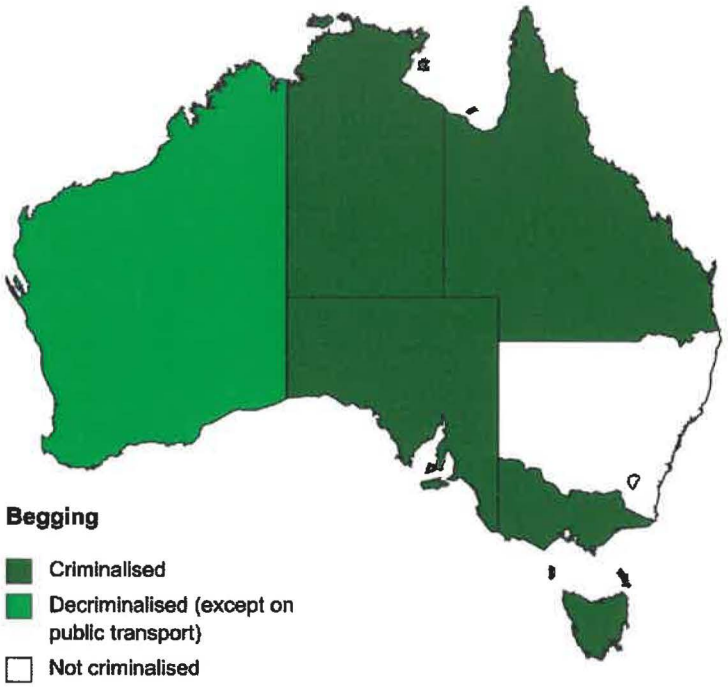
39 *Intoxicated People (Care and Protection) Act 1994* (ACT), s 4(2).

40 *Police Offences Act 1935* (Tas), s 4A(4).

41 *Public Intoxication Act 1984* (SA), s 7(4).

42 *Summary Offences Act 2005*, s 8; *Summary Offences Act 1966* (Vic), s 49A; *Summary Offences Act 1953* (SA), s 12; *Police Offences Act 1935* (Tas), s 8; *Summary Offences Act 1923* (NT), s 56(1)(c).

Figure 2 Begging in Australia



In WA, begging was decriminalised in 2004. However, it remains a criminal offence where it occurs on public transport, or in a public transport facility, such as a train station.[43]

The Tasmanian Government introduced a bill to decriminalise begging in 2018.[44] However, the bill lapsed following the Tasmanian election in 2021 and is no longer before the Tasmanian Parliament.

NSW decriminalised begging in 1979. In both NSW and the ACT, where begging is not an offence, the police retain discretionary powers that can be used to move on people who are begging in certain circumstances. This includes when people beg in a manner that is intimidating or likely to cause fear.[45]

1.3.3 Public urination

As illustrated in Figure 3, Queensland, SA and the ACT currently maintain specific offences that criminalise public urination.[46]

Other Australian jurisdictions maintain more general public order offences that can criminalise public urination in certain circumstances. For example, public urination can amount to a criminal offence where it constitutes 'offensive conduct' (NSW), 'disorderly conduct' (Victoria), 'disorderly behaviour' (WA), or 'public annoyance' (Tasmania).[47] In the NT, the offence of 'indecent behaviour' can include urinating in public.[48]

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43 *Public Transport Authority Regulations 2003* (WA); r 14.

44 *Police Offences Amendment (Begging) Bill 2018* (Tas).

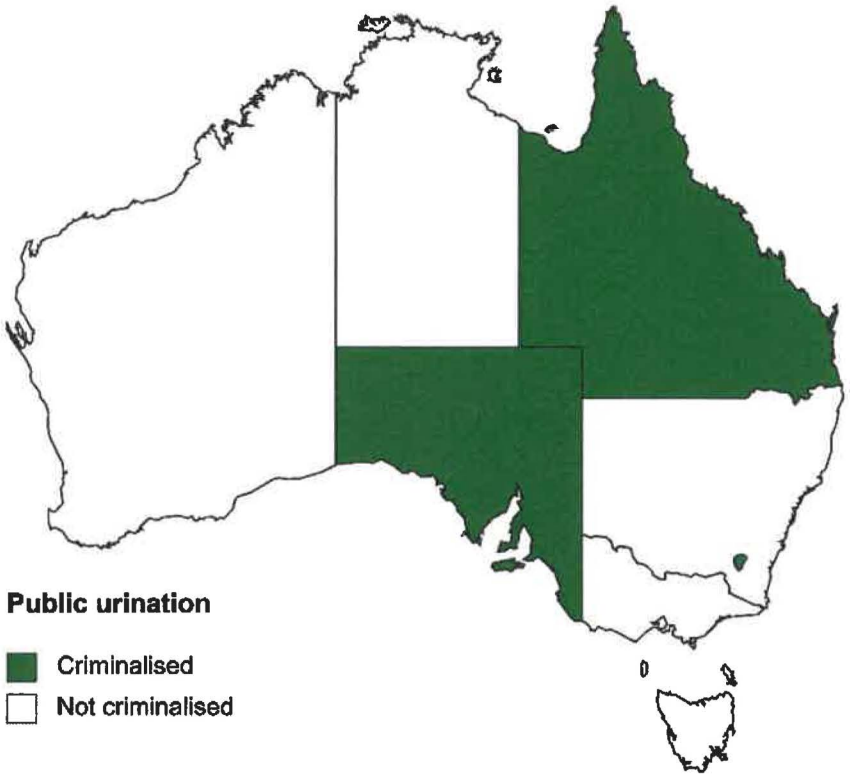
45 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 197; *Crimes Act 1900* (ACT), s 175.

46 *Summary Offences Act 2005*, s 7; *Summary Offences Act 1953* (SA), s 24; *Crimes Act 1900* (ACT), s 393(A).

47 *Summary Offences Act 1988* (NSW), s 4; *Summary Offences Act 1966* (Vic), s 17A; *Criminal Code Compilation Act 1913* (WA), s 74(a); *Police Offences Act 1935* (Tas), s 13.

48 *Summary Offences Act 1923* (NT), s 47(a).

Figure 3 Public urination in Australia



1.4 Factors unique to Queensland communities

Queensland is geographically large and diverse. Queensland has the highest proportion of residents living in regional areas when compared with other states. It has more urban areas with populations over 50,000 than any other state and is the most decentralised state in Australia with 49 per cent of the population living in the capital city, compared with 68 per cent in other states.[49]

These factors are reflected in the QPS statistics relating to the frequency of and the police response to the public order offences that are the subject of this inquiry.

[49] Department of State Development, 'Celebrate Your State: Happy Queensland Day', https://www.statedevelopment.qld.gov.au/news/celebrate-your-state-happy-queensland-day.

Key insights from Queensland Police Service data

Aboriginal and Torres Strait Islander peoples are significantly overrepresented among those charged with public intoxication, begging and public urination.

Aboriginal and Torres Strait Islander peoples made up 4.6 per cent of Queensland's population in 2021,[50] but more than 47 per cent of people charged with these offences in 2021-22.[51] This means that Aboriginal and Torres Strait Islander peoples are charged with these offences at almost 19 times the rate of the non-Indigenous population.

Aboriginal and Torres Strait Islander peoples charged with public intoxication tend to be slightly older than non-Indigenous people charged with this offence.

The majority of Aboriginal and Torres Strait Islander peoples who are charged with public intoxication are aged between 30 and 49. In the non-Indigenous community, there is less variation across age cohorts: people aged between 18 and 49 are charged with public intoxication at roughly similar numbers.

There is substantial geographic variation in the frequency of each offence – and who is most likely to be charged with it.

While begging occurs primarily in Brisbane, public intoxication is far more common in the Gold Coast and in North and Far North Queensland. In the Gold Coast, it is overwhelmingly non-Indigenous people who are charged with public intoxication, while in North and Far North Queensland it is overwhelmingly Aboriginal and Torres Strait Islander peoples who are charged with this offence.

How police respond to public urination depends on where they are.

In some parts of Queensland, police respond to public urination by talking to the offender or under certain circumstances, issuing an on-the-spot fine. In contrast, in Far North Queensland, if police do act upon the offence, they charge more people with public urination than they issue with on-the-spot fines.

Most charges for public intoxication end up being dismissed.

Between November 2017 and October 2021, the Magistrate's Court heard 1,257 single counts of public intoxication and dismissed 693 of those charges. This means that in at least 55% of cases, no penalty was imposed.

Queensland's police are enforcing the offences of public intoxication, begging and public urination less frequently than in the past.

Over the last 5 years the number of people charged with public urination in Queensland declined by almost one-third, the number of people charged with begging declined by over two-thirds, and the number of people charged with public intoxication almost halved.

The public very rarely reports instances of public urination to the police.

In the first two months of 2022, only 6 charges of public urination were based on reports made to the police by members of the public. Police detected the other 91 instances of public urination that led to charges being laid during this period.

[50] Calculated using population data from the Australian Bureau of Statistics 2021, 'Australia: Aboriginal and Torres Strait Islander population summary', https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary.

[51] Queensland Police Service, correspondence dated 11 July 2022, p 2.

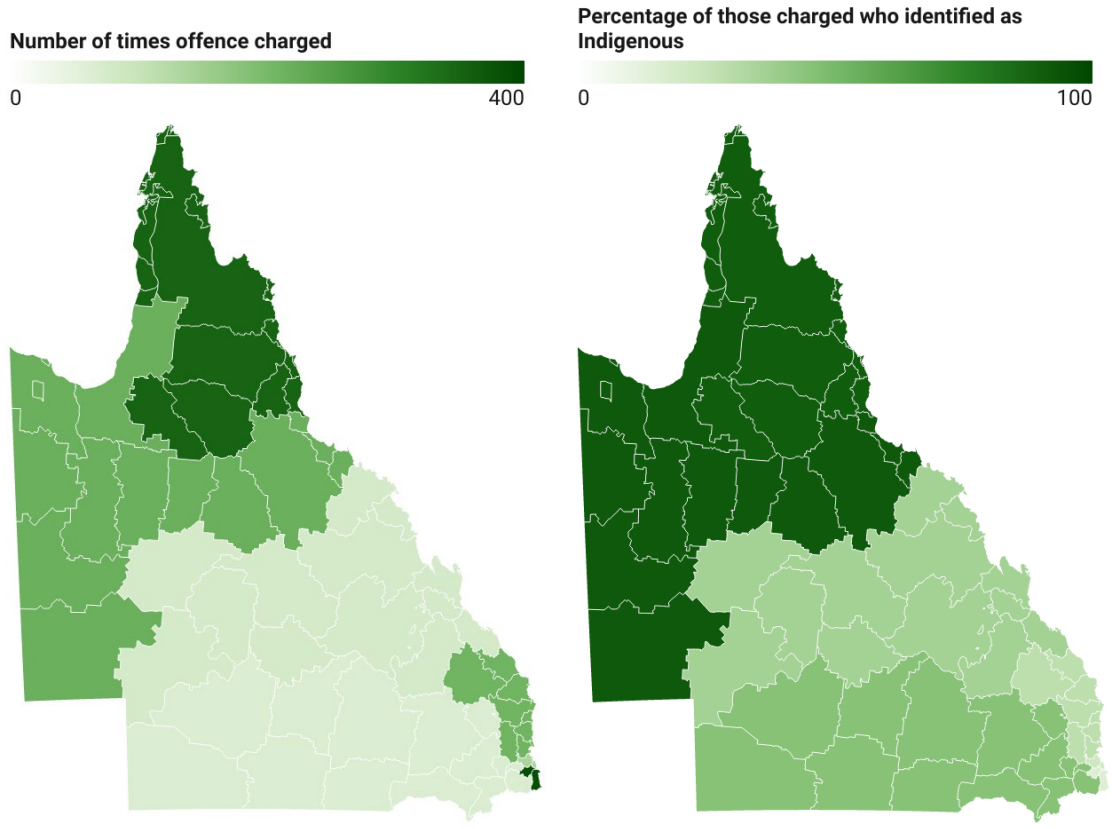
1.4.1 Patterns of offending by region and cohort

Considering the public offences of intoxication, begging and urination, there are significant geographic variances in the police statistics made available to the committee in respect to this inquiry.[52]

The QPS advised that there are 15 police districts across the following police regions in Queensland:

- Brisbane Region
- South Eastern Region
- Southern Region
- North Coast Region
- Central Region
- Northern Region
- Far Northern Region.

Figure 4 Geographic variation in enforcement of public intoxication, 2020-21



Source: Queensland Police Service, correspondence dated 18 July 2022.

Note: Data has been aggregated to the regional level with LGAs assigned to the QPS Police Region in which they primarily fall. The QPS Police Regions are Brisbane, Central, Far Northern, North Coast, Northern, South Eastern and Southern.

Geographic variances are also apparent when considering public begging and public urination offences. An analysis of the QPS statistics for s 8 and s 10 of the Summary Offences Act from 1 July 2017 to 30 June 2021 indicates that public begging is predominant in the Brisbane Region, whereas

[52] Queensland Police Service, correspondence dated 11 July 2022 and 15 August 2022.

there is a greater distribution of public urination offending in the Southern police region of Queensland, including the Darling Downs, Ipswich and South West Districts.[53]

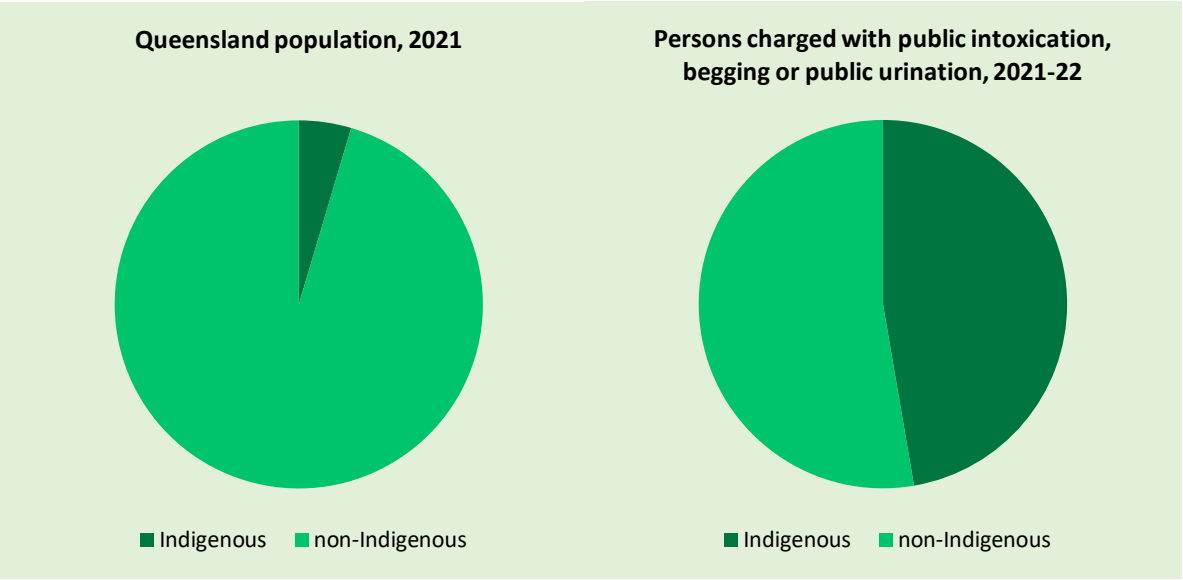
Deputy Commissioner Gollschewski, QPS stated:

> I think it is really important to understand the demographics that sit with some of these statistics. If you look at begging, urination and intoxication, it flips from the south-eastern region, which is the Gold Coast. The numbers are very much non-Indigenous. You have demographics at play here. If you go to the north of Queensland, it goes completely the other way.
>
> …
>
> When you look at the figures across our report and across the different areas, you can see what local issues come into play with how the offences are playing out.[54]

QPS statistics provide a measure of that disproportion in 2020-21:

- 47 per cent of all people police charged for urinating in a public place identified as being Indigenous
- 47 per cent of all people charged for public intoxication identified as being Indigenous
- 64 per cent of people charged with begging identified as being Indigenous.[55]

Figure 5 Over-representation of Aboriginal and Torres Strait Islander peoples among those charged with relevant offences in Queensland



Source: Australian Bureau of Statistics, Census 2021; Queensland Police Service, correspondence dated 18 July 2022.

[53] Queensland Police Service, correspondence dated 8 July 2022, p 7; Attachment 1.

[54] Public briefing, Brisbane, 12 July 2022, p 7.

[55] Queensland Police Service, correspondence dated 8 July 2022, p 1.

I think the design of what this new system needs to be must be quite carefully thought through, depending on the circumstances of each community that this behaviour is occurring in, because there might be unique local solutions.

Ms Neroli Holmes, Deputy Commissioner, Queensland Human Rights Commission, public hearing, Brisbane, 29 August 2022.

1.5 Stakeholder views on decriminalisation

1.5.1 Disproportional impact on vulnerable people

The most effective response in addressing and preventing repeated antisocial behaviour will generally be a health and welfare response. Such a response will also reduce the likelihood of victims being subjected to such behaviour.

Ms Neroli Holmes, Deputy Commissioner, Queensland Human Rights Commission, public hearing, Brisbane, 29 August 2022.

A majority of submitters supported decriminalisation of public intoxication and begging. Generally, these submitters expressed the view that criminalising these behaviours had a disproportionate impact on vulnerable members of the community and was not effective in deterring the behaviour.

The time has come to put an end to the ongoing criminalisation and incarceration of people for being poor, homeless and in need; and for substance misuse, addiction and for failing to access and utilise ablution facilities

Australian Human Rights Commission, Submission 40.

Most submitters accepted and emphasised that these offences have a disproportionate and negative impact on vulnerable people, and drew the committee's attention to:

- the strong connection between the public intoxication offence, the over-incarceration of Aboriginal and Torres Strait Islander peoples, and the risk to this cohort of the community to result in deaths in custody[56]
- the current offences maintain systematic inequalities in Queensland communities, sustaining the overrepresentation of First Nations people in the criminal justice system and impeding on the human rights of Queensland's most vulnerable[57]
- the outstanding recommendations from the Royal Commission into Aboriginal Deaths in Custody (refer to Appendix B for details of the recommendations from the Commission)[58]

[56] Submissions 8, 9, 10, 14, 16, 19, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42.

[57] Queensland Youth Policy Collective, submission 26, p 14.

[58] Submissions 10, 16, 23, 24, 26, 27, 29, 30, 32, 33, 34, 35, 37, 40, 41, 45.

- the intersection of Indigeneity with other aspects of identity (including gender, age, and disability) that magnify disadvantage and the disproportionate impact on some groups, most notably First Nations women, and First Nations children and youth[59]
- the interaction of the criminalisation of public intoxication (and other minor offences) with the Blue Card system, and the serious negative impact that this has on Aboriginal and Torres Strait Islander peoples, including loss of job opportunities and the potential removal of children from kinship carers to foster carers who are likely to be non-Indigenous[60]
- members of a culturally and linguistically diverse communities
- people who are mentally ill and people experiencing homelessness.

Submitters expressed diverse opinions about the appropriate role for police in dealing with public intoxication. While most who addressed this issue took the view that there is some role for police to play, many of them stressed that police involvement should be a last resort and subject to strict limitations.[61]

> *We don't consider that a 'response' of any form is truly needed in many situations involving public space offences. Where a response is necessary, we think that the vacuum left by decriminalisation, as well as the additional resources that will become available, will in itself create the positive initiatives that are needed to provide assistance to those who are intoxicated, experiencing a mental health crisis, or a domestic violence incident in public. For individuals who are so intoxicated in public that they are at risk of harm, the hospital or a 24-hour specialised medical clinic are the most obvious and suitable answers. In our view, conduct needs to be taken out of the realm of what is legitimately considered 'police work' in order for supportive, non-criminalising responses to be established.*
>
> Sisters Inside, submission 7.

Specifically in regard to begging, submitters noted:

- consistent evidence of a nexus between begging and severe hardship, which includes those who experience mental illness, homelessness and substance dependency issues[62]
- begging is the product of poverty, it doesn't warrant criminalisation, and criminalising it is neither effective nor appropriate.[63]

> *They [people who beg] are among the most marginalised, disadvantaged and disenfranchised in society.*
>
> Legal Aid Queensland, submission 34, p 10.

Mr Robert Heron did not support decriminalisation but offered qualified support to decriminalising begging, by supporting the decriminalisation of 'passive' begging (displaying a sign only), but

59 Submissions 13, 31, 33, 40.

60 Submissions 24, 28, 31. A Blue Card application may be declined owing to previous minor offences, see *Working with Children (Risk Management and Screening) Act 2000*, s 221; or outstanding SPER debt, which could lead a warrant for arrest and imprisonment, see *State Penalties Enforcement Act 1999*, s 119.

61 Submissions 26, 29, 31, 32, 39, 40, 42.

62 Legal Aid Queensland submission 34, p 10.

63 Submissions 17, 18, 23, 29 and 37.

suggested begging remain criminal 'where a person more actively solicits money or approaches people aggressively.[64]

Committee comment

The committee notes the views of submitters regarding the disproportionate impact of these public order offences on disadvantaged and vulnerable people.

The committee shares the concerns of the community in relation to the over-representation of First Nations Peoples in the criminal justice system. The committee recognises the need to deliver an appropriate, trauma-informed health and welfare response as part of the broader measures to address the problem.

1.5.2 Concern for community safety

A number of submitters opposed decriminalisation of public intoxication, begging and public urination, expressing concern that:

- decriminalisation would erode efforts to maintain community safety and lead to an increase in anti-social behaviour[65]
- business owners and their customers feel unsafe where offending is occurring in their community, and sustain regular damage to their store fronts[66]
- local councils face ongoing commitment to 'maintain community safety' at considerable cost, in public areas blighted by vandalism, human waste and discarded rubbish.[67]

Specifically to the offence of begging, some submitters suggested that:

- people often feel threatened when approached by beggars[68]
- beggars can be aggressive and intimidating[69]
- decriminalisation does not reflect community attitudes and will have a negative effect.[70]

Committee Comment

The committee acknowledges the concerns held by key stakeholders that decriminalisation of the offences of public drunkenness, begging and public urination may adversely affect perceptions of community safety, local tourism and businesses, and the cleanliness of public areas.

