# Inquiry into the Decriminalisation of Certain Public Offences, and Health and Welfare Responses

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**Submitted by:** Sisters Inside Inc.

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3 August 2022

Committee Secretary
Community Support and Services Committee

By email: cssc@parliament.qld.gov.au

**Inquiry into the decriminalisation of certain public offences, and health and welfare responses**

Dear Committee Secretary,

Sisters Inside welcomes the opportunity to provide the following submission to the **Inquiry into the decriminalisation of certain public offences, and health and welfare responses**. The views expressed in this submission are informed by our 30 years of work advocating for the collective human rights of criminalised women and girls and providing services to address their individual needs.

## Executive summary

Sisters Inside considers that the following offences in the *Summary Offences Act 2005* (Qld) must be decriminalised as a matter of immediate priority:

- Public intoxication (consequential amendments must be made to *Police Powers and Responsibilities Act 2000* (Qld), s 378 ('additional case when arrest for being intoxicated in a public place may be discontinued'));
- Begging;
- Urinating in a public place.

Further, for this reform to be effective, the following provisions must be decriminalised to put a stop to the harassment and criminalisation of those experiencing racism, poverty, homelessness, mental health issues and disability:

- Public nuisance (*Summary Offences Act 2005* (Qld), s 6);
- Move on directions (*Police Powers and Responsibilities Act 2000* (Qld), Ch 2, Pt 5), and in association the offence of contravene direction or requirement of police officers (*Police Powers and Responsibilities Act 2000* (Qld), s 791);
- Police banning notices (Ch 19, pt 5A);
- Consumption of liquor in certain public places prohibited (*Liquor Act 1992* (Qld), s 173B).

The consequences of choosing not to decriminalise these public 'acts' or 'behaviours' must not be understated – immeasurable suffering will be caused to those in society who are already struggling

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the most, and the number of Aboriginal and Torres Strait Islander people who die in police custody will continue to rise.

## Why must we decriminalise these offences?

### Lives lived in public

We know from our direct experience that it is Aboriginal and Torres Strait Islander people, the poor, homeless, those with mental health issues, and people with a disability who are most affected by the public intoxication, begging and urinating in public places offences. The ongoing effects of colonisation and systemic racism at all levels of government and society, particularly in the Queensland Police Service, are to blame for the mass incarceration of First Nations people in this cohort.

Though we use the term 'act' or 'behaviour' in this submission, it is important to bear in mind that the conduct regulated by these offences is not in and of itself illegal, rather it is only the location in which it is done – the street – that makes it criminal. The people criminalised by these offences are not making an active choice to be on the street or to beg for money, they simply have nowhere else to go and no other options. The 'public' sphere is in effect their living room, meaning that actions which are perfectly legal for housed people – such as being intoxicated – are illegal for those sleeping rough. They do not have the luxury of private space, so are forced to perform 'private' actions in public. It is not a choice; it is a matter of necessity. We would argue the 'deterrent' effect of these laws is therefore non-existent.

Concepts such as community safety and public order are used to justify the existence of public behaviour and conduct type offences. As Walsh writes,[1] the public or community whose interests these offences refer to and seek to protect must be questioned: is it purely the interests of those who are 'dominant' in society (meaning, in general, the white, wealthy, and non-disabled)? Who is excluded by this formulation of the 'public'? Who serves to benefit from this conduct or behaviour being criminalised, and who, as its corollary, suffers?

By asking ourselves these questions, it becomes clear that certain groups – people who are First Nations, poor, homeless, those with mental health issues and people with a disability – are excluded from the definition of the 'community' deemed worthy of having their interests protected. Those who are 'othered' by this definition of the public are controlled and punished in order to serve the privileged majority's interests in amenity, comfort, and aesthetic enjoyment in public space. As such,

[1] Tamara Walsh, 'Who is the 'public' in 'public space'?: a Queensland perspective on poverty, homelessness and vagrancy' (2004) 29(2) *Alternative Law Journal* 81.