The committee believes that appropriate and adequate responses to truly address the problems that give rise to these offending behaviours will help to minimise these concerns.

64 Submission 5.

65 Submissions 1, 8, 11, 41, 44.

66 Joe Moro, President, Mareeba Chamber of Commerce, public hearing transcript, Mareeba, 6 September 2022, p 10; Emma Harman, President, Commerce North West, public hearing transcript, Mount Isa, 4 October 2022, p 11.

67 Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 6; Cr Brett Moller, Cairns Regional Council, public hearing transcript, Cairns, 5 September 2022, p 2; Rick Huriwai, Management Committee member, Cairns Chamber of Commerce, public hearing transcript, Cairns, 5 September 2022, p 13.

68 Joanne Daley, submission 2.

69 Mareeba Shire Council, submission 12.

70 Mareeba Shire Council, submission 12.

1.5.3 The role of police

Expressing a measure of caution in regard to decriminalisation were a number of submitters who argued that while decriminalisation could be supported, the current offences remained necessary to support police as part of their 'tool box' of measures to guide vulnerable people to a place of safety, or where there are behaviours exhibited that need to be addressed.[71]

Noting the QPS' advice to the committee that if decriminalisation was implemented in Queensland, police contact with intoxicated people would still occur,[72] the Queensland Police Service Union (QPU) submission stated:

> The QPU is keen to see any changes around public intoxication laws in Queensland still allow Police the power and the scope to protect the community and the individual. We cannot see a situation in Queensland were the law directs Police to leave intoxicated people as a risk to themselves or the community.[73]

The committee met with police officers in areas identified as of particular relevance to the inquiry. During these informal discussions, the committee heard general consensus on the following:

- police consider detaining offenders in custody a very last resort measure
- police will continue to require appropriate 'tools' to manage potentially offending behaviour, including the power to move people to a place of safety
- community support services are not always present or able to work independently in high-risk areas, especially after hours, and quite often police are the only ones who are able to respond to people exhibiting offending behaviour
- police work with local support services, local councils and with participants in SNPs to maintain community safety
- there needs to be sustainable support frameworks to support decriminalisation
- public perception needs to recognise that offending behaviours are not just the responsibility of the police.[74]

The committee observed that:

- every police district has unique community demographics, offending cohorts, and available community services to divert people away from harm
- police in rural and remote regions foster relationships with traditional owners, but must also liaise with transient populations that have travelled from outside community, or from outside the State into Queensland.

Committee comment

The committee was deeply impressed with the compassion and professionalism of those who work, often under significant pressure, to support individuals and to keep our community safe.

71 Submissions 24, 42, 44.

72 Queensland Police Service, correspondence dated 11 July 2022, p 4.

73 QPU, submission 42, p 3.

74 Personal communication, Queensland Police Service, Fortitude Valley, 31 August 2022; Cairns, 5 September 2022; Mount Isa, 4 October 2022; Townsville, 5 October 2022; and Surfers Paradise, 21 October 2022.

Recommendation 2

The committee recommends that the offences at s 8 (begging in a public place), s 10 (being intoxicated in a public place) and s 7 (urinating in a public place) of the *Summary Offences Act 2005* should be repealed, subject to appropriate community-based diversion services being in place.

Recommendation 3

The committee notes that, should those offences be repealed, the Queensland Police Service would retain relevant powers to address aggressive and violent behaviour. The committee notes that repealing s 10 (being intoxicated in public) of the *Summary Offences Act 2005* and investment in programs to establish or maintain non-custodial facilities for the care and treatment of intoxicated persons are essential to delivering on recommendations 79 to 91 of the Royal Commission into Aboriginal Deaths in Custody report handed down in 1991.

Recommendation 4

The committee recommends that the Queensland Police Service investigate any tools used by police in other Australian jurisdictions where the offences of being intoxicated in public, begging in a public place and urinating in a public place have been decriminalised.

2 Examination of the terms of reference

This section discusses issues raised during the committee's examination of the Inquiry terms of reference.

2.1 Changes required to decriminalise public intoxication and begging offences under the *Summary Offences Act 2005*

The first term of reference to this inquiry asks the committee to consider changes to legislation and operational policing responses to decriminalise the public intoxication and begging offences in the *Summary Offences Act 2005*.

2.1.1 Use of discretion in police operation

Some submitters to the inquiry expressed concern that the current offence framework allows police the discretion to detain intoxicated persons in custody. For example, the Queensland Network of Alcohol and Other Drug Agencies (QNADA) submitted that although custody is not the preferred option, the offence statistics indicate that police continue to make determinations to detain persons in custody for a period of time. Professor Tamara Walsh also noted that police discretionary powers could allow offences like public intoxication to operate in a discriminatory fashion.[75]

> *Although there are no reasons provided as to what factors officers used to inform their decision making in these instances, it does highlight the importance of not including any provision that allows officers the discretion to detain intoxicated persons in custody.*
>
> QNADA, submission 14, p 4.

2.1.2 Equipping police with adequate and appropriate responses

The committee notes the submissions of the QPU and LawRight which acknowledges the need to maintain a power and scope for the police to protect the community and the individual.[76] LawRight suggested that police continue to have power to detain in protective custody, but only in strictly limited circumstances: where a person is significantly impaired and an imminent danger to themselves and/or others.

Specific to the act of begging, Mount Isa City Council did not explicitly oppose decriminalisation, but submits police will need to retain some power to move on people who engage in the practice.[77]

LawRight submitted that if the public intoxication and public urination offences were repealed, clear regulations, guidelines, policies, training and partnership measures should be implemented to ensure that QPS do not instead negatively impact vulnerable Queenslanders by charging them with more serious offences or using alternative police powers.[78]

> *They [the police] should no longer, on their own, justify an approach, recording or other interaction between a police officer and a member of the public.*
>
> Caxton Legal Centre and the Institute of Urban Indigenous Health, submission 37, p 3.

[75] Prof Tamara Walsh, University of Queensland, submission 15.

[76] City of the Gold Coast, submission 42, p 3; LawRight, submission 24, p 8.

[77] Mount Isa City Council, submission 43.

[78] LawRight, submission 24, pp 9, 10.

2.1.3 First responders

Some submitters spoke to a new role for police as first responders that must be forged if decriminalisation occurred. There was a range of positions expressed by submitters:

- police should not have a role in the response to public intoxication, and if police did become involved, their interventions would be designed to help people rather than further criminalise them[79]
- police should have as minimum a role as possible, and primary first responders should be health services or people from community organisations[80]
- the QPS Operational Procedure Manual (OPM) (which provides police with guidance and instructions) must be amended to explicitly instruct police that being drunk, begging and urinating in public are no longer considered anti-social or nuisance behaviours for the purposes of Queensland law.[81]

> *Often people do not have a great response to police interactions and that can escalate behaviour. It would be preferable for health responses to come out into the field and deal with issues if people need to go to a place of safety rather than the police, so maybe the police calling that group. With the state the size it is, that may not always be an option. There might be occasions where the police are the first responders who have to deal with issues that have to be dealt with. I think that is where good negotiated outcomes for each district or community, to try to get nuanced responses to fit what is available in that community and what resources have been created, is going to be necessary.*
>
> Ms Neroli Holmes, Deputy Commissioner, Queensland Human Rights Commission, public hearing Brisbane, 29 August 2022.

2.1.3.1 Co-responder model

The committee heard from a number of stakeholders the potential benefits of a wider application of a co-responder model, where first responders—ambulance and police officers—are accompanied by health professionals who assist the first responders and provide specific treatment or diversion recommendations.

The Public Advocate recommended that the government extend the Mental Health Co-responder Program, in a format that is appropriate to each particular region, so that it is available to all Queenslanders.[82] Similarly, Logan City Council strongly recommended that a 'collaborative approach is taken to addressing public safety and associated welfare issues that includes local community, health, homelessness, drug, and alcohol addiction service providers, Queensland Health, Queensland Ambulance Service and QPS' in a co-responder service.[83]

79 Sisters Inside Inc, submission 7; Queensland Youth Policy Collective, submission 26.

80 QCOSS, submission 29; Justice Reform Initiative, submission 23.

81 IUIH and Caxton Legal Centre, Submission 29, pp 3-4.

82 Submission 19, p 2.

83 Logan City Council, submission 45, p 3.

Committee comment

The committee recognised that where co-responder models are in place, they are having a positive impact on the community and individuals.

The committee notes the submissions of the Public Advocate and others who recommend a collaborative approach to responding to vulnerable people in need of appropriate health and social welfare-based treatments, so long as it does not hinder police in performing their work to maintain the safety of both the individual and the community.

Recommendation 5

The committee recommends that all frontline workers responding to or providing services in connection to these offences receive cultural awareness training and respond in a trauma-informed way and reflective of cultural sensitivities

2.2 The appropriateness of other police powers and offences to ensure community safety and public order arising from public intoxication and begging

This section discusses issues raised during the committee's examination of the Inquiry's Term of Reference g); the appropriateness of other police powers and offences to ensure community safety and public order arising from public intoxication and begging, particularly in the context of events where there may be significant alcohol consumption.

In addressing this term of reference, submitters raised the potential for police officers to use alternative offences to manage public intoxication, begging and public urination if those offences were decriminalised. In that context, submitters also considered the role of police in transporting an intoxicated person to a place of safety, whether police protective custody would be appropriate, and the inclusion of alcohol and drugs in the definition of 'potentially harmful things'. Submitters also discussed police training and procedures that would be required if those offences were decriminalised.

2.2.1 Potential use of alternative offences

The committee notes that among those submitters who addressed the appropriateness of other offences and police powers, many expressed concern that the decriminalisation of public intoxication and begging may have an unintended consequence of police making greater use of other (more serious) public order offences and powers, in particular public nuisance and move-on orders/banning notices.[84] They submitted that this was likely to have significant adverse consequences for vulnerable members of the community, including increased criminalisation.[85] Public nuisance offences and police move-on powers grant police wide discretionary powers in deciding whom and when to prosecute.[86]

[84] See Prof. Tamara Walsh, University of Queensland, submission 15; Prisoners' Legal Service, submission 16; Aboriginal & Torres Strait Islander Legal Service, submission 17; LawRight, submission 24; QLS, submission 28; Queensland Council of Social Services (QCOSS), submission 29; QFCC, submission 30; Aboriginal & Torres Strait Islander Women's Legal Services NQ (ATSIWLSNQ), submission 31; Legal Aid Queensland, submission 34; QHRC, submission 35; Queensland Police Union (QPU), submission 42; Ms Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service (QIFVLS), public hearing transcript, Cairns, p 6. .

[85] See Sisters Inside, submission 7; QPU, submission 42; QIFVLS, submission 33.

[86] QLS, submission 28.

The Queensland Law Society (QLS) expressed concern that discretion had capacity to result in the selective enforcement of these laws, and particularly unjust outcomes for marginalised groups.[87]

The Aboriginal & Torres Strait Islander Women's Legal Services NQ (ATSIWLSWQ) warned against the potential use of spatial restrictions on alcohol that are designed to target First Nations drinkers.[88]

The QPS raised concerns about the potential for an intoxicated person to be charged with another offence in the absence of a police discretion to use the public intoxication offence. Those offences included 'failure to leave licensed premises, consuming liquor in a public place, creating a disturbance or nuisance in or on passenger vehicle, wilful exposure, wilful damage, affray, trespass, pedestrians causing traffic hazards or obstructions, stealing and going armed so as to cause fear'.[89]

Observing that any decriminalisation should not erode the powers of the QPS to intervene 'where the conduct of an individual poses a real threat to public safety or property',[90] the Logan City Council noted that powers under the PPRA and the Summary Offences Act would still enable the Queensland Police Service to respond to antisocial behaviour, including powers to issue move-on orders and to charge people with good order offences such as public nuisance, disorderly behaviour and/or indecent behaviour.[91]

> *What we do not want to see is more serious offences being used to police this when there are other things in place which are beneficial to all. We do not want people to end up with criminal histories. That is the way I want to go. I want to see this as a health and welfare issue. That is how we want to deal with things and have the tools to do it.*
>
> Ian Leavers, President and Chief Executive Officer, Queensland Police Union, public hearing transcript, Mount Isa, 4 October 2022, p 17.

Figure 6 illustrates the maximum penalties for public intoxication and alternative offences, the majority of which have a higher maximum penalty, and some a term of imprisonment.

87 QLS, submission 28, p 9.

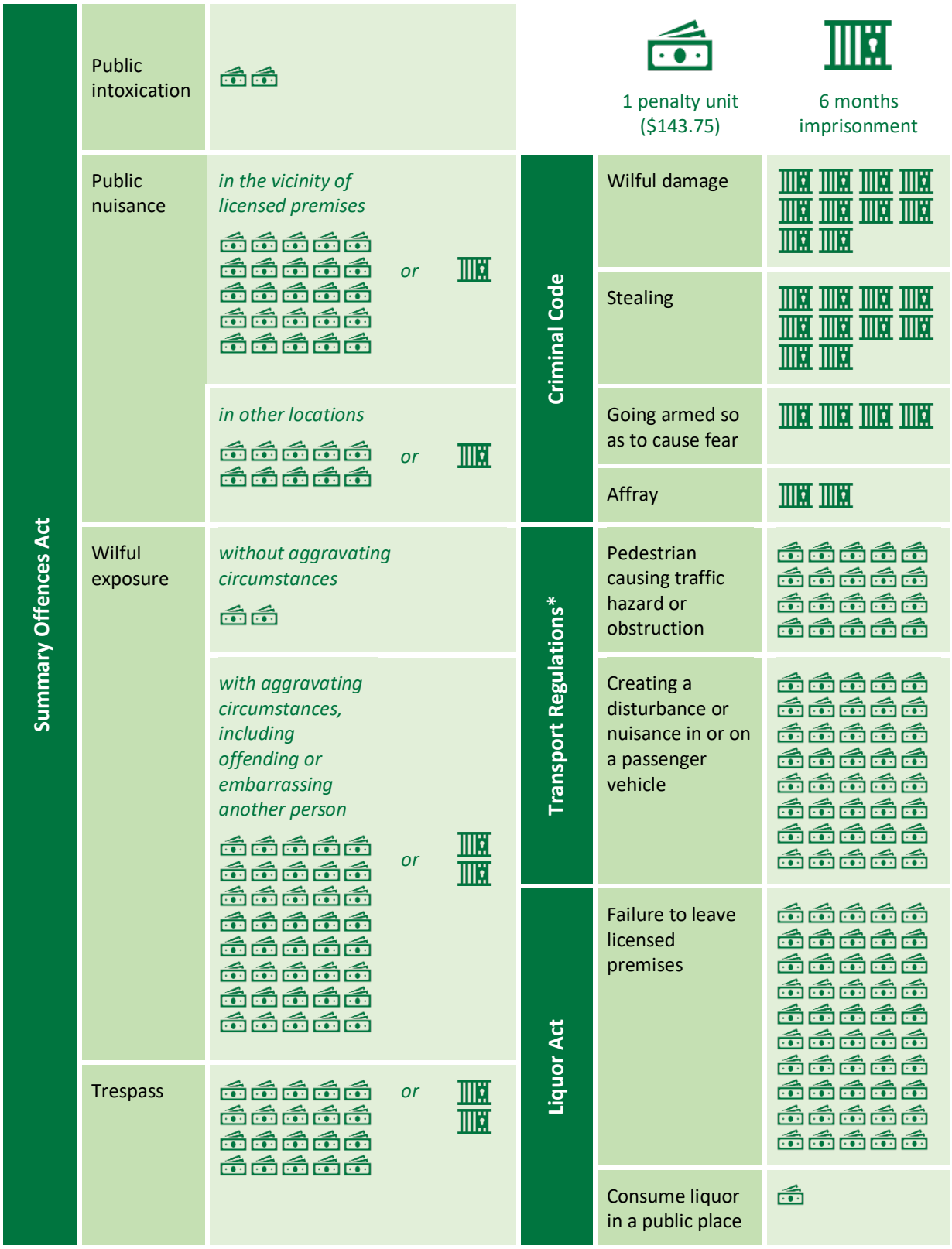
88 ATSIWLSNQ, submission 31

89 Deputy Commissioner Gollschewski, Queensland Police Service, public hearing transcript, Brisbane, p 3.

90 Submission 45, p 2.

91 Submission 45.

Figure 6 Maximum penalties for public intoxication and alternative offences



Source: *Created from data provided by the Queensland Police Service, response to a question taken on notice at a public briefing in Brisbane on 12 July 2022.* Transport Operations (Road Use Management – Road Rules) Regulation 2009; Transport Operations (Passenger Transport) Regulation 2018.

2.2.1.1 Public nuisance offence

> *We definitely do not want the default operation by police to go from arresting for public intoxication or public urination or begging to the nuisance offence.*
>
> Ms Neroli Holmes, Deputy Commissioner, Queensland Human Rights Commission, public hearing, Brisbane, 29 August 2022.

To mitigate the potential for the increased use of alternative public order offences if public intoxication and begging were to be decriminalised, submitter support was strongest for amending the public nuisance offence compared to other police powers/offences. The offence of public nuisance falls under s 6 of the Summary Offences Act.

Figure 7 When a police officer may charge a person with a public nuisance offence

Public nuisance

(1) A person must not commit a public nuisance offence.

Maximum penalty—

(a) if the person commits a public nuisance offence within licensed premises, or in the vicinity of licensed premises—25 penalty units or 6 months imprisonment; or

(b) otherwise—10 penalty units or 6 months imprisonment.

(2) A person commits a public nuisance offence if—

(a) the person behaves in—

(i) a disorderly way; or

(ii) an offensive way; or

(iii) a threatening way; or

(iv) a violent way; and

(b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

(3) Without limiting subsection (2)

(a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and

(b) a person behaves in a threatening way if the person uses threatening language.

(4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.

(5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

Summary Offences Act 2005, s 6

Measures proposed by submitters to mitigate or overcome the use of the public nuisance offence should the offences of public intoxication and begging be decriminalised and the offence of public urination be repealed were mixed and included:

- repealing the offence[92]
- limiting its use to reduce police discretion, including:
    - requiring it to be reasonably necessary in the interests of public safety
    - requiring police officers to consider the broader circumstances at the time including those of the individual concerned
    - requiring there to be a complaint from a member of the public[93]
- amending the threshold for offensiveness by:
    - removing the word 'disorderly'
    - either repealing the section of the offence relating to offensive language or removing the words 'offensive', 'obscene' and 'indecent'[94]
- clarifying and narrowing the subsection dealing with a person's behaviour impacting enjoyment of a public place[95]
- restraining use of the offence as a very last resort in the interests of public safety[96]
- developing clearer guidance on how it should be applied[97]
- changing police charging practices to ensure public nuisance is not used in place of public intoxication, begging and/or public urination[98]
- introducing a defence of reasonable excuse into the offence of public nuisance[99]
- inserting a 'vulnerable persons' provision 'to ensure police officers consider alternative courses of action before proceeding against a vulnerable person for trivial, or only arguably offensive, behaviour'[100]
- increasing the range and appropriateness of sentencing alternatives for petty offences.[101]

Some submitters saw circumstances in which the use of the public nuisance offence may be appropriate, such as when begging is accompanied by antisocial behaviour that becomes disorderly, offensive, threatening or violent.[102] Whilst advocating for the repeal of offences of begging and urinating in a public place, ATSILS noted that any antisocial behaviour impacting upon the peaceful

92 Sisters Inside, submission 7; Australian Red Cross – Townsville, submission 13; Prof. Tamara Walsh, University of Queensland, submission 15; Prisoners' Legal Service, submission 16.

93 Queensland Law Society, submission 28; Ms Neroli Holmes, Deputy Commissioner, QHRC, public hearing transcript, Brisbane, 29 August 2022, p 13.

94 Prof. Tamara Walsh, University of Queensland, submission 15; IUIH and Caxton Legal Centre, submission 37; *Summary Offences Act 2005,* subsections 6(2)(a) and 6(3)(a).

95 IUIH and Caxton Legal Centre, submission 37; *Summary Offences Act 2005*, subsection 6(2)(b).

96 Ms Neroli Holmes, Deputy Commissioner, QHRC, public hearing transcript, Brisbane, 29 August 2022, p 13.

97 QCOSS, submission 29.

98 QFCC, submission 30.

99 QLS, submission 28.

100 QLS, submission 28, p 11.

101 QLS, submission 28.

102 LawRight, submission 24.

passage through or enjoyment of a public space and blatantly offensive urinating in a public place would fall within the ambit of a public nuisance offence.[103]

2.2.1.2 Move on powers and banning notices

In Queensland, move on powers and the police banning notice regime authorise police officers to move people away from public spaces in specific circumstances.

Move on powers authorise police officers in certain circumstances to direct persons to move away from public spaces, including public areas in SNPs, and other prescribed places, such as schools and railway stations, even if the person has not committed any offence.[104] Those powers are set out in Part 5 of the PPRA.

Figure 8 When police officers may make a move on direction

Move on powers

A police officer may make a move on direction if a person's behaviour or presence:

- is reasonably suspected to be causing anxiety to a person or interfering with trade by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
- is reasonably suspected to be disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or
- is reasonably suspected of disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.
- raises the suspicion that the person is soliciting for prostitution.

Police Powers and Responsibilities Act 2000, ss 44-48

A police banning notice is a written notice from a police officer that stops a person from entering or remaining in:

- stated licensed premises
- an SNP
- a public event where alcohol is being sold
- an area which is a reasonable distance to or from any of the above (e.g. 500m from a stated licensed premise or SNP).[105]

It is an offence to disobey a police banning notice, with a penalty of 60 penalty units ($8,625.00).[106] A banning notice will be in effect for a month (ending at midnight), or if the notice applies to a particular event, up until the end of the day (midnight) the event finishes.[107] An extended police banning notice

[103] ATSILS, submission 17.

[104] 'Prescribed places' is defined in Schedule 6 of the PPRA and includes shops, childcare centres, schools, licensed premises, railway stations and railway land around it, malls, a part of the corporation area under declared under the *South Bank Corporation Act 1989*, automatic teller machines, and war memorials. In relation to soliciting or prostitution, it does not include any area in a licensed brothel that cannot be viewed from outside the brothel.