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Sisters Inside considers that these laws are patently discriminatory and inconsistent with the *Human Rights Act 2019* (Qld). Queensland parliament must protect the *entire* public – not just those lucky enough to not have to call public space 'home'.

## Frequency of charges

Based on our direct experience working with criminalised women and girls, these charges are fairly common. It is by no means a rarity to attend to a woman in the watchhouse who is only there because of public drunkenness, begging, or urinating in public offences. There is academic research to support this view; most recently the National Criminalisation of Poverty study undertaken by Tamara Walsh, Thalia Anthony, Luke McNamara, and Julia Quilter.[2] People experiencing homelessness and the practitioners who work with them, including magistrates and lawyers, said that they continue to regularly receive public intoxication, begging, and urinating in public charges.

In our experience, if an offence is still on the books, police will almost always charge and prosecute individuals for it, even if average members of the public no longer consider it appropriate to do so. We consider that no amount of increased police 'training' around 'vulnerability' will ameliorate this issue – it is simply inconsistent with the fundamental role of policing as perceived by police. If training was capable of stopping the police from issuing unfair and unjust charges, it would have by now. The issue runs too deep. For this reason, full decriminalisation is the only option.

However, as we discuss below, the offence of public nuisance is in reality charged far more often than public drunkenness for the same type of 'behaviour'. The same is also true of move on orders and the 'contravene police direction' offence. Therefore, reducing the harms of the public intoxication offence necessitates addressing these offences as well.

## The consequences of these charges

The consequences of criminalisation for minor street offences should not be minimised. These offences must not be viewed as carrying only a 'slap on the wrists' penalty. As we set out below, the consequences of being charged with these offences are serious and far-reaching. In addition to these more direct consequences, we also ask the Committee to keep in mind the emotional and mental toll caused by the threat of criminalisation quite literally looming around every corner.

Even 'minor' criminalisation directly leads to further and ongoing criminalisation. For example, unpaid fines will lead to license suspension, which leads to driving unlicensed charges where the

[2] Tamara Walsh et al, 'National study on the criminalisation of homelessness and poverty' (2019) 32(4) *Parity* 25.

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individual has no other option than to drive, and notices to appear in court for minor charges will often lead to failure to appear charges. This then leads to being remanded in custody. Further, interactions with police officers as a result of minor street offences commonly lead to assault or obstruct police officer charges as a result of police officers antagonising individuals. Sisters Inside workers see this chain of events unfold time and time again with the women we support. Unpayable fines and infringement notices take a significant toll on people living in poverty. This has been reported on by numerous legal academics and we refer the Committee to this work.[3] In particular, we note that imprisonment for fine default still exists in Queensland.[4]

Further, Sisters Inside workers often see women we support breached on their parole, probation, or bail order as a result of being charged with public space offences, including public drunkenness, urinating in public, and begging. They will usually be incarcerated as a result, often for several months or longer while they wait for their parole suspension to be lifted (we direct the Committee's attention the unpreceded numbers of parole suspensions and parole decision delays), or for their matter to be dealt with in court. This obviously carries with it the proven and indisputable harms of imprisonment.

The most serious consequence is death. Aboriginal and Torres Strait Islander people too often die in police custody following detainment for public space offences. The most recent and well-known instances are the deaths of Ms Dhu and Ms Day, but there are countless examples of situations in which people were arrested (often violently) because of being intoxicated or otherwise a 'public nuisance', locked in a police cell, and left alone to die (often despite their pleas for medical assistance). Aunty Sherry Tilberoo died aged 49 in the Roma Street Watchhouse in 2020 in circumstances closely resembling those of Ms Dhu and Ms Day. She should have been given appropriate medical care and support in a hospital. Instead, her humanity was diminished in the eyes of police and watch house staff because of her labelling as 'criminal'.