[105] Queensland Police Service, 'Police banning notices', https://www.police.qld.gov.au/drugs-and-alcohol/police-banning-notices#:~:text=A%20police%20banning%20notice%20is,where%20alcohol%20is%20being%20sold.

[106] PPRA, s 602Q. The penalty for contravention of a banning notice is 60 penalty units ($8,625.00).

[107] PPRA, s 602D(b); Queensland Police Service, 'Police banning notices'.

permits a police officer to extend a banning notice for additional days, ban the person from additional places and/or extend the duration of the police banning notice to up to 3 months from the starting time of the initial police banning notice.[108]

Figure 9 When police officers may issue a police banning notice

Banning notices

A police officer, with the approval of another police officer of at least the rank of sergeant, may give an adult a police banning notice if they are reasonably satisfied:

- the person has behaved in a disorderly, offensive, threatening or violent way, and
- the behaviour was at or in the vicinity of a relevant public place, and
- the person's ongoing presence, or presence in the immediate future, at the relevant public place and any other place stated in the notice, poses an unacceptable risk of—
  - (i) causing violence at the places; or
  - (ii) impacting on the safety of other persons attending the places; or
  - (iii) disrupting or interfering with the peaceful passage, or reasonable enjoyment of other persons, at the places.

Police Powers and Responsibilities Act 2000*, s 602C(1) to(3)*

The QPU noted that Police Banning Notices may be impacted by any decriminalisation of public intoxication and begging, as the examples provided in the PPRA for disorderly, offensive, threatening or violent behaviour, which trigger the issuing of a Police Banning Notice, include urinating or being intoxicated in a public place in contraventions of sections 7 and 10 of the Summary Offences Act.[109]

The QLS warned that, if the 3 public offences under consideration by the inquiry were decriminalised, police might expand the use of banning notices in the inner-city SNPs to deal with homeless and vulnerable people whom they previously dealt with under the Summary Offences Act.[110]

Several submitters expressed concern about the disproportionate impact of move on notices and banning notices on First Nations peoples and people experiencing homelessness.[111] The Queensland Human Rights Commission (QHRC) attested that criminal law enforcement practices, including move on directions, can be 'especially punitive for a person suffering serious, and often multiple, disadvantages' and include substance use, alcoholism, social impairments, and physical or cognitive disabilities.[112]

Several submitters described the impact move on directions and banning notices can have on people who are experiencing homelessness and those with complex needs who need to be near their regular support services and networks.[113]

[108] PPRA, s 602F; Queensland Police Service, 'Police banning notices'.

[109] Submission 42.

[110] QLS, submission 28.

[111] Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Service, public hearing transcript, Cairns 5 September 2022, p 8; Shane Cuthbert, submission 22; LawRight, submission 24; QHRC, submission 35.

[112] QHRC, submission 35, p 7.

[113] QLS, submission 28; IUIH and Caxton Legal Centre, submission 37; Law Right, submission 24.

Measures proposed by submitters to mitigate the risk of move-on powers being used to replace the public intoxication, public urination and begging offences, included:

- a small number of submitters were concerned that, in the context of decriminalisation of public intoxication, begging and public urination, move-on powers would be insufficient to deal with people exhibiting antisocial behaviour and questioned moving on people simply to cause a problem in another place.[114]

Other submitters were concerned that decriminalisation of the offences of public intoxication and begging and the repeal of the offence of public urination would remove the authority for police to move on people exhibiting those behaviours, and leave police unable to move someone to safety, without their consent,[115] leading to an increase in those behaviours,[116] and making it 'difficult to do anything at all' about the behaviours.[117]

Some submitters who supported the use of the move on power in the context of decriminalisation expressed the following views:

- police would need a move on power, not for punitive purposes, but for community safety, so people feel safe, and for common decency[118]
- police must be able to move-on people who are begging for the flow of commerce and the welfare of the rest of society, and to control the behaviour or, with the person's consent, consider the suitability of commencing a police referral to a suitable service provider'[119]
- suitable legislative alternatives would be needed to move on intoxicated persons and detain or arrest those displaying high risk antisocial behaviours to ensure community safety[120]
- a desire for the Mount Isa City Council to be authorised to make local laws with move-on powers and 'tip-out powers', with a view to working with the police and Indigenous liaison officers to checking on intoxicated persons' welfare and assisting with transporting that person home.[121]

> *I know that in Cairns when I was practising there used to be the move-on directions in relation to the tourism precinct, the banning notices, which I found in my practice were heavily targeted towards Aboriginal and Torres Strait Islander peoples who were sleeping rough. It was, with respect, to move them out of the public view of tourists.*
>
> Ms Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Service, public hearing Cairns, 5 September 2022, p 8.

114 Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 5; Lee Ellis, public hearing transcript, Mount Isa, 4 October 2022, p 22.

115 Cairns Regional Council, submission 41.

116 Cr Phil Barwick, Deputy Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 4; Ms Emma Harman, President, Commerce North West, public hearing transcript, Mount Isa, 4 October 2022, p 12.

117 Cr Phil Barwick, Deputy Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 4.

118 Ian Leavers, President, QPU, public hearing transcript, Mount Isa, 4 October 2022, p 18.

119 QPU, submission 42, p 5.

120 City of the Gold Coast, submission 44, p 8

121 Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, pp 3 and 6.

Recommendation 6

Noting that sections 13.7.9 and 16.6.3 of the Queensland Police Service Operational Procedures Manual encourage officers to use discretion when dealing with an intoxicated person, the committee recommends police only use alternative powers to deal with an intoxicated person where the person is aggressive or violent.

2.2.2 Police power to transport an intoxicated person

The committee notes that several submitters were supportive of police having the power to transport an intoxicated person to a safe place to prioritise the health and safety of the intoxicated person.[122]

> *Without the ability to detain the person for transportation under section 10, police are left with two options.*
>
> 1. *Charge the person with other offences, such as Public Nuisance (section 9), resulting in higher penalties.*
> 2. *Taking no action, exposing the person to potential danger to themselves or to others' safety.*
>
> *Neither option is optimal for the wellbeing of those who are already disadvantaged and vulnerable.*
>
> The Advocacy Support Centre National Limited, submission 27, p 6.

Noting that a police officer may not exercise relocation powers and take an intoxicated person to a place of safety without first arresting them, the Queensland Youth Policy Collective recommended reform to the PPRA to empower police officers to interact and deal with publicly intoxicated people without first arresting them.[123]

In this regard, the Queensland Council of Civil Liberties directed the committee's attention to laws in NSW, Tasmania and the ACT that decriminalise public intoxication, but give police powers to move an intoxicated person to a safe place.[124]

Other submitters supported minimal police involvement with intoxicated people, with some citing the risk of escalation to other charges with police interaction. Those submitters recommended:

- police transport 'only if no other way for the person to be transported'[125]
- police should wait for a health or community service provider to provide appropriate transport[126]

[122] See for example Joanne Daley, submission 2; Queensland Council for Civil Liberties (QCCL), submission 9; Queensland Network of Alcohol and Other Drugs (QNADA), submission 14; Aboriginal & Torres Strait Islander Legal Service (ATSILS), submission 1; LawRight, submission 24.

[123] Queensland Youth Policy Collective, submission 26.

[124] QCCL, submission 9; *Intoxicated Persons Act 1979* (NSW); *Police Offences Act 1935* (Tas); Intoxicated *Persons (Care and Protection) Act 1994* (ACT).

[125] Alcohol and Drug Foundation, submission 25.

[126] QCOSS, submission 29, citing scenarios raised in the *Seeing the Clear Light of Day* report to the Victorian Attorney-General.

- first responders should be personnel from external agencies, such as health services or community service organisations, including alcohol and other drugs services, and Aboriginal community-controlled organisations[127]
- any police transport should be in the context of a co-responder model, where a First Nations person is present if the intoxicated person is a First Nations person[128]
- where police identify safety risks, the role of a police officer within a health-based response should involve:
  - engaging with the individual to assess whether immediate medical assistance is required and calling an ambulance if needed
  - making inquiries to identify a safe place for the person, including contacting a responsible person (family/ friend) or an SUC or other similar support service if the person does not need immediate medical assistance
  - ensuring that there is appropriate transport to take the person to the safe place, where required.[129]

Committee comment

The committee agrees that interaction between police and intoxicated people should be as minimal as possible to prevent escalation, for the safety of the intoxicated person and for community safety.

The committee sees benefit in the co-responder model. The committee is of the view that police officers need the power to transport a person to a safe place in circumstance where there is no other appropriate transport provider, such as a community service organisation.

Recommendation 7

The committee recommends that police be authorised to transport an intoxicated person to a place of safety where there is no other appropriate transport option.

The committee sees benefit in the co-responder model. The committee is of the view that police officers need the power to transport a person to a safe place in circumstance where there is no other appropriate transport provider, such as a community service organisation.

2.2.3 Protective custody for intoxicated persons

Submitters expressed strong views on the appropriateness of police protective custody for intoxicated people.

Those submitters who supported protective custody expressed the following:

[127] Sisters Inside, submission 7; Justice Reform Initiative, submission 23; Alcohol and Drug Foundation, submission 25; QCOSS, public hearing transcript, Brisbane, 29 August 2022, p 6; Change the Record, submission 39; QLS, public hearing transcript, Brisbane, 29 August 2022, p 27; QIFVLS, public hearing transcript, Cairns, 5 September 2022.

[128] QIFVLS, public hearing transcript, Cairns, 5 September 2022, p 8.

[129] Justice Reform Initiative, p 23.

- police need to have discretion to detain a person where necessary for the person's protection and the protection of others[130]
- police should be empowered to detain and/or arrest those deemed intoxicated at events where there is 'significant alcohol'[131]
- jurisdictions where public drunkenness has been decriminalised have retained the ability for police to take a person into custody at a police facility as a last resort given it may not always be possible or desirable to take a person to a place of safety because of the person's behaviour[132]
- people need to be taken into custody sometimes and, to avoid deaths in custody, police officers must follow internal processes and procedures and be held accountable[133]
- police detaining young women for their own protection when drunk.[134]

Those opposing protective custody stated:

- police cells should never be used to detain people on the basis of public intoxication[135]
- no parallel to protective custody should be introduced[136]
- any new protective custody measure must be distinct from the police and not have a criminalising effect, such as by providing an opportunity for police to check for outstanding warrants or scrutinise the person's behaviour in the facility[137]
- the discretion to detain discourages police from diverting intoxicated people to health and welfare services[138]
- being placed in protective custody by police can be dangerous because police are poorly placed to provide health care and cells are not designed to facilitate adequate monitoring[139]

130 Deputy Commissioner Paul Taylor, Queensland Police Service, public briefing transcript, Brisbane, 12 July 2022, p 3; Joanne Daley, submission 2; Name withheld, submission 6; QPU, submission 42; City of the Gold Coast, submission 44.

131 Mareeba Crime Action Group, submission 11.

132 QPU, submission 42.

133 Shane Cuthbert, submission 22.

134 Name withheld, submission 6.

135 Change the Record, submission 39.

136 Change the Record, submission 39.

137 Sisters Inside, submission 7.

138 QNADA, submission 14.

139 Prof. Tamara Walsh, submission 15.

- in jurisdictions where public intoxication has been decriminalised:
  - police continue to detain intoxicated people in police cells, with a disproportionate impact on First Nations Peoples, people experiencing homelessness and other disadvantaged groups[140]
  - protective custody regimes have failed to reduce the risk of deaths in custody[141]

Others considered police protective custody may be appropriate as a last resort.[142] Those submitters listed the following criteria for last-resort use of protective custody:

- only in strictly limited circumstances: where a person is significantly impaired and pose an imminent danger to themselves and others[143]
- only where other responders are not available[144]
- must be accompanied by the development of clear regulations, guidelines, policies and training to ensure that police exercise discretion appropriately and limits on protective custody are respected in practice.[145]

Committee comment

The committee notes that in the absence of a sober up centre or a diversionary centre, using holding cells for intoxicated persons places police in a compromising situation and places intoxicated persons at risk of not receiving the intervention needed.

The committee notes the range of stakeholder views on the current role of protective custody in managing intoxicated persons and stresses that protective custody should be used as a last resort.

2.2.4 Definition of 'potentially harmful things'

The PPRA provides police officers with powers for dealing with persons affected by potentially harmful things, for example, volatile substances such as glue, paint or solvents.[146] In areas declared by regulation to be declared localities for the purposes of those provisions, if a police officer is satisfied that a person is affected by the ingestion or inhalation of a potentially harmful thing, the police officer is authorised to take that person to a place of safety.

140 Justice Reform Initiative, submission 23; LawRight, submission 24; QLS, submission 28; Australian Lawyers Alliance, submission 32.

141 Australian Lawyers Alliance, submission 32; QIFVLS, submission 33.

142 Justice Reform Initiative, submission 23; Legal Aid Queensland, submission 34; Australian Human Rights Commission, submission 40; Change the Record, submission 39.

143 Justice Reform Initiative, submission 23.

144 Change the Record, submission 39.

145 Justice Reform Initiative, submission 23.

146 PPRA, ss 603 to 606.

Figure 10 Definition of 'potentially harmful thing'

Potentially harmful thing

(a) means a thing a person may lawfully possess that is or contains a substance that may be harmful to a person if ingested or inhaled; and

Examples—

1 glue

2 paint

3 a solvent

(b) includes methylated spirits; and

(c) does not include a thing intended by its manufacturer to be inhaled or ingested by a person using it.

Schedule 6, Police Powers and Responsibilities Act 2000.

Noting that those provisions operate without an offence nexus, The Advocacy and Support Centre National Limited (TASC) suggested that adding alcohol and drugs to the definition of 'potentially harmful thing' would enable police officers to continue to be able to detain a person, transport them to a place of safety and ensure that a person in charge of that place of safety signs an undertaking to care for the intoxicated person.[147]

In contrast, the QPU noted that the provisions relating to dealing with person affected by potentially harmful things give police the power to detain a person for the purpose of taking them to a place of safety; however, if that is not possible, the detention power is exhausted and the person must be released.[148]

> *… we would like decriminalisation to happen in addition to changes to the examples of 'potentially harmful things' under the Police Powers and Responsibilities Act. Under the act, 'potentially harmful things' allows Queensland police to detain and move people on to a place of safety without the offence nexus.*
>
> Ms Kirsten Williams, The Advocacy and Support Centre, public hearing, Brisbane, 29 August 2022, p 2.

The Queensland Police Service asserted that, if such a situation were to occur with someone who was intoxicated, the police officers would be 'in a very vulnerable position':

> 'Given it was a police response, it could subject the police involved to scrutiny, particularly if someone becomes injured after police have released them with no suitable person to look after their welfare. If they were injured or, indeed, if as a consequence of their activities they died, the matter would be subject to a coronial review and possibly could be considered as an injury in custody or a death in custody or police operations, so there needs to be that ability [to take persons into custody for their safety and the safety of others and to consider diversionary opportunities].[149]

147 The Advocacy and Support Centre (TASC) National Limited, submission 27, p 6. The Queensland Youth Policy Collective, submission 26, also sought reform to the reform to the PPRA which would empower police officers to interact and deal with publicly intoxicated people without first arresting them.

148 Queensland Police Union, submission 42, p 4.

149 Deputy Commissioner Paul Taylor, Queensland Police Service, public briefing transcript, Brisbane, 12 July 2022, p 3.

2.2.5 Queensland Police Service training and procedures

Several submitters emphasised that the challenge of decriminalisation is not simply one of legislative reform, but of promoting cultural change within the police force and a fundamental shift in how police respond to public order issues and how they engage with vulnerable members of the community.[150]

In the context of decriminalisation of the offences under consideration by this enquiry, submitters made the following recommendations for training for police officers:

- consideration be given to whether further education and cultural change may be necessary for police officers to ensure their use of discretion is carefully calibrated to best respond to behaviour and in accordance with s 58 of the *Human Rights Act 2019*.[151]
- increased/improved cultural training to increase officers' competency when dealing with members of the First Nations community,[152] including adequate historical and contextual education to understand the drivers of conflict between the Queensland Police Service and First Nations people, and the history of ongoing contests over public space in Queensland. [153]
- community-led cultural competency be mandated during officer training and reinforced as part of their ongoing professional development[154]
- training in how to engage with people who have addiction struggles, poor mental health and disabilities[155]
- training in how to deliver health and welfare outcomes and be highly skilled in de-escalation[156]
- training in the delivery of a trauma-informed response with appropriate
- training and partnership measures to ensure that officers do not instead negatively impact vulnerable Queenslanders by charging them with more serious offences or using alternative police powers.[157]

Submitters made the following recommendations in relation to police procedures if the offences were decriminalised:

- amendment of the QPS OPM to explicitly instruct police that being drunk, begging and urinating in public are no longer considered anti-social or nuisance behaviours for the purposes of Queensland law[158]
- development of clear regulations, guidelines, policies and training to ensure that police exercise discretion appropriately and limits on protective custody are respected in practice[159]

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150 Alcohol and Drug Foundation, submission 24; Queensland Law Society (QLS), submission 28; Queensland Human Rights Commission (QHRC), submission 35; IUIH and Caxton Legal Centre, submission 37.

151 QHRC, submission 35. Under s 58 of the HRA it is unlawful for a public to make a decision in a way that is not compatible with human rights or in making a decision, to fail to give proper consideration to a human right relevant to the decision.

152 Aboriginal & Torres Strait Islander Women's Legal Services NQ (ATSIWLSNQ), submission 31; Australian Lawyers Alliances, submission 32.

153 IUIH and Caxton Legal Centre, submission 37.

154 ATSIWLSNQ, submission 31.

155 IUIH and Caxton Legal Centre, submission 37.

156 IUIH and Caxton Legal Centre, submission 37.

157 Alcohol and Drug Foundation, submission 24.

158 IUIH and Caxton Legal Centre, submission 37.

159 Alcohol and Drug Foundation, submission 24; Justice Reform Initiative, submission 23, sought a protocol to guide police in the exercise of discretionary powers.

- updating of policies and and procedures where appropriate to stress the need to attempt de-escalation of conflict and to seek non-custodial solutions to conflict and disorderly conduct that is not otherwise criminal[160]
- development of a protocol to improve interactions between police and those experiencing homelessness[161]
- training to help drive changes in policing culture and police approach to vulnerable members of the community[162]
- equipping of officers to make referrals to appropriate services as an alternative to fines and charges.[163]

In contrast, calling for 'full decriminalisation' Sisters Inside submitted that 'if an offence is still on the books, police will almost always charge and prosecute individuals for it', and 'no amount of increased police "training" around "vulnerability" will ameliorate this issue' … 'If training was capable of stopping the police from issuing unfair and unjust charges, it would have by now'.[164]

Committee comment

The committee notes submitters' concerns regarding the need for appropriate education and training for police officers to ensure that more serious offences are not engaged in the context of decriminalisation.

The committee acknowledges that police regulations, guidelines, policies and protocols will need to be updated following decriminalisation to ensure police responses to decriminalised offences are appropriate for all members of the community, including First Nations People, people suffering mental illness and disabilities and people experiencing homelessness.

2.3 The effects of decriminalising public intoxication and begging in rural and remote communities

Submitters expressed diverse positions regarding the impact of decriminalisation in rural and remote areas. While key stakeholders expressed concern that decriminalisation would have an adverse effect in these areas (refer to section 1.5.2), several submissions from organisations focussed on welfare and justice/legal issues suggesting that regional and remote areas are likely to benefit from decriminalisation.

A small number of submissions noted that Aboriginal and Torres Strait Islander peoples living in remote areas are particularly vulnerable to disproportionate negative consequences when they are charged with minor offences due to their financial insecurity and limited employment options (refer to section 1.5.1).

Some submitters drew attention to higher rates of financial insecurity in regional/remote areas, and more limited public transport, which leaves individuals who accrue fines at much greater risk of adverse or escalated consequences.

160 ATSIWLSNQ, submission 31.

161 Justice Reform Initiative, submission 23.

162 IUIH and Caxton Legal Centre, submission 37.

163 Justice Reform Initiative, submission 23.

164 Sisters Inside, submission 7, p 3.

2.3.1 Transient populations in regional communities

During the course of the inquiry the committee heard of the challenges faced by regional communities of people coming from rural and remote regions, finding a lack of housing and support, and consequently finding themselves at risk of offending.

Cairns Regional Council presented data indicating that certain groups are often over-represented in occurrences of antisocial behaviours. These groups include transient or itinerant persons, disaffected youths, and those experiencing significant mental health concerns among others.[165]

Returning to community

During the public hearings held in Cairns, Mareeba, Mount Isa and Townsville matters relating to the health and welfare of transient people from outside community was discussed, including:

- people camping in the Cairns central business district area sleeping rough and intoxicated[166]
- people from dry communities north of Mareeba travelling to the Mareeba region and camping in the Mareeba central business district[167]
- people from dry communities in the NT taking a bus service to Mount Isa and camping in the Leichhardt Riverbed area, with limited options to return to their country[168]
- people from Palm Island and the Mount Isa corridor adding pressures to Townsville's crisis accommodation and other services.[169]

The Mount Isa City Council submitted that there should be more state funding made available to assist transient people return to country should they wish to do so.[170]

> *The Return to Country funding only lasts so long and I believe that has run out for us, so that is not really an option for us at the moment. We do ask the question. I do not know if we can get interstate agencies involved with housing and so on. Obviously if you have a house back in the NT then you should be going back to that house and not getting housing here and having two houses. The shortage of buses is an issue.*
>
> Mr William Blackley, Public hearing Mount Isa, 4 October 2022, p 8.

165 Cairns Regional Council, submission 41.

166 Cr Brett Moller, Councillor, Cairns Regional Council, public hearing transcript, Cairns, 5 September 2022, p 4.

167 Peter Franks, Chief Executive Officer, Mareeba Shire Council, public hearing transcript, Mareeba, 6 September 2022, pp 2-3.

168 Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, pp 5- 6.

169 Sara O'Reilly, Executive Manager, Department of Communities, TAIHS, public hearing transcript, Townsville, 5 October 2022 , p 16.

170 Mount Isa City Council, submission 43.

Access to health services

During the course of the inquiry the committee heard of people coming in from rural and remote communities for medical treatment, meeting up with family or friends, and experiencing difficulties returning to their community.

> *We know that the majority of the clients who do travel to Townsville are on dialysis. Therefore, we can conclude that there is an association with an increase in public offences, particularly around public urination, because often people with chronic kidney disease have incontinence issues. We do have issues in relation to particularly those clients being at risk of being fined for that offence without actually having a conversation with us as a service that has contact with those clients who travel from rural and remote communities.*
>
> Assoc. Professor Peter Malouf, CEO, Townsville Aboriginal & Islander Health Service, public hearing, Townsville, 5 October 2022.

The committee notes the invaluable state Patient Travel Subsidy Scheme which provides financial assistance for eligible patients to access specialist medical services not available to them locally.[171] However, the scheme does not cover all costs and does not ensure that people return to the communities after treatment.

> *Obviously with dialysis, we are aware that quite a few people are moving to Townsville but it is not just for dialysis; there are quite a lot of health conditions and chronic health conditions that are being treated from the islands, as the member for Cook would know, and from our rural and remote communities where they have to travel to Townsville. We do not have the infrastructure—and this leads into the homelessness question—right now to support the population of peoples that we have in Townsville.*
>
> Ms Sara O'Reilly, Executive Manager, Department of Communities, Townsville Aboriginal & Islander Health Service, public hearing, Townsville, 5 October 2022, p 15.

Committee comment

The committee acknowledges the value of the state Patient Transport Subsidy Scheme but also notes that many disadvantaged people experience difficulty finding accommodation and lack support during their treatment, and may be at risk of becoming homeless and vulnerable.

The committee notes that the liquor accords, Banned Drinkers Register, and Alcohol Management Plans in place across a number of communities contribute to a disconnect between communities with or without alcohol restrictions.

[171] Queensland Government, 'The Patient Travel Subsidy Scheme (PTSS) https://www.qld.gov.au/health/services/travel/subsidies

2.4 Repealing the 'Urinating in a public place' offence under the *Summary Offences Act 2005*

This section addresses Inquiry term of reference i), the appropriateness of repealing the 'urinating in a public place' offence under the Summary Offences Act.

2.4.1 Creation of the offence

The offence of urinating in a public place was created in 2008.[172] Previously, 'urinating in view of another in a public place' had constituted a public nuisance offence under the Summary Offences Act. The new offence was created in response to a recommendation of a legislated review of public nuisance laws by the then Crime and Misconduct Commission (CMC) and published in *Policing public order: A review of the public nuisance offence*. The CMC's rationale for creating a separate public urination offence included that:

- a number of submissions to the CMC's review considered that public urination was a trivial behaviour that may not warrant criminal justice system attention[173]
- while a simple wilful exposure offence carried a lesser maximum penalty than a public nuisance offence, people often preferred to be charged with a public nuisance offence rather than wilful exposure because of the sexual connotation of a wilful exposure charge on their records.[174]

2.4.2 Application of the offence

Public urination carries a maximum penalty of 4 penalty units ($575.00) if committed within, or in the vicinity of, licensed premises, or otherwise 2 penalty units ($287.50). Both offence provisions are also infringement notice offences attracting a fines of 2 penalty units ($287.50) and 1 penalty unit respectively ($143.75).[175]

During the inquiry, the QPS advised that the number of people charged by police officers for public urination is low: in 2021, 182 persons, equating to fewer than 4 people per week. During the same period, police issued 602 infringement notices for public urination, approximately 12 per week.[176]

QPS statistics over the past 5 years indicate a declining trend in enforcement of public urination with a slight rise in 2021-22 (see Figure 11 below).

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172 *Summary Offences and Other Acts Amendment Act 2008*, s 4.

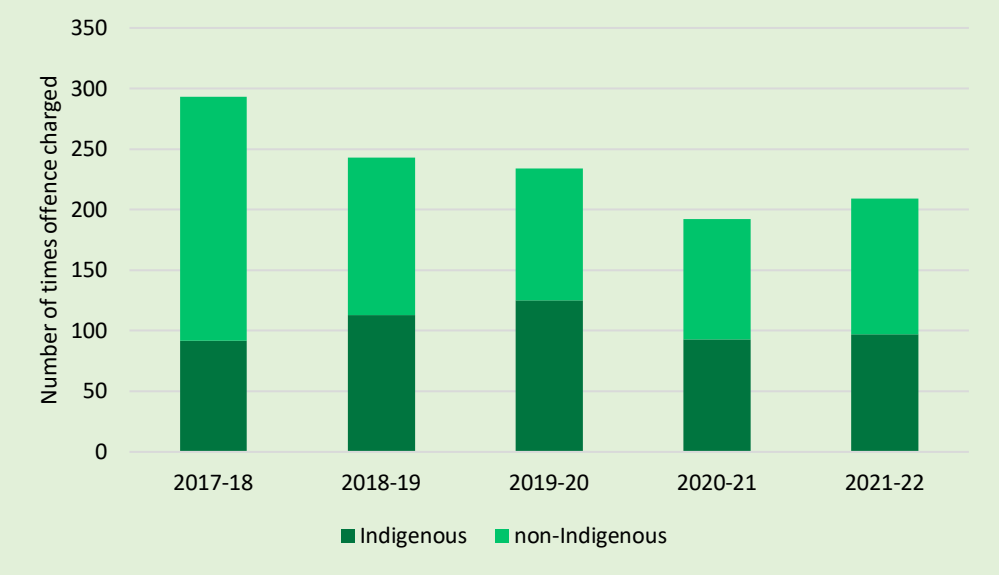
173 Crime and Misconduct Commission, *Policing Public Order: A Review of the public nuisance offence*, May 2008, p 120, https://www.ccc.qld.gov.au/sites/default/files/Docs/Legislative-Review/PNI/Policing-public-order-A-review-of-the-public-nuisance-offence-Report-2008.pdf.

174 Crime and Misconduct Commission, *Policing Public Order: A Review of the public nuisance offence*, May 2008, p 121, https://www.ccc.qld.gov.au/sites/default/files/Docs/Legislative-Review/PNI/Policing-public-order-A-review-of-the-public-nuisance-offence-Report-2008.pdf.

175 *Summary Offences Act 2005*, s 7; Queensland Police Service, correspondence dated 11 July 2022.

176 Deputy Commissioner Gollschewski, QPS, public briefing transcript, Brisbane, 12 July 2022, p 2.

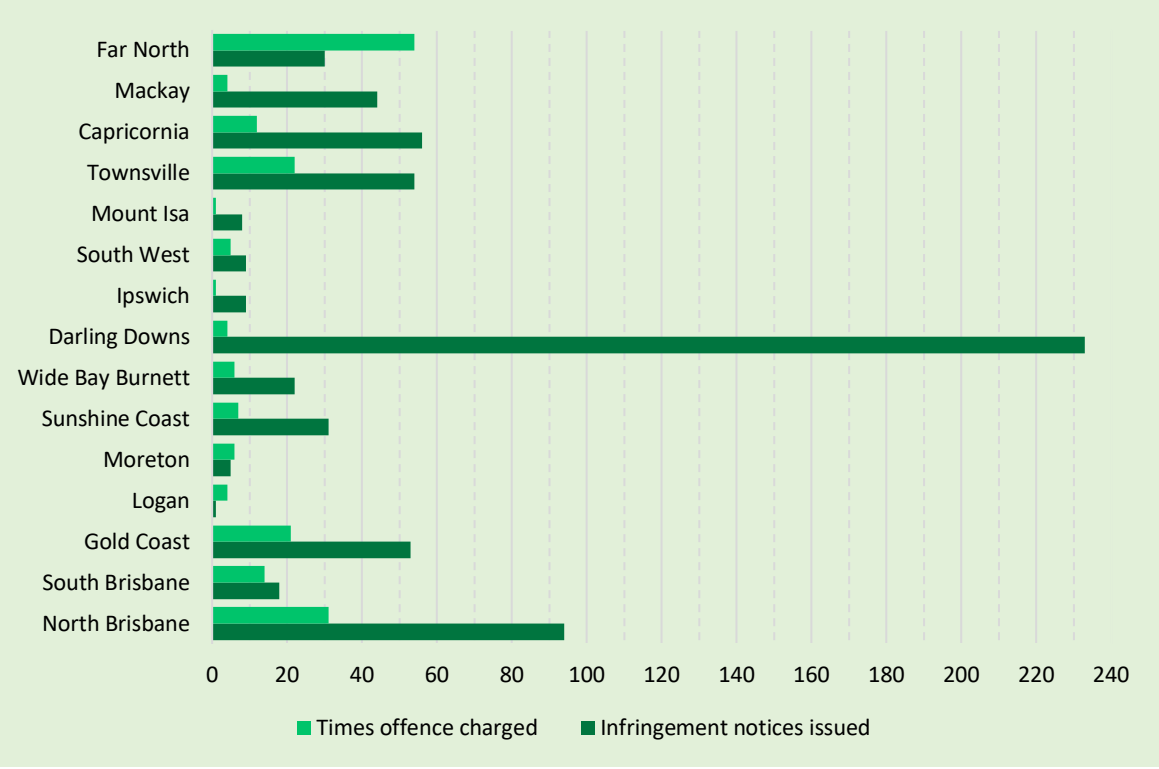
Figure 11 Declining enforcement of public urination from 2017 to 2022



Source: Queensland Police Service, correspondence dated 18 July 2022. [177]

QPS figures provided for 2020-21 indicate a variation across regions in the level of enforcement of the offence of urinating in a public place (see Figure 12 below).

Figure 12 Variation in how police enforced public urination in 2020-21



Source: Queensland Police Service, correspondence dated 18 July 2022.

[177] The very small number of instances in which a person's identity was 'not stated' have been included in the category 'non-Indigenous.' The maximum number of cases in which this occurred (in a single year) was 3.

2.4.3 Views of submitters on repeal of the offence of public urination

The majority of submitters who addressed this issue supported the repeal of the offence. They typically argued that the offence has a disproportionate impact on vulnerable members of the community and is not effective as a deterrent. A small number of submitters strongly opposed repealing this offence, stressing that the behaviour is undesirable and does not reflect community expectations. Several submitters suggested investment in public toilets would be a better way of dealing with the problem.

The committee notes that views on repealing the offence varied geographically, with rural, regional and remote submitters detailing the significant impact of public urination on their communities.

Submitters who supported the repeal of the provision asserted:

- the offence criminalises behaviour that is the product of poverty and disadvantage[178]
- the offence has a disproportionate impact on people experiencing homelessness and other vulnerable members of the community[179]
- the offence has a disproportionate impact on First Nations people[180]
- criminalisation is not an effective deterrent[181]
- the costs associated with prosecuting the offence would be better used to provide additional access to restroom facilities[182]
- a potential risk exists for disadvantaged people to be subject to alternative police powers or charged with more serious offences such as indecent acts or wilful exposure[183]
- the offence is outdated and no longer reflects community expectations[184]
- the offence is a product of necessity[185]
- police do not use discretion, even where the public would feel it is appropriate to do so.[186]

Some submitters noted that if the offence were to be repealed, other offences would be available for use in 'extreme cases':

- only sexualised forms of wilful exposure should be criminalised and that is prohibited under another provision[187]
- the offence is too broad and unnecessary, as more blatant, non-discreet, offensive examples of such behaviour could fall within the ambit of the public nuisance offence[188]

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178 Queensland Council for Civil Liberties, submission 9; Bar Association of Queensland, submission 38.

179 Sisters Inside, submission 7; Prisoners' Legal Service, submission 16; LawRight, submission 24; QCOSS, submission 28; Micah Projects, submission 36; Change the Record, submission 39.

180 Shane Cuthbert, submission 22; QCOSS, submission 28; Micah Projects, submission 36; Bar Association of Queensland, submission 38.

181 Shane Cuthbert, submission 22; Legal Aid Queensland, submission 34.

182 Shane Cuthbert, submission 22; Change the Record, submission 39.

183 LawRight, submission 24.

184 Change the Record, submission 39.

185 Shane Cuthbert, submission 22; Prof Tamara Walsh, submission 15.

186 Sisters Inside, submission 7.

187 Prof Tamara Walsh, submission 15; The Queensland Council for Civil Liberties, submission 9, also noted wilful exposure is a separate provision.

188 ATSILS, submission 17.

- repeal of the offence of would not remove the ability of police to prosecute in more extreme cases, but it will minimise the indirect discrimination of homeless and Indigenous individuals.[189]

Although recommending repeal of the offence, Legal Aid Queensland expressed some reservations about potential outcomes:

- A person may be charged with section 9(2) of the Summary Offences Act relating to wilful exposure, which is not a ticketable offence. Thus, 'abolishing the offence [of public urination] removes an avenue of police discretion to deal with the conduct in a way that does not require arrest and attendance before a court'.[190]
- A person may be prosecuted for a 'disorderly' or 'offensive' public nuisance offence, which is punishable by a significantly higher penalty.
- The potential exists for the public to be exposed to a more serious criminal sanction. For example, unlike the current offence, a public nuisance or wilful exposure conviction would breach a suspended sentence.
- The potential exists for the police to expose members of the public to further banning notices and potential breaches of banning notices.[191]

To ameliorate its concern regarding the use of stronger charges in the event of repeal of the offence, Legal Aid Queensland suggested amending the public nuisance, urinating in a public place and wilful exposure provisions to the effect that 'A person's conduct is not disorderly or offensive only because they are intoxicated or urinating in a public place'.[192]

In the event the offences were not repealed, LawRight recommended:

- training of QPS officers across Queensland, including in rural, regional and remote areas, to ensure they and the justice system exercise discretion to ensure the offence does not negatively impact people experiencing homelessness and other people suffering disadvantage
- strengthening of partnerships between QPS and organisations that support people experiencing or at risk of homelessness, or experiencing other vulnerabilities.[193]

Those opposing repealing the offence submitted:

- the rationale for the creation of the offence remain valid: public urination is a trivial behaviour that may not warrant criminal justice attention; the wilful exposure offence was considered inappropriate for dealing with the behaviour because of the sexual connotation of a wilful exposure charge on a person's record; and, the more serious offence of public nuisance was considered to be disproportionate[194]
- 'public urination by homeless people who are not drunk due to a lack of access to toilets is one thing—public drunkenness and urination due to excessive drinking is completely different'.[195]
- if the offence of public urination were repealed, the only alternative charge would be wilful exposure which carries a heavier penalty[196]

189 Shane Cuthbert, submission 22.

190 Legal Aid Queensland, submission 34, p 11.

191 Legal Aid Queensland, submission 34, pp 11-12.

192 Legal Aid Queensland, submission 34, p 12.

193 LawRight, submission 24.

194 QPU, submission 42.

195 Name withheld, submission 3, p 1.

196 Cr Jenny Hill, Mayor, Townsville City Council, public hearing transcript, 5 October 2022, p 4.

- urinating in public is horrible, disgusting and unseemly[197]
- the behaviour does not meet community attitudes and expectations[198]
- reduction of police powers will escalate the extent of the behaviour[199]
- the offence impacts on public amenity and use of public spaces by all members of the community[200]
- the true cost of maintenance that is required to be undertaken to remove human waste needs to be determined, as well as its impact and cost on ratepayers.[201]

Defences to the offence of urinating in a public place

Several submitters suggested the provision of a defence to the offence. Supporting the repeal of the offence, ATSILS suggested the provision of a 'reasonable excuse' defence were the offence not to be repealed. Robert Heron, who opposed repeal, also suggested a 'reasonable excuse' defence.[202]

Although supporting the retention of the offence, the QPU suggested the addition of a defence: 'if an individual does not urinate on chattels, a park bench, children's playgrounds, mailboxes or the door or wall of a shop and takes steps to urinate in a manner which best removes themselves from public view there is no offence committed'.[203]

The Torres Shire Council drew the committee's attention to provisions in the NSW Summary Offences Act relating to 'offensive conduct'. In that legislation 'public place' is defined broadly to include places that are open to the public or used by the public. The Torres Shire Council advised that a 'reasonable excuse' defence is available for the offensive conduct charge, that is, 'the excuse must be "reasonable" from the perspective of the ordinary person rather than that of the defendant'.[204] The Torres Shire Council also stated that another defence to the offence of urinating in a public places honest and reasonable mistake in relation to a fact, for example, 'if you honestly did not know, and could not have reasonably known, that you could be seen urinating from street outside your home'.[205]

2.4.4 Public facilities

During the inquiry, the committee heard of the need for more public toilets to be provided in spaces where groups of people gather including central business districts, SNPs and areas of high tourist numbers, and of some public toilets being locked at night.[206]

197 Name withheld, submission 6; FamilyVoice Australia, submission 8.

198 Mareeba Crime Action Group, submission 11; QPU, submission 42.

199 City of the Gold Coast, submission 44; Moreton Bay Regional Council, correspondence dated 21 September 2002; Office of Lord Mayor, Brisbane City Council, correspondence dated 27 September 2022.

200 Office of Lord Mayor, Brisbane City Council, correspondence dated 27 September 2022.

201 Mount Isa City Council, submission 43.

202 ATSILS, submission 17.

203 Ian Leavers, President and Chief Executive Officer, Queensland Police Union, public hearing transcript, Mount Isa, 4 October 2022, p 15.

204 Torres Shire Council, correspondence dated 6 October 2022, p 3.

205 Torres Shire Council, correspondence dated 6 October 2022, p 3.

206 IUIH and Caxton Legal Centre, submission 37; Mount Isa City Council, submission 43; Shane Cuthbert, public hearing transcript, Cairns, 5 September 2022, p 22; Emma Harman, public hearing transcript, Mount Isa, 4 October 2022, p 12; Cr Jenny Hill, Mayor, Townsville City Council, public hearing transcript, Townsville, 5 October 2022, p 4.

Several submitters commented on the need for more publicly accessible toilet facilities:

- investment is needed to ensure there are adequate toilets, including accessible toilets,[207] and portable public toilets in areas of high-density human activity[208]
- a lack of accessible public toilets can affect the ability of people with disabilities who suffer incontinence to enjoy and participate in public life and increasing access to public toilets would be consistent with the rights of people with disabilities and human rights generally,[209] as previously identified by evidence presented in the committee's 2021 Inquiry into social isolation and loneliness in Queensland.[210]
- the number of accessible public toilet facilities continues to dwindle significantly: those in public parks can be locked overnight and those in entertainment venues, restaurants and cafes in large public buildings are generally restricted to patrons only [211]
- investment is needed to provide portable public toilets in areas of high-density human activity[212]
- all levels of government need to work together to address the need for more public toilets.[213]

Committee comment

The committee acknowledges the views of all submitters on the appropriateness of repealing the 'urinating in a public place' offence.

The committee recognises that this offence can have a disproportionate impact on people experiencing homelessness, First Nations people, people with a disability, people with health issues such as diabetes and chronic kidney disease, and other vulnerable people. The committee acknowledges the views of submitters regarding the potential impacts on those groups if the offence were to be repealed and the stronger offence of wilful exposure were to be applied.

The committee sees the provision of adequate public facilities, including accommodation and health services, across the state as an essential element in minimising urination in public.

The committee was strongly affected after witnessing and hearing of the profound impact the commission of this offence is having on the day to day life of Queensland communities and councils.

Recommendation 8

The committee recommends that the state government encourage local governments to ensure the provision of adequate public facilities across the state and that spiritual places of cultural gatherings be provided with public facilities including shade, waste bins, seating, fresh drinking water and amenities.

207 LawRight, submission 24; Change the Record, submission 39, p 5; Legal Aid Queensland, submission 34.

208 Legal Aid Queensland, submission 34.

209 Legal Aid Queensland, submission 34.

210 Queensland Parliament, Community Support and Services Committee, Report No. 14, 57th Parliament – Inquiry into social isolation and loneliness in Queensland.

211 Legal Aid Queensland, submission 34.

212 Legal Aid Queensland, submission 34.

213 Shane Cuthbert, public hearing transcript, Cairns, 5 September 2022, p 22.

2.5 Maintaining compatibility with rights protected under the *Human Rights Act 2019*

2.5.1 The Human Rights Act and public entities

The *Human Rights Act 2019* requires all QPS members to properly consider human rights and act and make decisions in a manner that is compatible with human rights. The obligations on public entities, including the QPS and its members, are set out under Division 4 of the Human Rights Act.[214]

Figure 13 Obligations of public entities in the Human Rights Act 2019

> **Human Rights obligations of public entities,**
>
> (1) It is unlawful for a public entity:
>
> a) to act or make a decision in a way that is not compatible with human rights; or
>
> b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.
>
> (2) Subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.
>
> *Human Rights Act 2019, ss 58 (1)-(2)*

The Queensland Youth Policy Collective noted that, should the offences be repealed, police and corrective services officers will not have the protection offered by s 58(2) of the HRA, contains an exception where the public entity could not reasonably have acted differently or made a different decision because of a statutory provision or under law, and will be required to adhere to the obligations under s 58(1).[215] However to achieve this outcome, the QHRC suggested that an appropriate response to these issues would not likely involve the application of s 58(2): all public entities involved in responding to this form of behaviour should retain a high degree of discretion as how best to respond, giving proper consideration to human rights each time a decision is made.[216]

2.5.2 Stakeholder views

Most submitters who discussed decriminalisation in the context of rights protected under the *Human Rights Act 2019* (HRA), framed their position as an assessment of whether the current offences and policing practices are consistent with the HRA, rather than an assessment of whether decriminalisation would be compatible with the HRA.

Among submitters that addressed the issue of the HRA, there was near consensus that the existing offence of begging is incompatible, or potentially incompatible, with the HRA.[217]

Some submitters noted broader human rights issues, including Australia's obligations under United Nations Declarations, including the Declaration of the Rights of Indigenous Peoples, as well as criticism from international human rights bodies with regard to the over-incarceration of Aboriginal and Torres Strait Islander peoples.[218]

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214 Queensland Police Service, correspondence dated 11 July 2022, pp 5-6.

215 Submission 26, p 5.

216 Submission 35, p 6.

217 Prof Tamara Walsh, University of Queensland submission 15; Queensland Youth Policy Collective, submission 26; TASC, submission 27; QCOSS, submission 29.