This is not new information and should come as no surprise to the Committee. The Royal Commission into Aboriginal Deaths in Custody recommended the decriminalisation of public intoxication in 1991, as a result of the indisputable evidence that the offence posed a fatal risk to First Nations people. And yet, nothing has changed in 33 years. There will be needless death and human suffering unless Queensland parliament immediately moves to decriminalise public intoxication and the other offences we have identified.

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[3] Elyse Methven, 'A Very Expensive Lesson': Counting the Costs of Penalty Notices for Anti-social Behaviour' (2018); Tamara Walsh 'Poverty, Police and the Offence of Public Nuisance' (2008) 20(2) Bond Law Review 7.
[4] State Penalties Enforcement Act 1999 (Qld) ss 52A ('Working out period of imprisonment for arrest and imprisonment warrant'), 199 ('Enforcement by imprisonment'), 120 ('Satisfaction of fine by imprisonment')

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## Relevant legislation in other jurisdictions

Begging has long been decriminalised in the Australian Capital Territory, New South Wales, and Western Australia. The rationale for this is obvious: it punishes people for having no money, usually by imposing a financial penalty. We consider it unlikely there is continued public support for this completely illogical and immoral criminalisation.

Public drunkenness has been decriminalised in every state and territory in Australia except Queensland.[5] The reasons why this offence needs to be abolished are well-known and indisputable – it is frankly senseless to restate them. As we have already explained, the Royal Commission into Aboriginal Deaths in Custody called for the decriminalisation of this offence over 30 years ago and yet nothing has been done in Queensland to implement this recommendation.

There is no offence of 'urinating in public' in New South Wales, Northern Territory, Tasmania, Victoria, or Western Australia.

It is clear from reviewing the legislation in other Australian jurisdictions that Queensland is in a state of hyper-criminalisation. The cost to the state of doing so – through spending on policing, the courts, and corrective services – should be a concern to all who care about effective allocation of resources. This expenditure is particularly wasteful in light of the ultimately insignificant social 'cost' associated with allowing these behaviours to go un-prosecuted, as well as the inability for criminal sentences to effectively intervene in acts done out of necessity or caused by mental illness and disability.

## Other necessary legislative changes

If decriminalisation of these offences occurs, it is extremely importance to ensure that the same people are not still criminalised and detained for the same behaviour just using different provisions. That would render this entire process counter-productive, if not make matters even worse by pushing back effective reform. This is historically what has occurred, for example, in the case of the decriminalisation of vagrancy in Queensland – the 'vagrant' purely became the 'nuisance'.[6]

[5] Note: we acknowledge this legislative change is yet to come into effect in Victoria, and is expected to in 2023.
[6] Tamara Walsh, 'From 'vagrant' to 'nuisance': 200 years of public space law in Queensland' (2006) 19(10) *Parity* 22.

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## Public Nuisance

In our experience, public nuisance is charged far more frequently than the three offences under consideration, particularly where the individual was drunk or under the influence of drugs. Again, it is almost always Aboriginal and Torres Strait Islander people, the poor, homeless, those with mental health issues or people with a disability who are charged with this offence. There are significant research findings supporting this.[7]

We routinely visit women in prison who are there because they received a public nuisance charge. Usually, it is because they swore at or merely in the presence of a police officer.[8] The woman may have otherwise 'caused a scene' in some manner, such as by yelling or having an argument, or experiencing the effects of psychosis in public. We once had a young homeless woman tell us she was charged with public nuisance for crying too loudly on the street when she was in emotional distress.

The breadth of the offence, particularly its prohibition of merely 'disorderly' conduct, means that it criminalises behaviour that is merely considered 'annoying' to the public or makes them 'uncomfortable', rather than actually threatening anyone's safety. It also clearly captures behaviours related to being in an intoxicated state. The discussion concerning public intoxication above therefore equally applies to this offence. In short, we do not believe that one section of the public's right to be entirely comfortable when in public outweighs the right to not be locked up and criminalised for trivial and non-violent conduct.