218 Justice Reform Initiative, submissions 23; Australian Lawyers Alliance, submission 32; Legal Aid Queensland, submission 34; AHRC, submission 40.

QHRC submitted that decriminalisation would make anti-social behaviour less likely, providing indirect benefits to the community and by addressing and preventing anti-social behaviour, would further protect the rights of victims.[219]

It was noted by Deputy Commissioner Taylor of the QPS at the public briefing that children under the age of 18 are not admitted to diversionary centres, leaving their options limited;[220] a position that some submitters considered a limitation, and potential breach, of young people's human rights.[221]

Submitters emphasised that available diversionary and treatment models be presented to clients by choice, and not coercion, employing a human-rights consent-based model, where clients can exercise choice, participation and control in a manner consistent with the right to self-determination.[222]

2.6 Health and social welfare-based responses to public intoxication and begging necessary to support legislative amendments

Term of reference d) to the inquiry requires the committee to consider the health and social welfare-based responses to public intoxication and begging necessary to support legislative amendments, having regard to existing responses, such as diversion services. The committee drew upon evidence from the relevant government departments, submitters, and site visits to a number of support service entities in urban and regional centres around Queensland.

2.6.1 Current services available to Queensland communities

Queensland Health provides a range of treatment and care responses for people who use alcohol and other drugs (AOD), including emergency responses through Queensland Ambulance Service and ED settings for people at immediate risk of harm due to high levels of intoxication. Queensland Health also provides a range of specialist AOD treatment services through Hospital and Health Services and funded non-government and Aboriginal and Torres Strait Islander community-controlled health organisations for people who are seeking assistance for their problematic substance use. Specialist AOD treatment is available on a voluntary basis for people who wish to attend and participate in treatment and care. These specialist services are available in most regional centres across Queensland, with additional treatment opportunities being available through telehealth and online counselling.[223]

The Department of Communities, Housing and Digital Economy (DCHDE) advised the committee that it provides support to community services, and housing and homelessness services throughout Queensland. DCHDE funds a range of social welfare-based responses to public intoxication including cell visitor services, community patrols, diversion centres, managing public intoxication services and reducing demand services.[224]

The QPS advised that where possible QPS utilise diversion centres located in Brisbane, Cairns, Mount Isa, Palm Island, Rockhampton and Townsville.[225] Police referrals, which connect at-risk and vulnerable people to external support service providers are an embedded strategy of QPS frontline operational policing. The intent of police referrals are to deliver early and effective interventions for a broad range of social issues where referred individuals are engaged to achieve sustainable outcomes. The QPS

219 QHRC, Submission 35, p 5.

220 Public briefing transcript, Brisbane, 12 July 2022, p 4.

221 QFCC, submission 30; QHRC, submission 35; AHRC, submission 40.

222 Alcohol and Drug Foundation, submission 25; Australian Lawyers Alliance, submission 32; AHRC, submission 40.

223 Queensland Health, correspondence dated 11 July 2022, p 1.

224 Department of Communities, Housing and Digital Economy, correspondence dated 11 July 2022, p 2.

225 Queensland Police Service, correspondence dated 11 July 2022, p 6.

advised that successful police referrals lead to a reduction in repeat calls for service, as well as the longer term benefits of reducing recidivism and victimisation.[226]

To better inform the committee of existing responses currently available to the community and to first police, the committee visited and spoke with representatives and workers from the following support services:

- ChaplainWatch, NightWatch Chaplains, Nightsafe Rest and Recovery, Fortitude Valley, 31 August 2022
- Cairns Homelessness Services Hub (The Hub), Cairns, 5 September 2022
- Lyons Street Diversionary Centre, Cairns, 5 September 2022
- Arthur Petersen Diversionary Centre, Mount Isa, 4 October 2022
- Reverend Charles Harris Diversionary Centre, Bohle, 5 October 2022
- Dale Parker Place, Rosslea, 5 October 2022
- StreetCRED, Surfers Paradise, 20 October 2022.

During these site visits, the committee heard general consensus on the following:

- the services provided worked well, but more resources were required for the services to be most effective
- services experienced chronic skilled-staff shortages, especially in rural and remote areas and those services operating outside of regular hours
- staff shortages at times impacted on services' ability to function at full capacity
- coordination and co-operation with police and other services, including transport services, was essential to ensure the availability of wrap-around health and welfare services.

The committee observed:

- the location of a diversional centre or detoxification centre was crucial to the success of clients' commitment to diversionary care or detoxification treatment
- that without exception all services sought to make their clients feel safe, respected and welcomed
- the staff they met and spoke with were dedicated, professional and exhibited genuine care for their clients
- the need for not just diversionary centres but rehabilitation facilities and services.

Committee comment

The committee is grateful to the service providers for taking the time to meet with the committee and explain the invaluable work they do for the community's most vulnerable.

The committee was deeply impressed with the compassion and professionalism of those who work there in these roles and thanks them for their service to our Queensland community.

[226] Queensland Police Service, correspondence dated 11 July 2022, p 5.

2.6.2 Availability of services

Submitters who spoke specifically to the availability and appropriateness of health and social welfare-based responses unanimously called for greater investment in support services as an essential element in a decriminalisation process. Greater investment was considered essential to address:

- the shortage of treatment options in rural and remote communities, including rehabilitation services[227]
- limitations on hours of operation, for services required 24 hours a day[228]
- additional resources for services that operate in high-risk environments[229]
- limited diversionary and treatment options available to children aged under 18 years.[230]

Mr William Blackley, North West Queensland Indigenous Catholic Social Services:

> If we look at a lot of things in policing, everything becomes a police response outside of business hours. We need other agencies, NGOs and other government departments to be able to assist us to do our job. If other agencies were able to work with us more, we could look at different options which I think would lead to a safer and better community.[231]

In reference to the NightWatch services provided by ChaplainWatch, Jesse Webb, Chief Executive Officer, advised:

> I do believe there is a great opportunity to utilise the already funded and established rest and recovery spaces that we have established in 5 cities, to be better utilised for the purpose of providing a health response for public intoxication. Presently these centres only operate between 10 and 12 hours per week (plus public holidays), yet activating these spaces for 7 days and/or 24 hours would only require an investment sufficient to staff these spaces. This could be combined with an extension of our volunteer program to provide some assertive outreach supports in a broader area of the community, while providing an extremely cost effective, safe and humane space for intoxicated persons to receive care and monitoring. We would love to continue the discussion about how our resources could be better capitalised to support initiatives arising from the parliamentary inquiry.[232]

Committee comment

The committee recognises that more targeted resourcing of agencies and services, and the need for significant health, including mental health, rehabilitation and welfare services are vital elements in the decriminalisation process.

[227] William Blackley, public hearing transcript, Mount Isa, 4 October 2022, p 9.

[228] Cr Brett Moller, Councillor, Cairns Regional Council, public hearing transcript, Cairns, 5 September 2022, p 4; Personal communication, Queensland Police Service, Fortitude Valley, 31 August, 2022; Mount Isa, 4 October 2022; Townsville 5 October 2022.

[229] Personal communication, Queensland Police Service, Townsville 5 October 2022.

[230] Submissions 2, 15, 18, 24, 31, 35, 38 and 42.

[231] Ian Leavers, President and Chief Executive Officer, Queensland Police Union, public hearing transcript, Mount Isa, 4 October 2022, p 16.

[232] Private correspondence with Jesse Webb, CEO, Chaplainwatch, dated 20 October 2022.

Recommendation 9

The committee recommends that community support organisations should be available at times when Queensland's communities and individuals most need them, including the provision of outreach services and any health assessments.

2.7 The design of appropriate health and social welfare-based responses

Term of reference f) to the Inquiry requires the committee to consider the design of health and social welfare-based responses that are culturally safe and appropriate and informed by First Nations people, including Aboriginal and Torres Strait Islander health and legal services and also representative bodies for seniors and people with a disability.

The committee considered evidence from submitters and contributions from the community during public hearings to identify key features of a culturally safe and appropriate health and social welfare-based responses to public intoxication and begging.

2.7.1 Culturally safe and informed by First Nations people and Informed by representative bodies for seniors and people with a disability

Several submissions highlighted services provided by Murri Watch (Qld) and Micah Projects as good examples of a culturally safe and appropriate response to what is currently considered offending behaviour.

More generally, submitters suggested that culturally safe responses should:

- be non-coercive
- have stable funding
- be community-led
- be underpinned by the principle of self-determination.

The Justice Reform Initiative submitted that, in repealing the offences of public intoxication and begging, the Queensland Government create an appropriate public health response model in consultation with relevant stakeholders and communities, including First Nations communities, culturally and linguistically diverse communities, specialist homelessness services and community services in regional and remote areas.[233]

Recommendation 10

The committee notes the recommendation of the Justice Reform Initiative (submission 23, p 3) that the Queensland Government ensure that multidisciplinary, culturally responsive, integrated, flexible, trauma-informed, wraparound support is provided alongside social housing and onsite in supported accommodation and recognising the support needs of disadvantaged people with multiple and complex support needs

[233] Submission 23, p 3.

Submitters also pointed to the need for adequate response services to follow on from reporting to Alcohol, Tobacco and Other Drugs Services (ATODS) as required by Murri Court proceedings.[234]

The committee notes the statement by Haylene Grogan, Chief Aboriginal and Torres Strait Islander Health Officer and Deputy-Director General Aboriginal and Torres Strait Islander Health Division, Queensland Health:

> The purpose of decriminalising these offences is not to leave vulnerable people at the mercy of their environment, but rather to affect health and welfare responses that assist police in protecting them without evoking a criminal justice approach. This assistance may come in the form of bolstering support for police to deploy existing mechanisms more effectively such as delivering an intoxicated person to an alternative place of care, and/or considering the role of diversionary strategies (eg. through strengthened health role) and/or identified solutions developed through co-design and consultation with the Aboriginal and Torres Strait Islander community-controlled sector.[235]

2.7.2 Diversionary centres

Submitters to the inquiry recognised that diversion centres were often a triage for further treatment and thus had a potentially wider role as a portal to AOD treatment and the harm reduction sector.[236] For example, Anglicare Southern Queensland called for diversionary and similar outreach services to be integrated into a holistic model that has the capacity, when people are looking for change, to provide collaborative case management.[237]

Submitters informed the committee of a number of critical requirements for an effective diversionary model:

- the location of a diversionary centre in a safe space, with consideration given to its physical location in relation to community gathering places, and liquor outlets[238]
- on-site clinical or registered nurses available to provide treatment, or referral to further treatment, at centres at all times, or during peak times at a minimum.[239]

Recommendation 11

The committee recommends that diversionary centres be strategically located to provide the best possible outcome for those engaging in the diversionary process.

234 William Blackley, Cultural Compliance and Community Engagement Manager, North West Queensland Indigenous Catholic Social Services, public hearing transcript, Mount Isa, 4 October 2022, p 10.

235 Haylene Grogan, Chief Aboriginal and Torres Strait Islander Health Officer and Deputy-Director General Aboriginal and Torres Strait Islander Health Division, Queensland Health, correspondence dated 5 August 2022, p 2.

236 Mareeba Crime Action Group, submission 11; QNADA, submission 14; Prof Tamara Walsh, University of Queensland, submission 15.

237 Submission 18, p 4.

238 Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 4; Personal communication, Queensland Police Service, Cairns, 5 September 2022; Mount Isa, 4 October 2022; Townsville 5 October 2022.

239 Ms Karyn Walsh, Micah Projects, public hearing transcript, Brisbane, 29 August 2022, p 30; Ms Genevieve Sinclair, Youth Empowered Towards Independence, public hearing transcript, Cairns, 5 September 2022, p 19.

2.7.3 Detoxification and rehabilitation

On the pathway to treatment, the committee heard from submitters of the essential requirement that people have rehabilitation options available to them at diversionary and sobering up centres, and that there be quick and timely access available to services, which meet the demands of the community.

> *… it is getting to that next process of actually getting into a centre to dry out in that period when people are still thinking about it, because in a couple of days time they will be drunk again and will not worry about it. You have to catch them and move quickly.*
>
> Mr William Blackley, public hearing Mount Isa, 4 October 2022, p 10.

> *… you can wait two weeks before the paperwork is done and all the hoops have been jumped through, but this person would be long gone. It is about having something that is more workable and manageable for someone because once you have someone who says, 'Yes, I want help,' you do not want to leave it for two weeks.*
>
> Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing Mount Isa, 4 October 2022, p 5.

Committee comment

The committee notes the Queensland Government's *Achieving balance: The Queensland Alcohol and Other Drugs Plan 2022–2017* is designed to reduce alcohol and other drug related harm and improve outcomes for individuals and families impacted by substance use. The committee is encouraged by the design of the plan which includes 5 strategic priorities, including enhancing treatment and support systems and expanding diversion services.

Recommendation 12

The committee recognises the important role played by diversionary services. The committee recommends further investment in rehabilitation services, noting the current examples of good practice across the state could inform the development of models to apply more broadly across Queensland.

Recommendation 13

The committee notes that law enforcement responses to addiction, particularly incarceration are less effective and more expensive than other treatment options and recommends that community-based diversion and rehabilitation services should be delivered in accordance with strategic priority 3 of Achieving Balance, the Queensland Alcohol and Other Drugs Plan.

2.8 Public messaging on the harm of alcohol and other drugs

This section discusses the issues raised by submitters about Inquiry Term of Reference h); how existing public messaging on the harm of alcohol and other drugs, including alcohol-related violence, can continue to be reinforced following the decriminalisation of public intoxication.

Only a small number of submitters addressed the issue of public messaging. Among those that did, the vast majority did not see decriminalisation as a threat to the effectiveness of public messaging. Several presented evidence that public messaging is more effective when it centres on health impacts rather than the illegality of behaviour.

Submitters made the following suggestions to increase the effectiveness of public messaging on the harm of alcohol and other drugs:

- focussing on health issues is likely to be more effective, as evidenced by national and state-based campaigns against smoking it is necessary to focus on the right public messaging from health and prevention of violence perspectives[240]
- do not use shame-based messaging as this discourages help seeking and can make a person feel scapegoated and vilified[241]
- targetting at-risk groups increases the impact of public messaging[242]
- prevention is the most effective method of addressing harm related to public[243]
- children are not deterred from using alcohol and/or drugs by public messaging that stresses the illegality of the substances[244]
- children and young people would be assisted by educational programs which explain the health impacts of alcohol and other drugs and the consequences of intoxication in the short term[245]
- increased education that public intoxication is a public health issue that requires holistic responses that address the underlying causes is necessary to generate a shift in community and cultural attitudes about public intoxication[246]
- reducing risky drinking (4 or more standard drinks on a single occasion) and illicit substance use should be a key focus with campaigns delivered at a broad community level or targeted campaign of higher risk groups[247]
- a well-designed and resourced communication program would be necessary to make it clear that QPS will still have the power to take appropriate action in relation to anti-social behaviour[248]
- a community campaign would be necessary to make it clear that risks from alcohol are still present[249]
- campaigns should not be only state-based, but also cross-border to ensure messaging is received by those who transit to border communities.[250]

240 Alcohol and Drug Foundation, submission 25.

241 Ms Sara O'Reilly, Townsville Aboriginal & Islander Health Service, public hearing transcript, Townsville, 5 October 2022, p 18.

242 Alcohol and Drug Foundation, submission 14.

243 Alcohol and Drug Foundation, submission 14.

244 QFCC, submission 30.

245 QFCC, submission 30.

246 Justice Reform Initiative, submission 23; Australian Lawyers Alliance, submission 32.

247 Alcohol and Drug Foundation, submission 14.

248 Logan City Council, submission 45.

249 QPU, submission 42.

250 Personal communication, Queensland Police Service, Mount Isa, Tuesday 4 October 2022.

QNADA emphasised that public messaging should comply with best practice by:

- avoiding exaggeration and scare tactics that can stigmatise people and make public messaging less effective and have a detrimental effect
- showing a balanced perspective of the potential physical, emotional and social effects of alcohol and other drug use
- describing the effects of alcohol and other drug use in a way that accurately reflects the interaction between the substance being used, the characteristics of the person and the environment within which the substance is being used
- conveying that there is differentiation between experimental, occasional, problematic and dependent use, while also acknowledging that harm can potentially occur across the spectrum of use.[251]

> *… we need to move away from shame-based advertising. If we are going to continue to try and get messaging out in a shame-based response—and particularly for our First Nations people—that is not going to work. Instead, it is just going to make people feel like they are an enemy of the people who are trying to support them.*
>
> Ms Sara O'Reilly, Townsville Aboriginal & Islander Health Service, public hearing transcript, Townsville, 5 October 2022, p 18.

To reduce the chances of individuals being heavily intoxicated in public, the Alcohol and Drug Foundation recommended the following strategies to reduce the risky consumption of alcohol:

- mass media campaigns, such as raising awareness about the National Health and Medical Research Council alcohol guidelines
- place-based approaches that seek to prevent harm and to change drinking cultures, such as in sporting clubs and other community settings, and to target high-risk groups
- increasing awareness in the community of how a person can seek treatment and support for themselves, or a family member or friend.[252]

Submitters also made the following general contributions regarding public messaging:

- the message about the harmful effects of alcohol and drugs is 'still not getting through to many of those affected' despite a 'collective of millions of dollars' being expended[253]
- questioned 'when was the last time we actually saw a campaign around alcohol?'[254]
- decriminalisation would undo good work and results of previous public messaging[255]
- public messaging is unlikely to change the current circumstances in Mount Isa as the majority of the people involved are of a transient nature.[256]

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251 QNADA, submission 14.

252 Alcohol and Drug Foundation, submission 14.

253 Mareeba Crime Action Group, submission 11.

254 Ms Pania Brown, Anglicare Southern Queensland, public hearing transcript, Townsville, 5 October 2022, p 20.

255 Mareeba Crime Action Group, submission 11; Mr Brian Atherinos, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 20 was concerned decriminalisation would dilute the messaging.

256 Mount Isa City Council, submission 43.

Committee comment

The committee notes the need for public messaging about the dangers of drug use and excessive alcohol consumption to focus on health impacts.

Recommendation 14

The committee recommends that public messaging about the abuse of alcohol should focus on health impacts, encourage a person to seek help, and is not shame-based.

The committee also suggests that, in addition broad campaigns and public messaging should be targeted to effectively engage identified cohorts, including First Nations Peoples, children and young people, and risky drinker sub-communities.

2.9 The costs and benefits of alternative responses to public intoxication and begging

2.9.1 Stakeholder views

The committee received limited submissions to the inquiry addressing the costs and benefits of decriminalisation. Several of those that did address this issue emphasised that experience from other jurisdictions showed decriminalisation alone was not enough to generate benefits: it must be paired with investment in a public health/welfare response, and genuine change in police operational approaches.

Submitters spoke to the significant cost of maintaining the current offences:

- spending on policing, courts and corrective services, was 'a concern to all who care about effective allocation of resources', in comparison to the 'ultimately insignificant' social cost of allowing certain behaviours to go un-prosecuted[257]
- decriminalisation would result in cost savings to police resources and longer term, more sustainable positive outcomes for people through the linking of support services.[258]

Notably, Cairns Regional Council expressed concern that any easing of the Summary Offences Act will further disempower public space managers. The Council submitted that decriminalisation would result in additional cost-shifting to local governments and a social services sector already under duress, as has been experienced in other jurisdictions.[259]

2.9.2 Other Australian jurisdictions

There is limited reporting of the costs and benefits associated with decriminalisation reforms in other Australian jurisdictions. Available evidence suggests there are indirect benefits to decriminalisation with a reduction of the burden on families, hospitals and police, more culturally appropriate responses to First Nations people, and fewer incarcerations as a result of decriminalisation.

Victoria

Victoria's *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic) decriminalises public drunkenness and introduces a range of reforms, including helping people with

[257] Sisters Inside, submission 7, p 6.

[258] IUIH and Caxton Legal Centre, submission 37.

[259] Cairns Regional Council, submission 41.

their immediate health needs and providing support to address more complex needs (refer to section 1.2 above).[260]

Victoria's 2020-21 budget allocated $16 million towards decriminalising public drunkenness,[261] with the money to be spent on 'expanding Aboriginal Community Controlled Services, providing a culturally safe service delivery response to both Aboriginal and non-Aboriginal people'.[262] In 2021-22, Victoria's budget allocated $9.5 million towards decriminalising public drunkenness.[263] This included funding for trial sites, including health outreach teams, transport and sobering up services, and Aboriginal cultural safety initiatives.[264]

On 9 June 2022, the Victorian Government allocated an additional $50 million towards the reforms over 2022-23 and 2023-24. This funding was allocated to enable the continuation and expansion of the trial site program; an expansion of the Custodial Notifications Scheme, which provides support to Aboriginal community members detained in custody; evaluation of trial sites to inform the state-wide rollout; and planning for the state-wide rollout.[265]

Western Australia and South Australia

The first SUC opened in Perth in 1990, and 13 further SUCs opened across WA from 1991 to 2003. The WA Drug and Alcohol Office considered that the benefits of the expansion of SUCs included:

- reduced police time and resources previously involved in detaining and monitoring intoxicated people in lock ups. Data for 1992 to 2005 showed that the number of detentions for drunkenness in police lockups fell from 12,346 to 1,972, and the number of admissions to SUCs rose from 3,527 to 19,380[266]
- reduced use of court time and resources
- reduced levels of domestic violence and other problems associated with alcohol abuse
- reduced burden on hospitals because of fewer hospitalisations for alcohol-related illnesses and accidents.[267]

The WA Drug and Alcohol Office noted that the annual cost of running SUCs had increased from $318,733 in 1990-91 to $3.2m in 2006-07, as the number of SUCs increased. The WA Drug and Alcohol

260 Victorian Government, Department of Health, *Public intoxication reform*, https://www.health.vic.gov.au/alcohol-and-drugs/public-intoxication-reform-0.

261 Victorian Government, Victorian Budget 2020/21, Service Delivery, Budget Paper No. 3, p 63, https://s3-ap-southeast-2.amazonaws.com/budgetfiles202021.budget.vic.gov.au/2020-21+State+Budget+-+Service+Delivery.pdf.

262 Victorian Government, Victorian Budget 2020/21, Service Delivery, Budget Paper No. 3, p 71, https://s3-ap-southeast-2.amazonaws.com/budgetfiles202021.budget.vic.gov.au/2020-21+State+Budget+-+Service+Delivery.pdf.

263 Victorian Budget 2021/22, Service Delivery, Budget Paper No. 3, p 59, https://s3-ap-southeast-2.amazonaws.com/budgetfiles202122.budget.vic.gov.au/2021-22+State+Budget+-+Service+Delivery.pdf.

264 Victorian Budget 2021/22, Service Delivery, Budget Paper No. 3, p 63, https://s3-ap-southeast-2.amazonaws.com/budgetfiles202122.budget.vic.gov.au/2021-22+State+Budget+-+Service+Delivery.pdf.

265 Victorian Government, Department of Health, *Public intoxication reform*, https://www.health.vic.gov.au/alcohol-and-drugs/public-intoxication-reform-0.

266 Western Australia, Drug and Alcohol Office, 'Utilisation of sobering up centres, 1990–2007 Perth', 2008, p 2, https://www.planitaerth.com/wp-content/uploads/2021/03/Swensen-2008-Utilisation-sobering-up-centres-Western-Australia-1990-2007.pdf.

267 Western Australia, Drug and Alcohol Office, 'Utilisation of sobering up centres, 1990–2007 Perth', 2008, p A-17, https://www.planitaerth.com/wp-content/uploads/2021/03/Swensen-2008-Utilisation-sobering-up-centres-Western-Australia-1990-2007.pdf.

Office stated SUCs were a very cost effective service as they avoided costs that would otherwise have been incurred if people had been detained or admitted to a hospital.[268]

Milliya Rumurra Alcohol and Drug Rehabilitation Centre in Broome, WA, runs a SUC[269] that was established in 1999.[270] Since its establishment, the number of Indigenous people incarcerated in the region fell from 173 in 1999, to 99 in 2000, and 33 in 2001.[271]

A review of a sobering-up centre in SA found similar outcomes to WA.[272]

Northern Territory

In the NT, work by PricewaterhouseCoopers Indigenous Consulting (PwC) estimated that alcohol-related hospital admissions cost on average up to $806/bed/night. Modelling suggested that if there was a reduction of just 4 hospital and/or accident and emergency admissions per night across the NT if intoxicated people were placed in the SUCs, this would save around $700,000 a year.[273]

PwC stated its consultations had informed it that all stakeholders, specifically police and night patrol services, preferred SUCs as an alternative to protective custody or hospital (unless required for health reasons) and that SUCs were also a more cost effective use of resources.[274]

This work also noted that many clients of SUCs were Indigenous, and that care needed to be provided in a culturally appropriate way, otherwise clients may choose not to be admitted to an SUC, putting themselves and their community at an increased risk of harm.[275]

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268 R Milford, 'The Decriminalisation of Public Drunkenness in Western Australia', *Aboriginal Law Bulletin*, https://www.planitaerth.com/wp-content/uploads/2021/03/Swensen-2008-Utilisation-sobering-up-centres-Western-Australia-1990-2007.pdf.

269 P Strempel, S Saggers et al., National Drug Research Institute, Curtin University of Technology, Indigenous drug and alcohol projects: elements of best practice, p 43, http://www.atoda.org.au/wp-content/uploads/rp8_indigenous_best_practice.pdf.

270 P Strempel, S Saggers et al., National Drug Research Institute, Curtin University of Technology, Indigenous drug and alcohol projects: elements of best practice, p 44, http://www.atoda.org.au/wp-content/uploads/rp8_indigenous_best_practice.pdf.

271 P Strempel, S Saggers et al., National Drug Research Institute, Curtin University of Technology, Indigenous drug and alcohol projects: elements of best practice, p 47, http://www.atoda.org.au/wp-content/uploads/rp8_indigenous_best_practice.pdf.

272 M Brady, R Nicholls, G Hendersen et al., 'The role of a rural sobering-up Centre in managing alcohol-related harm to aboriginal people in South Australia', *Drug and Alcohol Review*, vol 25, 2006, p 205, Northern Territoryhttps://onlinelibrary.wiley.com/doi/abs/10.1080/09595230600644657 (payment required).

273 PricewaterhouseCoopers Indigenous Consulting and the NT Government, 'Review of the Northern Territory sobering up shelters. Northern Territory,' PwC & NT Government, 2018, p 7, https://digitallibrary.health.nt.gov.au/prodjspui/bitstream/10137/7234/1/SUS%20Review%20Final%20Report.pdf.

274 PricewaterhouseCoopers Indigenous Consulting and the NT Government, 'Review of the Northern Territory sobering up shelters. Northern Territory,' PwC & NT Government, 2018, p 5, https://digitallibrary.health.nt.gov.au/prodjspui/bitstream/10137/7234/1/SUS%20Review%20Final%20Report.pdf.

275 PricewaterhouseCoopers Indigenous Consulting and the NT Government, 'Review of the Northern Territory sobering up shelters. Northern Territory,' PwC & NT Government, 2018, p 7, https://digitallibrary.health.nt.gov.au/prodjspui/bitstream/10137/7234/1/SUS%20Review%20Final%20Report.pdf.

2.10 Pathways to decriminalisation

2.10.1 Transition process

In terms of transition work, Queensland Health advised the committee that primarily providing a public health and social response will require consideration and modelling of the models of support and care and requisite resourcing implications across health and emergency services. This would include ensuring there are options for police to continue to respond appropriately to public intoxication and avoid the potential for more people to be brought to EDs because of intoxication in absence of a medical emergency.[276]

It was Logan City Council's strong view that police powers should not be reduced before there is significant increase in state government investment in social welfare support, including increased levels of early intervention and meaningful diversionary strategies.[277]

In contrast, a number of submitters emphasised that the need for new or expanded services should not be used as an excuse to delay decriminalisation.[278] In terms of implementation, the Australian Human Rights Commission supported decriminalisation, but noted; 'it is also important to acknowledge that putting in place a health-based approach requires upfront investment, hard work and that it can take time to implement (as has been demonstrated in Victoria)'.[279]

The committee noted the submission of IUIH and Caxton Legal Centre, which stated:

> In Queensland, highly effective community-based preventative and responsive programs and policies already exist and could be more widely implemented. The structures and systems are already in place to support a therapeutic rather than a police-led response.[280]

Committee comment

The committee acknowledges the benefits of a carefully planned and staged progression to decriminalisation, but at the same time is empathetic to submitters who called for immediate decriminalisation.

2.10.2 Availability of services for young people

A small number of submitters drew attention to the lack of services and support for children under 18, who are typically excluded from diversion centres.[281] The Queensland Family and Child Commission expressed concern that young people will continue to be transferred to watch-houses when no other place of safety is identified.[282]

The committee notes ChaplainWatch is funded by the state government (DCHDE) under the safe night support service program under the funding stream 'individuals', 'adults affected by alcohol' funding schedule. Jesse Webb, CEO, ChaplainWatch advised: 'our position and hours working within the SNPs means that we rarely interact with people under 18. However, … we are both willing and able to

[276] Queensland Health, correspondence dated 11 July 2022, p 2.

[277] Logan City Council, submission 45

[278] Sisters Inside Inc, submissions 7; TASC, submission 28; IUIH and Caxton Legal Centre, submission 37; QPU, submission 42.

[279] AHRC, submission 40, p 9.

[280] IUIH and Caxton Legal Centre, submission 37, p 7.

[281] AHRC, submission 40.

[282] Submission 30 p 4.

provide services to people under 18, should they present, and where we can gain parental consent (or where emergency care is required)'.[283]

Committee comment

The committee holds concerns that there are inadequate age-appropriate diversionary and detoxification services available to young people, especially in rural and remote regions. The committee acknowledges the work of services in major centres around Queensland to divert many young people from further self-harm and criminalisation.

2.10.3 Tailored to unique community needs

Numerous submitters spoke to the need for health and social welfare based responses to be tailored to the unique make-up of a community and community subgroups, so that all responses have the appropriate mix of service types.[284] According to Anglicare Southern Queensland, community-led design of services is preferred, where the local community is best placed to provide 'comprehensive descriptions of the sort of local problems that resulted from public drunkenness ...' and thus inform an appropriate response.[285] The Australian Lawyers Alliance suggested that respect for self-determination and solutions developed locally are key aspects of an effective culturally safe framework.[286]

We call for the decriminalisation of public space offences and for legal frameworks to adopt a more holistic approach to punitive measures through culturally-based diversionary interventions.

Mr Zebulon Tanna, Manager Accommodation Services, Townsville Aboriginal & Islander Health Service, public hearing Townsville, 5 October 2022, p 16.

Committee comment

The committee recognises that an effective health and social welfare response to public offences will need to be tailored to a local community and the needs and circumstances of that community.

2.10.4 Service coordination and accountability

Some submitters considered the importance of coordinating services and ensuring that service expectations and standards are met. Submitters suggested:

- a centralised body to audit and coordinate funded services to avoid double ups in service provision and resources[287]
- greater cooperation and communication between federal and state governments, local councils and community to deliver services[288]

283 Private correspondence with Jesse Webb, CEO, Chaplainwatch, dated 20 October 2022.

284 QNADA, submission 14, p 5. AHRA, submission 40, p 10.

285 Anglicare Southern Queensland, submission 18, p 3.

286 Australian Lawyers Alliance, submission 32, p 16.

287 Ms Emma Harman, President, Commerce North West, public hearing transcript, Mount Isa, 4 October 2022, p 13.

288 Cr Danielle Slade, Mayor, Mount Isa City Council, public hearing transcript, Mount Isa, 4 October 2022, p 6.

- more careful consideration be placed on coordinating services in regional, rural and remote areas.[289]

Committee comment

The committee notes the importance of accountability measures and coordination to maximise the efficiency of health and social welfare services with service mapping to understand who is doing what in each community, when and how.

The committee commends the 5-stage public health response model proposed by Victoria's ERG for responding to public intoxication (refer to Appendix B, pp 63-64 for summary details).

Recommendation 15

The committee recommends a universal framework be adopted across Queensland in a community driven, trauma informed, culturally sensitive manner appropriate to community requirements, before there is legislative reform. The Victorian Expert Reference Group's 5-stage public health model is one example of such a framework.

Recommendation 16

The committee recommends:

- stronger case management practices and services to support people who are homeless and who have health and welfare needs, including alcoholism and mental illness
- the development of agreed key performance indicators and accountability measures for not-for-profit, government and non-government organisations receiving public funding
- better communication between local government and state government departments to ensure greater coordination of services and targeted intervention to support our most vulnerable.

[289] Karyn Walsh, Chief Executive Officer, Micah Projects, public hearing transcript, Brisbane, 29 August 2022, p32; Assoc. Prof Peter Malouf, Chief Executive Officer, TAIHS, public hearing transcript, Townsville, 5 October 2022, p 17; Pania Brown, Community Service Manager, Anglicare Southern Queensland, public hearing transcript, Townsville, 5 October 2022, p 20.

Appendix A – Role of the committee, inquiry referral and process

2.11 The Community Support and Services Committee

The Community Support and Services Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[290]

The committee's areas of portfolio responsibility are:

- Communities, Housing, Digital Economy and the Arts
- Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
- Children, Youth Justice and Multicultural Affairs.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the Human Rights Act 2019
- for subordinate legislation – its lawfulness.[291]

2.12 Inquiry terms of reference

That the Community Support and Services Committee inquire into and report to the Legislative Assembly by 31 October 2022 on:

a) changes to legislation and operational policing responses to decriminalise the public intoxication and begging offences in the Summary Offences Act 2005;

b) the compatibility of proposed legislative amendments, and health and social welfare-based service delivery responses to public intoxication and begging, with rights protected under the Human Rights Act 2019;

c) the costs and benefits of responses to public intoxication and begging in other Australian jurisdictions;

d) the health and social welfare-based responses to public intoxication and begging necessary to support legislative amendments, having regard to existing responses, such as diversion services;

e) the impacts of decriminalising public intoxication and begging in rural and remote communities;

f) the design of health and social welfare-based responses that are culturally safe and appropriate and informed by First Nations people, including Aboriginal and Torres Strait Islander health and legal services and also representative bodies for seniors and people with a disability;

g) the appropriateness of other police powers and offences to ensure community safety and public order arising from public intoxication and begging, particularly in the context of events where there may be significant alcohol consumption;

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290 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

291 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

h) how existing public messaging on the harm of alcohol and other drugs, including alcohol-related violence, can continue to be reinforced following the decriminalisation of public intoxication; and

i) the appropriateness of repealing the 'Urinating in a public place' offence under the Summary Offences Act 2005.

2.13 Inquiry referral and process

Following the referral of the inquiry to the committee on 24 June 2022, the committee invited stakeholders and subscribers to make written submissions on the Inquiry on 4 July 2022. Forty-five submissions were received.

The committee received written advice from the departments listed below in response to the terms of reference of the inquiry:

- Queensland Police Service
- Department of Communities, Housing and Digital Economy
- Queensland Health.

The committee received a public briefing about the Inquiry from the Queensland Police Service, Queensland Health and the DCHDE on 12 July 2022. A transcript is published on the committee's web page; see Appendix E for a list of officials.

The committee sought and received advice from the Legal Affairs and Safety Committee on matters relating to terms of reference g) and i).

The committee wrote to all local councils in Queensland, seeking advice on matters relating to the terms of reference. The committee received written advice from the councils listed below:

- Brisbane City Council
- City of Gold Coast
- Ipswich City Council
- Logan City Council
- Longreach Regional Council
- Moreton Bay Regional Council
- Richmond Shire Council
- Torres Shire Council.

In addition, the committee received submissions from the following councils:

- Cairns Regional Council
- Mareeba Shire Council
- Mount Isa City Council

The committee held public hearings in the below listed locations and on the following dates:

- Brisbane, 29 August 2022
- Cairns, 5 September 2022
- Mareeba, 6 September 2022
- Mount Isa, 4 October 2022

- Townsville, 5 October 2022
- Surfers Paradise, 21 October 2022.

See Appendix F for a list of witnesses.

The committee undertook site visits with key stakeholders in the below listed locations and on the following dates:

- Fortitude Valley, 31 August 2022
- Cairns, 5 September 2022
- Mount Isa, 4 October 2022
- Townsville, 5 October 2022
- Surfers Paradise, 20 and 21 October 2022.

The submissions, correspondence from the QPS, Queensland Health and DCHDE and transcripts of the briefing and hearings are available on the committee's webpage.

Appendix B – Background to the inquiry

2.14 Introduction

This appendix sets out key background information that has informed the committee's inquiry into the decriminalisation of certain public offences and health and welfare responses. It:

- summarises key findings and recommendations from the Royal Commission into Aboriginal Deaths in Custody (Royal Commission), and recent public inquires of particular relevance to this inquiry
- briefly reviews academic literature, and other reputable evidence, about the criminalisation and decriminalisation of public intoxication and begging.

2.15 The Royal Commission into Aboriginal Deaths in Custody and related public inquiries

The Royal Commission and subsequent related public inquiries have played a major role in driving the decriminalisation of public intoxication across Australian jurisdictions.

These public inquiries have consistently drawn a connection between the criminalisation of public intoxication, the over-incarceration of Aboriginal and Torres Strait Islander peoples, and the disproportionate number of Aboriginal and Torres Strait Islander peoples who die in police custody across Australia. As a result, public inquires have consistently recommended the decriminalisation of public intoxication, a shift towards a health and welfare response, and changes in the way that police officers engage with Aboriginal and Torres Strait Islander communities.

2.15.1 The Royal Commission and its recommendations

The Royal Commission investigated the deaths of 99 Aboriginal and Torres Strait Islander peoples in the custody of prison, police or juvenile detention institutions over a roughly 10-year period (January 1980 to May 1981). Established in 1987, the Royal Commission was a response to growing public concern about the number of Aboriginal and Torres Strait Islander peoples who died in custody, and a concerted public campaign led by members of the Indigenous community.

The Royal Commission's key finding was that although Aboriginal and Torres Strait Islander peoples did not die in custody at a greater rate than non-Indigenous people, there was a higher number of deaths among Aboriginal and Torres Strait Islander peoples due to their over-representation in the criminal justice system.[292] In other words, Aboriginal and Torres Strait Islander peoples were more likely to be detained in police custody, and thus more likely to die there.

The Royal Commission concluded that one reason for the higher rate of incarceration of Aboriginal and Torres Strait Islanders was the criminalisation of public drunkenness. The Royal Commission's Report, published in 1991, observed:

> … large numbers of Aboriginal people are apprehended by police and held in custody in police cells owing to drunkenness, even in those jurisdictions where public drunkenness has been decriminalised but where no facilities, other than the police cells, have been established for the care of intoxicated people.[293]

The report went on to emphasise:

> … how deeply and frequently alcohol has been involved in the 99 cases which have been investigated under the Letters Patent issued to the Royal Commission. It is clear that alcohol features as a central and negative part of the lifestyle of many of the Aboriginal people who died in custody. It was involved,

[292] Royal Commission into Aboriginal Deaths in Custody, *National Report,* 1991.

[293] Royal Commission into Aboriginal Deaths in Custody, *National Report,* 1991, para 15.2.3.

> frequently causally, in their being in custody and, especially sadly, was a direct or indirect cause of their deaths in custody.[294]

Drunkenness was the reason for the last detention of the deceased person in more than half of the 27 Queensland cases examined by the Royal Commission: a higher proportion than in any other jurisdiction.[295]

In its final report, released in 1991, the Royal Commission made 339 recommendations across 26 themes. The 13 recommendations relating to diversion from police custody (79-91) are of most relevance to this inquiry, particularly the 6 recommendations set out below.

Table 1 Most relevant recommendations from the Royal Commission

79	That the offence of public drunkenness be abolished, where it has not already been decriminalised.
80	That the abolition of the offence of public drunkenness be accompanied by adequate investments in non-custodial facilities to care for and treat intoxicated persons.
81	That police officers be subject to a legal duty to consider and use alternatives to detaining intoxicated people in police cells.
84	That plans for addressing public drinking be negotiated between police, local governments and organisations that represent Indigenous communities.
85	That police monitor, and make public data about, the impact of laws that decriminalise public drunkenness to ensure that: (i) intoxicated people are not being detained in police cells when they should have been taken to an alternative place; and, (ii) people are not being charged with other minor offences in place of public drunkenness.
87	That police adopt and apply the principle that arrest should be a sanction of last resort, and ensure that police training, directives and guidelines support the implementation of this principle in practice

In 2018, an Australian Government review found that across all levels of government, 78 per cent of the Royal Commission's recommendations had been fully or mostly implemented, 16 per cent had been partially implemented, and 6 per cent had not been implemented.[296]

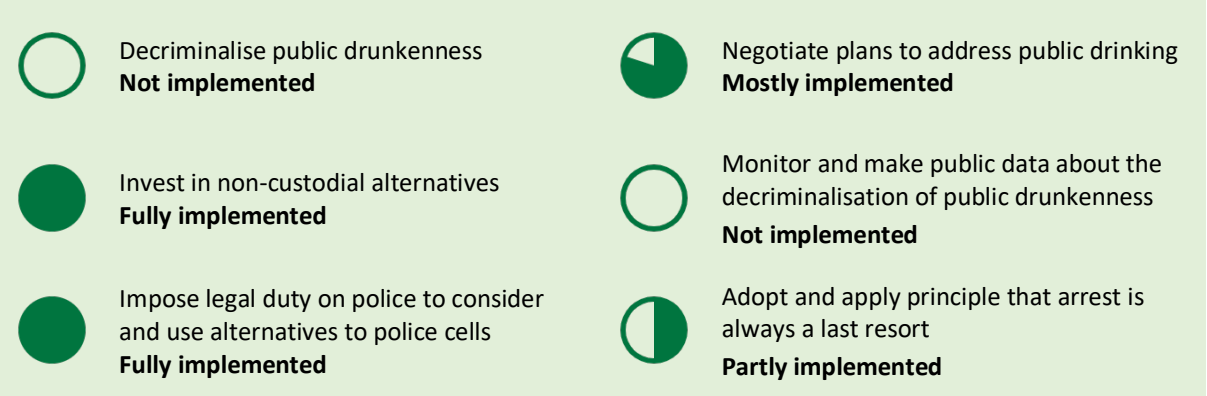
As Figure 14 illustrates, several of the recommendations that are particularly relevant to this inquiry were among those that the review found had not been fully implemented, in Queensland.

294 Royal Commission into Aboriginal Deaths in Custody, *National Report,* 1991, para 15.2.4.

295 Royal Commission into Aboriginal Deaths in Custody, *National Report,* 1991, Table 2.13 and para 2.4.2.

296 Department of the Prime Minister and Cabinet, *Review of the implementation of the Royal commission into Aboriginal Deaths in Custody*, October 2018, p xi. Available at: https://www.niaa.gov.au/resource-centre/indigenous-affairs/review-implementation-royal-commission-aboriginal-deaths-custody.