## Move on orders and banning notices

The 'move of powers' and 'banning notices' under the PPRA need to be addressed as part of this Bill's consultation process. These powers have largely the same underlying objective and effect as the begging, public intoxication and public nuisance offences – to police the behaviour of those who are deemed annoying, unsightly or unsettling by those more privileged. There is considerable

[7] Tamara Walsh, 'Offensive Language, Offensive Behaviour and Public Nuisance: Empirical and Theoretical Analyses' (2005) 24(1) *University of Queensland Law Journal* 123; Tamara Walsh, 'Public nuisance, race and gender' (2017) 26 *Griffith Law Review* 334; Craig Johnstone, 'Penalising presence in public space: Control through exclusion of the 'difficult' and 'undesirable'' (2017) 6(2) *International Journal for Crime, Justice and Social Democracy* 1.

[8] Tamara Walsh, 'Offensive Language, Offensive Behaviour and Public Nuisance: Empirical and Theoretical Analyses' (2005) 24(1) University of Queensland Law Journal 123; Hannah Trollip, Luke McNamara and Helen Gibbon, 'The factors associated with the policing of offensive language: a qualitative study of three Sydney Local Area Commands' (2019) 31(4) *Current Issues in Criminal Justice* 493.

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evidence that these powers are utilised by police on a daily basis to harass people experiencing homelessness, forcing them to pick up their things and keep walking the streets in the hope of finding somewhere else dry and safe to sleep.[9]

The broad and subjective wording of the move on orders provision empowers police to issue an order to person where their mere presence – not even any act done by them – is 'causing anxiety' to others. We would argue that the wording of this provision therefore builds racial, gender and class stereotyping into the offence, as it makes someone's existence in public alone the legitimate subject of concern. This prejudice is borne out in its application.

As with public nuisance, the ability to give a move on order for 'disorderly' behaviour means that the decriminalisation of public intoxication is unlikely to put a stop to arrests for this kind of 'conduct', as contravening a police direction is an offence. Further, banning notices may also be given for 'disorderly' conduct. These notices often result in people experiencing homelessness being unable to access essential services in those areas, such as food vans and medical clinics.

People experiencing homelessness quite rightly get sick of being told to move on when they simply have nowhere else to go. If they don't comply or get into an argument with the police officer out of frustration, they are at very real risk of being charged with the offence of contravening a police direction or assault/obstruct police officer under the PPRA. If they are alleged to 'spit' at the police officer they are charged with serious assault under the *Criminal Code Act 1899* (Qld). If they swear during this interaction, they are likely to be charged with public nuisance. We cannot emphasise enough how often we see this sequence of event. Again, this demonstrates how even seemingly minor criminal law intervention in the lives of those who occupy public spaces breeds further and more serious criminalisation.

## The Liquor Act 1992 and Local Laws

The prohibition on drinking alcohol in a public place under the *Liquor Act 1992* (Qld) must either be abolished, or contain an explicit requirement for an officer to consider vulnerability or reasonable excuse in issuing an infringement notice under that section. The decriminalisation of public intoxication will be undermined if this offence remains in its current form. We reiterate that fines and infringement notices have a crushing effect on those who cannot afford to pay them, and directly leads to incarceration for fine default or for repeated driving unlicensed charges.

The same is true of city council Local Laws, particularly those which prohibit 'rough sleeping' on public land or sleeping in cars. These provisions should be abolished as they blatantly target people

[9] Tamara Walsh and Monica Taylor, 'You're Not Welcome Here': Police Move-on Powers and Discrimination Law' (2015) 30(1) *University of New South Wales Law Journal* 151.

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experiencing homelessness and cause significant harm and distress to those affected. Again, these laws only serve to sweep the extent of poverty and inequality in Queensland under the rug.

## What new health and social welfare-based responses are needed?

The need to create 'alternative interventions', including health and welfare responses, must not be used as a justification to avoid or delay decriminalisation of public drunkenness. We note that this was the exact excuse made by both the Queensland Police and the Department of the Attorney-General in response to the Royal Commission into Aboriginal Deaths in Custody (RCIADC) Interim Report Recommendations back in 1988; the Final Report stating these bodies 'stressed the necessity for alternative facilities to be provided before decriminalisation is effected.'[10] It would be incredibly disappointing if the same weak justification and failed policy was used 33 years on to delay essential change. The focus must be on stopping the problem in discussion here – the criminalisation of benign, poverty-related acts – rather than becoming bogged down in discussion of what alternatives are 'necessary to support legislative amendments'.

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.

That being said, what is needed to prevent people from begging, being intoxicated in public, and urinating in public in the first place is more safe and stable public housing, liveable Centrelink payments, and improved mental health treatment and ending the racial, gendered violence of policing. Of course, that should be the starting point for all 'crime reduction' solutions; however, it is a recommendation that often goes ignored by governments who favour 'tough on crime' approaches for political reasons. If the Government does not want to commit the funding to safely house people in the community then they must not use imprisonment as what is effectively 'fill in' housing. This is a fundamental failure of government policy and resourcing.

In terms of direct outreach support services for those who are intoxicated on the street, we know that Murri Watch in Queensland and Larrakia Nation in the Northern Territory are generally well-

[10] Royal Commission into Aboriginal Deaths in Custody, *Final Report* (1991), Vol 3, 21.1.31.

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received by First Nations people in the community. These services operate a 'Night Patrol' service that relocate an intoxicated person to a 'safe' environment such as a relative's home, safe house, woman's refuge, hospital, sobering-up shelter or other medical facility. This model – a service that is non-coercive, independent to the police, and First Nations controlled – should be given much more funding and replicated throughout Queensland. A similar service that caters for non-First Nations people should also be established. Sisters Inside has provided the Government a submission 3 years ago to address these specific issues and how to resolve them by resourcing a Women and Girls Centre that would work to end the criminalisation of women and girls.

It is important that any new measures relating to 'protective custody' are distinct from the police. They must not have a criminalising effect, for example, by giving the police an opportunity to run checks for outstanding warrants, or through their behaviour in these facilities coming under increased police scrutiny.[11] Further, they must not make the person receiving the service feel as though they are being treated like a 'criminal'. Women detained under the *Mental Health Act 2016* (Qld) often say this is how they felt they were treated, despite not having committed any offence, and the effect on their sense of dignity is enormous.

The way to reduce public urination is patently clear: build more public toilets in locations where public urination is a problem.

We fail to see how the decriminalisation of public intoxication would weaken 'public messaging on the harm of alcohol and other drugs, including alcohol-related violence', as the legislative assembly motion put it. In our view, there is no clear connection between these two issues. We reiterate that there may be an issue with alcohol consumption in this country, including alcohol-fuelled violence, that may need to be addressed through policy, but criminalising just those who do not have enough wealth to be drunk in private is not the answer.

## Conclusion

Public space offences and over-policing on the street creates significant pain and suffering in the lives of Aboriginal and Torres Strait Islander people, people experiencing poverty and homelessness, and those with a psychiatric, cognitive, or intellectual impairment. We do not believe that improving police training around these 'vulnerabilities' will change anything – broad-scale decriminalisation is necessary. The stakes of decriminalising public intoxication and public nuisance cannot be understated: deaths in custody will continue to rise until legislative change is made.

[11] See discussion of this in Royal Commission into Aboriginal Deaths in Custody, *Final Report* (1991), Vol 3, 21.1.64

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There is very little public 'harm' that arises out of the behaviour or conduct to which these offences usually relate; rather, its manifestation in public simply forces well-off people to see the reality of poverty in their community. This may make people 'uncomfortable' or 'anxious', but it should not be legitimately the subject of the criminal law. If the Government actually wants to prevent harm, it will increase funding to First Nations-controlled outreach services, emergency health services, homeless shelters, and public housing.

Thank you for considering this submission. If you would like to discuss any aspect of it further, please do not hesitate to contact me on (07) 3844 5066.

Yours sincerely

Debbie Kilroy

Chief Executive Officer

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