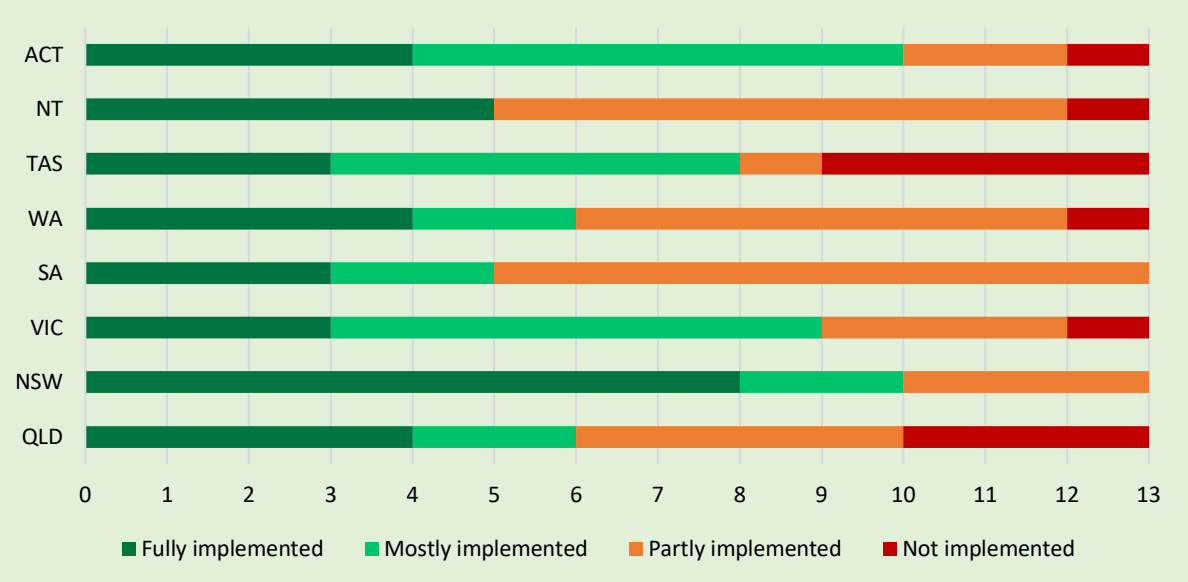
Figure 14 Implementation of most relevant recommendations in Queensland



Source: Department of the Prime Minister and Cabinet, *Review of the implementation of the Royal commission into Aboriginal Deaths in Custody*, October 2018.

On the whole, Queensland has lagged behind most other jurisdictions regarding the implementation of the 13 recommendations relating to the diversion from police custody. As illustrated in Figure 15, in 2018, only 6 of those recommendations had been fully or mostly implemented in Queensland, fewer than in all other jurisdictions except for SA and the NT.

Figure 15 Status of Royal Commission recommendations on diversion from police custody



Source: Department of the Prime Minister and Cabinet, *Review of the implementation of the Royal commission into Aboriginal Deaths in Custody*, October 2018, chapter 6.

2.15.2 Other public inquires

Several subsequent inquires have produced reports that address similar issues to those examined by the Royal Commission. The most recent of these include:

- the Australian Law Reform Commission's 2017 report, *Pathways to Justice – Inquiry into the* Incarceration *Rate of Aboriginal and Torres Strait Islander Peoples*, which set out 35 recommendations to reduce the disproportionate incarceration of Aboriginal and Torres Strait Islander peoples and improve community safety.
- the Queensland Productivity Commission's (QPC) *Inquiry into Imprisonment and Recidivism – final report*, published in 2020. This inquiry concluded that many offending behaviours can be

addressed outside of the criminal justice system, including through greater use of diversionary approaches

- the 2020 report of the Expert Reference Group (ERG) appointed to advise the Victorian Government on the decriminalisation of public drunkenness and the development of an alternative health-based response, Seeing the Clear Light of Day. This report is discussed in more detail in section 2.15.3, below.
- the Australian Human Rights Commission's Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future 2020 report, which documented a multi-year initiative designed to elevate the voices of Aboriginal and Torres Strait Islander women and girls in discussions about their strengths, challenges and aspirations for change
- the 2022 report of Queensland's Women's Safety and Justice Taskforce into the experiences of women and girls across Queensland's criminal justice system, *Hear Her Voice 2*.

These recent reports reiterate many of the findings from the Royal Commission, including findings that the rate of incarceration of Aboriginal and Torres Strait Islander peoples is disproportionately high.

Typically, these reports have stressed the social and economic benefits that could be realised by diverting people, including Aboriginal and Torres Strait Islander peoples, away from the criminal justice system. For example, the QPC estimated that the reforms it recommended could reduce the state's prison population by almost a third, saving $300,000 per year, without undermining community safety.[297]

Several of these inquiries made recommendations echoing those of the Royal Commission. For example:

- the QPC recommended that the Queensland Government 'remove those activities from the *Criminal Code Act 1889* and other relevant legislation for which the benefits of being included do not outweigh the costs'[298]
- the Women's Safety and Justice Taskforce recommended that the offences of begging and public intoxication be repealed as soon as possible due to their disproportionate impact on women and girls[299]
- Victoria's ERG concluded that 'the current punitive, criminal justice led response to intoxicated people is unsafe, unnecessary and inconsistent with current community standards' and recommended the decriminalisation of public drunkenness.[300]

The reports listed above have also stressed that efforts to address the social problems confronting Aboriginal and Torres Strait Islander communities should be developed in consultation with, and ideally led by, those communities.[301]

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297 Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism – final report*, January 2020, p x.

298 Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism – final report*, January 2020, p xlvii.

299 Recommendation 101, Women's Safety and Justice Taskforce, *Hear Her Voice 2*, July 2022, volume 1, pp 5 and 27.

300 Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day,* Report to the Victorian Attorney-General, August 2020, pp 1 and 4.

301 See for example Recommendation 13-1 in Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, ALRC Report 133, December 2017, p 17.

Numerous other inquiries across different Australian jurisdictions have produced findings and recommendations consistent with those discussed above. This includes inquiries conducted by the NSW Ombudsman in 2014,[302] and by the Drugs and Crime Prevention Committee of the Victorian Parliament in 2001.[303]

Those 2 inquiries highlighted the uneven enforcement of public intoxication offences, finding that in NSW and Victoria, Aboriginal and Torres Strait Islander peoples are fined or charged with public intoxication offences at a rate that this grossly disproportionate to their share of the population. For example, in the period reviewed by the NSW Ombudsman, almost a third of all fines or charges for continuing intoxicated and disorderly behaviour despite an order to move on were issued to Aboriginal people, who make up only 2.5 per cent of the NSW population.[304]

2.15.3 Seeing the Clear Light of Day

The findings and recommendations set out in *Seeing the Clear Light of Day*, are particularly relevant to the committee's inquiry due to the contemporaneous nature of that report and the similarity of the issues addressed.[305] That report was prepared by an independent group of experts appointed by the Victorian government – the Expert Reference Group (ERG). It was triggered, in part, by the death of Ms Tanya Day, a Yorta Yorta woman. In 2017, Ms Day was arrested for being drunk on a train and was detained for more than 4 hours in a police cell, where she repeatedly fell and hit her head. She later died in hospital.

In its report, the ERG stressed that:

- the evidence overwhelmingly demonstrates the need to change responses to public intoxication
- there must be a cultural shift so that public intoxication is seen as a health issue, not a matter of law enforcement
- any new model should be based on the principle that 'no one should be placed into a police cell simply because they are intoxicated in public'[306]
- although public intoxication is a complex problem, there is a 'clear path away from criminalisation' making a health-based model 'both realistic and attainable'[307]
- there is strong community support for this change.

In light of these points, the ERG concluded that the decriminalisation of public intoxication was urgent.

In place of the current approach, the ERG proposed a public health model for responding to public intoxication, which it suggested could be implemented in a phased manner, over a 2-year period. That model, which comprised 5 key stages, is summarised in Table 2, below.

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302 NSW Ombudsman, *Policing intoxicated and disorderly conduct: Review of section 9 of the Summary Offences Act 1988*, August 2014.

303 Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into Public Drunkenness – Final Report,* June 2001.

304 NSW Ombudsman, *Policing intoxicated and disorderly conduct: Review of section 9 of the Summary Offences Act 1988*, August 2014, p 32.

305 Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day,* Report to the Victorian Attorney-General, August 2020.

306 Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day,* Report to the Victorian Attorney-General, August 2020, p 1.

307 Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day,* Report to the Victorian Attorney-General, August 2020, pp 1, 3.

Table 2 The ERG's 5-stage public health model

	First response	• Primary first responders should be personnel from health or community services organisations, not law enforcement officials. • Police involvement should occur only when a high threshold is met: serious and imminent risk of significant harm. • Police power to detain should be strictly limited, e.g. 1 hour maximum with limited exceptions, and subject to strong accountability mechanisms.
	Transport to a safe place	• Default should be that an intoxicated person organises their own transport with assistance of family or friends. • New transport options are required for when this default option is not possible. These must be capable of meeting demand. • Police should only transport intoxicated people where no other options are available and should be under a legislative obligation to exhaust alternatives.
	Meet immediate health needs	• Intoxicated people who pose a risk to themselves or others should be transported to a private home – the preferred option; a hospital – if they require urgent medical care; or a sobering up service – if they cannot be safely cared for elsewhere. • New investments must be made to increase the availability of sobering up services, especially in high demand areas. These should be flexible and capable of scaling up when needed.
	Provide health and social care pathways for high needs individuals	• Increased support for people who are frequently intoxicated in public as a result of complex health and welfare challenges, including follow-up or ongoing support. • Improved service pathways and targeted approaches to fill gaps, including in the provision of services to Aboriginal and Torres Strait Islander peoples.
	Broader prevention strategies	• Address underlying causes in order to reduce the impacts of high-risk drinking.

The ERG recommended strengthened cultural safety training for those who engage with intoxicated people under the new model, including first responders. It also recommended further consultation and co-design with diverse stakeholders, especially the Indigenous community.

In response to the ERG's report, the Victorian Government stated that it was committed to decriminalising public drunkenness and shifting to a public heath model. It subsequently enacted legislation to repeal the relevant offences,[308] though it will not come into effect until November 2023.

2.16 Review of academic literature

This section provides a brief review of academic literature, and other evidence from other reputable sources, relating to the criminalisation and decriminalisation of public intoxication and begging. It

[308] *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic).

highlights 5 key findings that are relevant to the terms of reference for this inquiry, which are summarised in Table 3.

Table 3 Key findings from academic literature

	**Police cells are not safe places for intoxicated people.** Intoxicated people are at significant risk of harm, including risk of death, when detained in police cells.
	**Decriminalisation alone is not enough.** Further actions are required to ensure that intoxicated people will be diverted away from police custody in practice.
	**Diversion from police custody can save lives and is cost-effective.** Investments in sobering up centres have generated benefits and cost savings in Australian jurisdictions and abroad.
	**Begging is generally a last resort.** People beg when they have no other way to obtain the necessities of life.
	**Aggressive begging is extremely rare**. Passive begging is far more common, despite negative stereotypes that prevail in the media.

These key findings are discussed in more detail below.

2.16.1 Public intoxication

Several studies provide evidence that intoxicated people are at significant risk of harm when detained in police cells. For example, a study of 260 cases in NSW found that alcohol was frequently a contributing factor to injuries that occurred in police custody.[309] In many cases, intoxicated people injured themselves by punching, kicking or head-butting blunt objects, such as the wall or door of a police cell.

Both Australian and international evidence points to a strong correlation between intoxication and the risk that a person will die in police custody. For example, a review of international data found that alcohol was a dominant cause of deaths in police custody in Europe. In several countries, including Finland, Denmark, the United Kingdom and Germany, alcohol intoxication was the leading cause of deaths in police custody.[310] A study of deaths in police custody in Victoria between 1991 and 1996 found that alcohol was frequently a direct cause of death, or a contributing factor.[311]

309 Jo Sallybanks, *Monitoring Injuries in Police Custody: A Feasibility and Utility Study,* Technical and Background Paper, 2005, Australian Institute of Criminology, Canberra.

310 Steffen Heide and Theodore Chan, 2018. 'Deaths in police custody', *Journal of Forensic and Legal Medicine*, 57(July), pp 109-114.

311 K Petschel and JA Gall, 2000. 'A profile of deaths in custody in Victoria, 1991–96', *Journal of Clinical Forensic Medicine*, 7(2) pp 82-87.

Academic literature suggests that decriminalisation alone does not ensure that intoxicated people will be diverted away from police custody. Scholars point to several reasons for this. Drawing on the experience of NSW, one study observed that changes to the law did not automatically or quickly produce changes in police practice: in the early years after the decriminalisation of public intoxication there was little difference in how police dealt with intoxicated people.[312] Scholars have also noted the risk that police will make increased use of other discretionary powers relating to public order,[313] or be granted new powers that allow them to intervene when people are intoxicated in public.[314]

International research shows that the diversion of intoxicated people away from police custody can be highly effective in reducing deaths in custody. A study conducted in Norway found that the number of deaths in police custody declined by 75 per cent from the 1990s to the 2000s, and during that time, alcohol intoxication almost disappeared as a cause of death in police cells.[315] The authors concluded this was mainly due to the fact that heavily intoxicated people were no longer placed in police cells.

Research suggests that investments in alternatives to police cells, such as sobering up centres, can be effective in diverting intoxicated people away from police custody. For example, data from WA shows that as spending on SUCs gradually increased from $501,413 to $3,547,190 between 1992 and 2005, the number of intoxicated people detained in police custody declined from 12,346 to 1,972.[316] At the same time, the number of intoxicated people admitted to SUCs expanded from 3,527 to 19,380.

Another study from SA concluded that SUCs are effective in diverting extremely intoxicated people from police custody, protecting them from accidents and self-harm, preventing harm to others, and reducing conflict.[317] However, that study also concluded that sobering up centres have limitations: because they are primarily designed to provide acute care, they are less effective in reducing public intoxication over the long term.

While research on the cost savings produced by SUCs in Australia is limited, evidence from other countries suggests they can deliver significant cost savings. For example, research conducted in the United States demonstrates that sobering up centres provide a cheaper alternative to EDs at hospitals.[318] A study from San Francisco found that the average cost for a single visit to an SUC was US $264.18, compared to $2,820.61 for a visit to a hospital ED.[319]

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312 Luke J McNamara, and Julia Quilter, 2015. 'Public intoxication in NSW: the contours of criminalisation' *Sydney Law Review*, 37(1), pp 1-35.

313 Amy Pennay, Michael Savic, Kate Seear, Isabelle Volpe, Victoria Manning and Robin Room, 2021. 'Decriminalising public drunkenness: Accountability and monitoring needed in the ongoing and evolving management of public intoxication', *Drug and Alcohol Review*, 40(20), pp 205-209.

314 Luke J McNamara, and Julia Quilter, 2015. 'Public intoxication in NSW: the contours of criminalisation' *Sydney Law Review*, 37(1), pp 1-35.

315 Willy Aasebø, Gunnar Orskaug, and Jan Erikssen, 2016. 'Can deaths in police cells be prevented? Experience from Norway and death rates in other countries', *Journal of Forensic and Legal Medicine*, 37 (January), pp 61-65.

316 Drug and Alcohol Office, Government of Western Australia, *Utilisation of Sobering Up Centres, 1990 – 2005,* Statistical Bulletin No. 36, June 2007, Table 1 and Figure 1.

317 Maggie Brady, Ruth Nicholls, Graham Hendersen and Joe Byrne, 2006. 'The role of a rural sobering-up Centre in managing alcohol-related harm to aboriginal people in South Australia', *Drug and Alcohol Review*, 25(3) pp 201–206.

318 Brandon Marshall, Erin McGlynn and Andrew King, 2021. 'Sobering centers, emergency medical services, and emergency departments: A review of the literature', *The American Journal of Emergency Medicine*, 40 (February), pp 37-40.

319 Shannon Smith-Bernardin, Adam Carrico, Wendy Max, and Susan Chapman, 2017. 'Utilization of a Sobering Center for Acute Alcohol Intoxication', *Academic Emergency Medicine,* 24(9), pp 1060-1071.

2.16.2 Begging

Academic evidence suggests that begging is frequently a crime of survival, and typically a behaviour of last resort.

Research, including research conducted in Australia, has repeatedly demonstrated a strong connection between begging and homelessness, especially rough sleeping.[320] These studies report that people experiencing homelessness who beg generally do so because they have no other way to obtain the necessities of life, and view begging as preferable to stealing. People who engage in begging typically describe it as humiliating and dangerous, explaining that begging can make them a target for verbal and physical violence.

Research has also demonstrated a connection between food insecurity and begging, strengthening the conclusion that begging is often a behaviour driven by necessity. A study of food charity recipients in Perth found that while charitable services had been the main source of food for these people in the previous week, a significant proportion also begged for money for food (36 per cent) or begged for food (32 per cent).[321] Only 38 per cent of study participants reported being homeless, suggesting that begging may be a crime of necessity even when people have access to some form of accommodation.

Australian research also shows that most people who beg do so in a passive and non-aggressive manner.[322] For example, they may sit or sleep next to a sign, or ask passers-by for money, and can be easily refused. In contrast, aggressive begging is extremely rare. This has led scholars to suggest that claims that begging constitutes a threat to public safety are primarily driven by negative and inaccurate stereotypes, rather than facts.[323]

320 For example, see Philip Lynch, 2005. 'Begging for change: homelessness and the law' *Melbourne University Law Review*, 26(3), pp 690–706; Michael Horn and Michelle Cooke, *A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne*, Hanover Welfare Services, June 2001.

321 Christina M. Pollard, Sue Booth, Jonine Jancey, Bruce Mackintosh, Claire E Pulker, Janine L Wright, Andrea Begley, Sabrah Imtiaz, Claire Silic, S Aqif Mukhtar, Martin Caraher, Joel Berg, and Deborah A Kerr, 2019. 'Long-Term Food Insecurity, Hunger and Risky Food Acquisition Practices: A Cross-Sectional Study of Food Charity Recipients in an Australian Capital City', *International Journal of Environmental Research and Public Health,* 16(15), p 2749.

322 Michael Horn and Michelle Cooke, *A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne*, Hanover Welfare Services, June 2001.

323 Prof Tamara Walsh, 2004. 'Defending Begging Offenders', *QUT Law & Justice Journal,* 4(1), pp 58-76.

Appendix C - Abbreviations

ATSILS	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd
ATSIWLSNQ	Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc
AOD	Alcohol and other drugs
ACT	Australian Capital Territory
CBD	Central business district
CEO	Chief executive officer
CMC	Crime and Misconduct Commission
DCHDE	Department of Communities, Housing and Digital Economy
ED	Emergency Department
ERG	Expert Reference Group on public drunkenness
HRA	*Human Rights Act 2019*
IUIH	Institute for Urban Indigenous Health
LGA	Local Government Area
NSW	New South Wales
NT	Northern Territory
OPM	Operational Procedure Manual
PPRA	*Police Powers and Responsibilities Act 2000*
QCCL	Queensland Council for Civil Liberties
QCOSS	Queensland Council of Social Service
QFCC	Queensland Family & Child Commission
QHRC	Queensland Human Rights Commission
QIFVLS	Queensland Indigenous Family Violence Legal Service
QLS	Queensland Law Society
QNADA	Queensland Network of Alcohol and Other Drugs

QPS	Queensland Police Service
QPU	Queensland Police Union
QPC	Queensland Productivity Commission
Royal Commission	Royal Commission into Aboriginal Deaths in Custody
SNP	Safe night precinct
SUC	Sobering up centre
SA	South Australia
TASC	The Advocacy and Support Centre National Limited
WA	Western Australia

Appendix D – Submitters

Sub #	Submitter
001	Name Withheld
002	Joanne Daley
003	Name Withheld
004	Confidential
005	Robert Heron
006	Name Withheld
007	Sisters Inside Inc
008	FamilyVoice Australia
009	Queensland Council for Civil Liberties
010	AMA Queensland
011	Mareeba Crime Action Group
012	Mareeba Shire Council
013	Australian Red Cross
014	The Queensland Network of Alcohol and Other Drugs (QNADA)
015	Professor Tamara Walsh, The University of Queensland
016	Prisoners' Legal Service (PLS)
017	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd (ATSILS)
018	Anglicare Southern Queensland
019	The Public Advocate
020	Queensland Mental Health Commission
021	Name Withheld
022	Shane Cuthbert
023	Justice Reform Initiative
024	LawRight
025	Alcohol and Drug Foundation
026	Queensland Youth Policy Collective
027	TASC National Limited
028	Queensland Law Society
029	Queensland Council of Social Services (QCOSS)
030	Queensland Family & Child Commission
031	Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc. (ATSIWLSNQ)
032	Australian Lawyers Alliance (ALA)
033	Queensland Indigenous Family Violence Legal Service (QIFVLS)

034 Legal Aid Queensland

035 Queensland Human Rights Commission

036 Micah Projects

037 Institute for Urban Indigenous Health (IUIH) and Caxton Legal Centre

038 Bar Association of Queensland

039 Change the Record

040 Australian Human Rights Commission

041 Cairns Regional Council

042 Queensland Police Union of Employees

043 Mount Isa City Council

044 City of Gold Coast

045 Logan City Council

Appendix E – Officials at public departmental briefing

Queensland Police Service

- Mr Steve Gollschewski, Deputy Commissioner (Southern Queensland)
- Mr Paul Taylor, Deputy Commissioner (Regional Queensland)
- Mr Anthony Brown, Director, Legislation Branch, Policy & Performance Division

Queensland Health

- Associate Professor John Allan, Executive Director, Mental Health and Alcohol and Other Drugs Branch, Clinical Excellence Queensland
- Ms Haylene Grogan, Chief Aboriginal and Torres Strait Islander Health Officer and Deputy Director-General, Aboriginal and Torres Strait Islander Health Division
- Ms Emma Powell, Senior Project Officer, Governance, Aboriginal and Torres Strait Islander Health Division

Department of Communities, Housing and Digital Economy

- Ms Louise Howard, Acting Deputy Director-General, Communities
- Mr Brad McCoy, Executive Director, Community Services

Appendix F – Witnesses at public hearing

29 August 2022 - Brisbane

The Advocacy and Support Centre (TASC)

- Ms Kirsten Williams, Systems Advocate

Queensland Public Advocate

- Dr John Chesterman, Public Advocate
- Ms Tracey Martell, Acting Manager Office of the Public Advocate

Queensland Human Rights Commission

- Ms Neroli Holmes, Deputy Commissioner

Queensland Council of Social Service

- Ms Meg Martin, Human Rights Lead

Queensland Network of Alcohol and Other Drug Agencies

- Ms Rebecca Lang, Chief Executive Officer
- Mr Sean Popovich, Director, Policy and Systems

Institute for Urban Indigenous Health (IUIH) and Caxton Legal Centre

- Mr Kaava Watson, Director of Network Development, IUIH Legal Service
- Ms Keryn Ruska, Senior Principal Lawyer, IUIH Legal Service
- Ms Bridget Burton, Director, Human Rights and Civil Law Practice, Caxton Legal Centre

Aboriginal and Torres Strait Islander Legal Service (Queensland)

- Ms Kate Greenwood, Barrister and Policy, Intervention and Community Legal Education Officer

Queensland Law Society

- Ms Kara Thomson, President
- Ms Julia Jasper, Member, Criminal Law Committee
- Ms Lyndell O'Connor, Chair, First Nations Legal Policy Committee
- Ms Keryn Ruska, Member, Human Rights And Public Law Committee

Murri Watch Aboriginal and Torres Strait Islander Corporation

- Mr Ken Georgetown, Chief Executive Officer
- Ms Kristy-Lee Costello, Brisbane Programs Manager

Micah Projects

- Ms Karyn Walsh, Chief Executive Officer
- Mr Saad Farooqui, Cluster Lead – Health & Services Integration

5 September 2022 – Cairns

Cairns Regional Council

- Cr Bob Manning, Mayor
- Cr Brett Moller, Councillor

Tablelands Community Justice Group

- Ms Julie Go Sam, Coordinator
- Mr Terry Murray, Court Support & Programs Officer

Queensland Indigenous Family Violence Legal Service

- Ms Thelma Schwartz, Principal Legal Officer
- Mr Kulumba Kiyingi, Senior Policy Officer

Cairns Chamber of Commerce

- Mr Rick Huriwai, Management Committee Member

Centacare FNQ

- Ms Emma Townsend, Manager, Operations
- Mrs Andrea Obeyesekere, Manager, Multicultural Services

Youth Empowered Towards Independence (YETI)

- Ms Genevieve Sinclair, Chief Executive Officer
- Ms Bindi Diamond, Manager, Youth Justice Programs

Private Capacity

- Mr Shane Cuthbert
- Mr Rob Pyne

6 September 2022 – Mareeba

Mareeba Shire Council

- Cr Angela Toppin, Mayor
- Mr Peter Franks, Chief Executive Officer

Mareeba Chamber of Commerce

- Mr Joe Moro, President

Mareeba Crime Action Group

- Mr Barry Simpson

4 October 2022 – Mount Isa

Mount Isa City Council

- Cr Danielle Slade, Mayor
- Cr Phil Barwick, Deputy Mayor

North West Queensland Indigenous Catholic Social Services

- Mr William Blackley, Cultural Compliance and Community Engagement Manager

Commerce North West

- Ms Emma Harman, President

Queensland Police Union

- Mr Ian Leavers, President and Chief Executive Officer
- Mr Luke Moore, Policy and Project Officer

Private Capacity

- Mr Brian Atherinos, Mt Isa City Council
- Ms Kerry Bower
- Mr Lee Ellis
- Ms Chileya Luangala
- Mr Lee Pulman
- Ms Nikki Row

5 October 2022 – Townsville

Townsville City Council

- Cr Jenny Hill, Mayor

Palm Island Community Company

- Mr Vaughn Charles, Support Worker, Diversionary Services
- Mr Alfred Clay, Support Worker, Diversionary Services
- Ms Deeann Sailor, Manager, Youth Services

Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc.

- Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Advisor

Townsville Aboriginal & Islander Health Service

- Associate Professor Peter Malouf, Chief Executive Officer
- Ms Sara O'Reilly, Executive Manager
- Mr Zebulon Tanna, Manager Accommodation Services

Anglicare Southern Queensland

- Ms Pania Brown, Community Service Manager

Private Capacity

- Mr Carl Lymburner

21 October 2022 – Surfers Paradise

City of Gold Coast

- Ms Jo Furey-Lopez, Executive Coordinator City Laws
- Ms Anna Rainbow, Coordinator Community Safety

Bond University

- Dr Terry Goldsworthy, Associate Professor, Criminal Justice and Criminology

Gold Coast Youth Service Inc

- Mrs Maria Leebeek, Chief Executive Officer
- Mr Will Aufai, Senior Team Leader
- Ms Angela Driscoll, Chill Out Zone Coordinator

Australian Lawyers Alliance

- Mr Greg Barns, SC National Criminal Justice Spokesman

Private Capacity

- Name Withheld

Statements of Reservation

Stephen BENNETT MP
Member for Burnett

27 October 2022

Community Support and Services Committee
Inquiry into the Decriminalization of Certain Public Offences, and Health and Welfare Responses

LNP Statement of Reservation

The LNP members of the committee provide this Statement of Reservation to the committee's report that recommends repealing sections of the *Summary Offences Act 2005* (Qld).

The LNP Members heard from submitters with many ideas for reform, and we had hoped the report would address and make recommendations to address the failure and crisis we face in Queensland especially with health, housing, and welfare service delivery.

The committee report, while recommending repealing sections of the *Summary Offences Act 2005*

- Urination in a public place (s7)
- Begging in a public place (s8), and
- Being intoxicated in a public place (s10)

will ultimately not deal with in many cases underlying problems of poverty, homelessness, and entrenched disenfranchisement.

Many of the committee's other recommendations do not recognise the reality: that the community expects to be able to use public spaces and for them to be free from begging, public intoxication and public urination while utilising these public spaces. The committee's report does not reflect what many see as a disproportionate response to these offences and will be seen as a continuation of a soft crime Government that fails to plan.

With significant serious issues confronting many of our communities, some submitters questioned why Queensland would simply follow other states and territories with legislative reforms that fail to strengthen legislation, and repeal laws that maintain and improve existing behavioural and community public space standards expected by Queenslanders and the many visitors to our State.[1]

[1] Submissions 31, 32, 39, 40 and 41.

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We support many submitters who expressed concerns with the proposed repealing of these legislative provisions. We highlight particularly the local Government submitters and Police who overwhelmingly would prefer to see non-government organisations and Government agencies tasked with the health and welfare of vulnerable persons being part of a co-responder arrangement.[2]

The recommendation to repeal fails to acknowledge that a lack of services, funding, and capacity of other agencies to respond to reports of public intoxication creates an environment where police will not have the power of law to ensure community safety and amenity.

The Queensland Police Union submission and subsequent evidence provided to the committee highlighted that their members believe that,

> '… a multifaceted approach to public intoxication and begging is required to meet the expectations of the community and ensure public safety. There is a role for Departments, Non-Government providers and third parties to assist in the care and wellbeing of individuals who are publicly intoxicated or begging'.[3]

In many examples in other jurisdictions where decriminalisation has occurred, there was the need for the introduction of protective custody legislation which gives police the powers to apprehend persons as a last resort to keep themselves and the community safe.

The committee heard from police officers from across the State about their work in protecting the community and the individuals involved. Police officers want and need the power, the scope and the discretion in dealing with public intoxication.

There were concerns raised with the committee that with the repeal of s 10, 'being intoxicated in public place' in the *Summary Offences Act 2005,* the police will have no alternative options.[4] This has happened in other jurisdictions where police have utilised other offences like 'public nuisance' as a method to protect the individual and community safety, with the consequence that this more serious offence will further marginalise persons as criminals.

Of major concern to the LNP members of the committee was the apparent impact on Police Banning Notices in Safe Night Precincts with the proposed repeal of sections of the *Summary Offences Act 2005*. Police must establish that an individual is behaving in a disorderly, offensive, threatening, or violent way and with associated behaviours including urination or being intoxicated, as determined by s 7 and s 10 of the *Summary Offences Act 2005* and which is being recommended to be repealed.

Before any decriminalisation of offences under the *Summary Offences Act 2005* is considered, the Government should consider our international human rights obligations to uphold essential rights under the *Human Rights Act 2019* (Qld) and establish a culturally safe, health and welfare

[2] Submissions 12, 41, 42, 43 and 45.

[3] Submission 42.

[4] Submissions 15, 26 and 28.

approach to public intoxication affecting the poor, mentally ill, homeless and First Nations Peoples.
The committee received from many submissions with references to the recommendations from the Royal Commission into Aboriginal Deaths in Custody from June 1991 (RCIADIC) as a justification to decriminalise public intoxication, public urination, and begging.[5] Queensland's position in relation to other jurisdictions in Australia is a recurring issue, with decriminalisation of public intoxication in other jurisdictions not necessarily leading to a decrease in police interactions with people severely affected by alcohol.

During the inquiry there were many issues that submitters and individuals shared, but there was one issue which highlighted the failures to adequately action the recommendations 79-91 from RCIADIC relating to the diversion of First Nations Peoples away from police custody. Throughout the inquiry, LNP members of the committee continued to prosecute that the evidence being presented regarding public intoxication was more about lack of health and welfare capacity and not so much a police issue.

What remains of great concern is the lack of evidence or submissions addressing alcohol abuse as a societal, health and medical problem. While the committee received little information in relation to solutions to prevention or actions to reduce alcohol abuse, many acknowledged current laws in the *Summary Offences Act 2005* against public intoxication exist not to control or address problematic alcohol consumption, but rather to allow Government and law enforcement the tools they need to maintain social community control and safety.

The LNP Members of the committee witnessed many times throughout the inquiry the consequences of the complete failure to provide support services, resources, and important infrastructure to address the serious and confronting issues of intoxicated persons.

Of real concern to the LNP members of the committee was the evidence that much more needs to be done to address disparities in public health and social welfare and community safety amongst vulnerable Queenslanders, particularly First Nations Peoples. Key areas particularly in North and West Queensland and on the Gold Coast need immediate assistance and acknowledgement that after 30 years since the RCIADIC we have failed to adequately deal with an increasingly serious societal problem in relation to intoxicated persons.

The inquiry proved the need for the immediate implementation of targeted 'sobering up centres', which take in intoxicated persons in overnight and provide them with a short-term option for diversion away from police custody in a safe place.

Investment in appropriate diversionary centres was witnessed as inadequate in many communities, and universally, every volunteer or employee the committee spoke with highlighted the serious urgent need for more beds and resources.

Providing short term alcohol detoxification services located in areas of high alcohol consumption and dealing with the required acute care without the need for transfer to hospital or other emergency service is essential.

[5] Submissions 7, 9, 17, 18, 22, 23, 26, 28, 31, 32 and 37.

The need for community led services doing night patrols which includes First Nations People needs to be urgently expanded and resourced.
In Queensland we are fortunate to have many different groups, consisting of volunteers, Queensland Police and other agencies working in collaboration and providing tremendous outreach and support services, however it is not necessarily providing the best place-based solutions.

In not addressing the long-term health and welfare issues, the committee's report fails to identify the immediate need for supports like rehabilitation and mental health services. The most effective service providers are community owned and culturally and competently run, dealing with local needs and priorities.

The committee heard the importance of recognising that public intoxication often occurs with drug use and the need for the required health-based response to include drug use and dependence considerations.[6]

Public intoxication offences have been repealed in most English-speaking countries around the world. In Australia, most states and territories have abolished public drunkenness as a criminal offence, except for Victoria and Queensland. Examination of the other jurisdictions that have decriminalised public intoxication highlights the need to delay any repeal of legislation until an effective public health model is developed.

LNP committee members note the key points about decriminalisation in other jurisdictions, from the August 2020 report to the Victorian Attorney General, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness*:

- A primary lesson we have learned is that in Australian jurisdictions that have decriminalised public drunkenness, the use of police cells for such cases has continued.
- Of major concern is the significant over-representation of First Nations Peoples still being held in police cells in jurisdictions that have decriminalised.
- Protective custody regimes adopted in other jurisdictions following the decriminalisation of public intoxication have largely failed to address the risk of death in police custody.
- A significant reason for the failure in other jurisdictions to address the risk of death in police custody has been the failure to provide an effective health-based service system response that makes places of safety available as an alternative to police cells.
- The decriminalisation of public drunkenness in Victoria is a risk of continuing to incarcerate intoxicated persons in police cells should a protective custody regime allow for this to occur, and a health system response is not in place to address the care needs of such persons.[7]

We the LNP Members had hoped the report would have greater focus on the significant health-based service response to public intoxication, reforms that are required.

---

[6] Ms Rebecca Lang, Queensland Network of Alcohol and Other Drug Agencies, public hearing transcript, Brisbane, 29 August 2022; Mr Joe Moro, Mareeba Chamber of Commerce, public hearing transcript, Mareeba, 6 September 2022; Ian Leavers, Queensland Police Union, public hearing transcript, Mount Isa, 4 October 2022; Alfred Clay, Palm Island Community Company, public hearing transcript, Townsville, 5 October 2022; Sailor 5 Oct; Associate Professor Peter Malouf, Townsville Aboriginal & Islander Health Service, public hearing transcript, Townsville, 5 October 2022.

[7] *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness*, p 33, https://www.justice.vic.gov.au/public-drunkenness.

The LNP Members of the committee note, from the submissions and evidence provided, that organisations - particularly those with a significant role to play in improving Indigenous disadvantage - are in many instances not meeting societal expectations, and this is concerning.

Despite the efforts of successive Commonwealth, State and Local governments to address Indigenous disadvantage, progress has been mixed at best; minor improvements in some areas have been cancelled out by worsening outcomes elsewhere. Past approaches to remedying Indigenous disadvantage have clearly failed, and new approaches are needed for the future.

Tangible and trusted evidence is lacking on the performance and effectiveness of many Indigenous programs. Program evaluation activity has been fragmented at best, and many of the evaluations which have been conducted have lacked a suitable measure of rigour and independence.

The Queensland Government, First Nations Peoples, organisations and government-funded organisations must be held accountable for their performance, with details of the activities, products or services it is providing and at what cost.

This inquiry made it clear that there is a compelling and urgent need to address the current approach to persons who are intoxicated in public. A safer, balanced health-based response is required that ensures the health, well-being, and safety of all Queenslanders, no matter where they live.

Stephen Bennett MP
Member for Burnett

Dr Mark Robinson MP
Member for Oodgeroo

Michael Berkman MP
For Maiwar

28 October 2022

Statement of Reservation - CSSC Report No. 23:
Inquiry into the decriminalisation of certain public offences, and health and welfare responses

I support the general thrust of the Committee's Report No. 23 (**Report**), and especially the primary recommendation that Queensland Parliament should repeal the three offences of begging, urinating or being intoxicated in a public place. There are, however, some elements of the report on which my view differs from that expressed on behalf of the Committee, and issues that I consider warrant further comment.

Qualification on repeal of public order offences

In recommendation number 2 the Committee recommends repealing these offences, "subject to appropriate community-based diversion services being in place." Recommendation 16 goes further to suggest that "a universal framework be adopted across Queensland in a community driven, trauma informed, culturally sensitive manner appropriate to community requirements, before there is legislative reform."

I absolutely support the expansion of appropriate community-based diversion services, along with detox and rehabilitation facilities, and appreciate the pivotal importance of community driven, trauma informed, culturally sensitive services. Such services are universally oversubscribed, under-resourced, or simply unavailable in some parts of the state, and they require an urgent, major funding boost. That said, the Government should not delay taking steps to decriminalise the offences that are the focus of the Report until 'appropriate services are in place'. To delay reform until a universal framework has been adopted across the state risks this reform being delayed indefinitely. Both the decriminalisation of the offences and the improved funding for health, mental health, alcohol and other drugs services must be an immediate government priority.

It is not enough for the Committee to empathise with submitters who call for immediate decriminalisation, especially in respect of the decriminalisation of public intoxication - it is more than 30 years since the Royal Commission into Aboriginal Deaths in Custody explicitly called for decriminalisation of this offence, and advocates for this reform should not have to wait any longer.

Police custody of intoxicated people

The Committee's recommendation 7 recommends "police be authorised to transport an intoxicated person to a place of safety where there is no other appropriate transport option." This recommendation is made alongside related findings that police interactions with intoxicated people should be as minimal as

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possible, that police custody in holding cells present a real risk to an intoxicated person, and that protective custody should only be used as a last resort.

I remain concerned about any proposal that would allow for police to retain powers to detain people against their will, and especially in police watch houses. Any proposal for the police to transport someone to a place of safety should be either on a voluntary basis or ensure this does not include any ongoing police detention, especially in watch houses.

Risk of greater police reliance on public nuisance charges

On a number of occasions during the public hearings in this inquiry, some submitters expressed the concern that the decriminalisation of these offences, especially public intoxication and urination in a public place, may lead directly to an increase in the police use of the more serious offence of public nuisance, under s6 of the Summary Offences Act 2005. I share these concerns, but do not consider this to be an inevitable outcome or a valid argument against the decriminalisation of these offences.

Rather, this concern could be best addressed by a narrowing of the public nuisance offence, as was suggested by submitters including the Caxton Legal Centre (Caxton) and the Institute for Urban Indigenous Health (IUIH). The offence of public nuisance currently provides:

> **6 Public nuisance**
>
> 1) A person must not commit a public nuisance offence.
> Maximum penalty—
> a) if the person commits a public nuisance offence within licensed premises, or in the vicinity of licensed premises—25 penalty units or 6 months imprisonment; or
> b) otherwise—10 penalty units or 6 months imprisonment.
> 2) A person commits a public nuisance offence if—
> a) the person behaves in—
> i) a disorderly way; or
> ii) an offensive way; or
> iii) a threatening way; or
> iv) a violent way; and
> b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.
> 3) Without limiting subsection (2)—
> a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and
> b) a person behaves in a threatening way if the person uses threatening language.
> 4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.
> 5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

The submission from Caxton and IUIH suggested the following reforms to public nuisance offence:

> To properly support these reforms, sub-sections (2) (a) (i) and (2) (a) (ii) of section 6 should be repealed and 2 (b) narrowed and clarified. This modest amendment would allow continued

> regulation of more problematic public behaviours including street sexual harassment, vilification and other violent or threatening conduct whilst offering practical clarity and support to this decriminalisation process.

I implore the Government to take this sensible suggestion on board and take the additional reform step of narrowing the public nuisance offence provision in s6 of the Summary Offences Act. The QPS officers the committee spoke to throughout the inquiry repeatedly indicated that powers enlivened by this offence will almost exclusively be exercised in relation to threatening or violent behaviour. I'm firmly of the view that such discretionary and ill-defined terms as 'disorderly' or 'offensive' behaviour should not exist as a basis for commission of a public nuisance offence, and any reform flowing from this inquiry should include reform of the offence of public nuisance.

The need for decriminalisation of illicit drugs

The Committee's recommendation 13 provides an important and frank recognition that law enforcement responses to alcohol and other drug addiction, and especially incarceration, are more expensive and less effective than health responses and treatment options. The Report refers to the Queensland Mental Health Commission's report *Achieving balance: The Queensland Alcohol and Other Drugs Plan 2022-2027*, and its strategic priority of expanding diversion, including the following priority action:

> Increase the availability of health responses and reduce criminal justice responses for people experiencing problematic alcohol and other drug use.

This quite neatly summarises the intent of the most significant recommendations in the Report as it related to the necessary health responses, and it helpfully expands the focus of many recommendations to better acknowledge the importance of moving away from a criminal response to drug use and possession. Criminal responses to the possession and use of illicit drugs are as counterproductive as offences that criminalise harmful or problematic consequences of alcohol misuse.

This report offered an important opportunity to acknowledge that decriminalising all personal use of illicit drugs, and diverting the enforcement resources into harm reduction measures, is equally as important and sensible as decriminalising the public order offences that are the focus of this inquiry.

The public support for decriminalisation of personal drug possession and use, and for the legalisation of low risk drugs like cannabis and MDMA, has grown significantly in recent years. The Government would be well served to listen to the community and the health experts, and move on drug law reform as a matter of priority.

Criminalisation of people subject to Alcohol Management Plans

As the Report acknowledges, the committee heard from a number of witnesses that the differing alcohol restrictions in different communities and jurisdictions, whether as a result of Alcohol Management Plans (AMPs), liquor accords, or Banned Drinker Register in the NT, have a tendency to drive displacement and transience of people who move to seek access to alcohol. This is an important consequence of alcohol management, and one that the Government must be mindful of.

What the Committee doesn't acknowledge in the Report is the direct criminogenic consequences of AMPs, and the experience of locals on Palm Island that the AMP has created local issues with harmful drugs including ice. At the Townsville public hearing, Mr Alfred Clay, who works as a Support Worker in Diversionary Services for the Palm Island Community Company, gave the following evidence:

> To follow on from the previous speaker, as far as the alcohol management plan goes, people are becoming criminals because of drinking full-strength beer. That goes on their criminal record and they become branded as a criminal. Legally, you are a criminal if you get caught with a full-strength can of beer, so that goes on your record and that can stop you from getting a job. That can stop you from getting your children back. That can stop you from getting a lot of things when you want to change your life, but that one charge can stop that progress you have made in dealing with a lot of issues in your life. I have seen issues where men have come into Townsville here and ended up in the park because of domestic violence. We have services there that can help these people, but I suppose some things need to change, even when it comes to the alcohol management plan. It has created a system of binge-drinking—it created a binge-drinking lifestyle—and binge-drinking is a more damaging aspect of drinking. …
>
> It is not only alcohol; through the alcohol management plan drugs became a very big issue. I am talking about heavy drugs, not just marijuana; I am talking about ice and speed. It is running rampant on Palm Island because of the alcohol management plan.
>
> I have worked in the pub in the past, when the pub was open 10 to 10, and I found that during the week there was no-one there. It is only on payday that they will come and have a beer, because when you know you can go and get a beer whenever you want to there is no need for people to drink fast or drink as much as they can in a short period of time. That is what creates a lot of the problem when it comes to diabetes—that is, drinking as much as you can in a short period of time. That is what the alcohol management plan created—that binge-drinking style—and it also created a drug industry on Palm, and I mean heavy drugs.

It is clear on this evidence that the AMP is having the effect of criminalising people for their consumption of alcohol, which runs completely counter to the Committee's recommendations for the repeal and decriminalisation of other alcohol related offences. Further, it appears the AMP is causing problems with other dangerous drugs, including ice - causing more harm and undermining the harm reductions being supported on Palm Island.

Mr Clay, along with Ms Andrea Kyle-Sailor, who is a Councillor on Palm Island and a member of the Palm Island Community Justice Group, and also appeared as a representative of the Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc., indicated that the AMP does not have the support of community leaders.

While considering and adopting the Committee's recommendations, the Government should take steps to meaningfully engage with the communities currently subject to AMPs, to understand each community's views on their impacts, and ensure that AMPs are repealed where they are no longer supported.

It's vitally important that the Government steps such as these to avoid further unnecessary criminalisation as a consequence of alcohol addiction or misuse. The failure to do so risks undermining much of the benefit sought through the decriminalisation of other alcohol related public order offences.

Michael Berkman MP