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

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Submission by

Anglicare Southern Queensland

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This submission may be quoted in public documents.

Introduction

Anglicare Southern Queensland welcomes the opportunity to make a submission to the Community Support and Services Committee inquiry into decriminalising public intoxication, and relevant health and social welfare-based responses.

We bring to this submission the direct experience and expertise of Anglicare Southern Queensland staff. Our Managing Public Intoxication Program (MPIP) has been delivered in Townsville for more than 15 years, offering assertive outreach to those who are intoxicated in public places and/or experiencing homelessness, or are at risk of becoming homeless. In just the last quarter (Apr–June 2022) we provided nearly 1000 hours of service to 54 clients (see sidebar).

The MPIP service is designed to operate as a case management, first contact program. We utilise evidence-based practice in three broad areas of practice — case management, health supports and assertive outreach — and work with a broad range of partner and provider organisations to assist in the delivery of supports and services.

This submission draws on the input of staff who work in the MPIP program on a day-to-day basis. As such, it focuses specifically on the public intoxication aspects of the proposed legislation. We acknowledge that the issues surrounding public intoxication are complex, and that a range of reports and inquiries across other jurisdictions have addressed these issues in far more detail than is possible here.

Having said that, and while in no way discounting the importance of community safety, we consider that there are better ways to achieve this than a criminal justice response. Consistent with Anglicare's values and approach, this document therefore outlines some of the issues that need to be considered to ensure a better life for clients, and to support the successful implementation

Anglicare SQ
Managing Public Intoxication
Program client profiles

Intervention clients

Intensive intervention assists those who:

- are frequent users of substances in public places and/or homeless or at risk of homelessness and a return to public spaces
- suffer from non-stabilised mental health conditions
- have acquired brain injuries
- are chronically ill and/or
- have very low vocational, educational and social skills.

Diversionary clients

Diversionary clients are less frequent users of substances and/or homeless or at risk of homelessness. Most of these clients are referred from Queensland Health, Department of Corrective Services, Centrelink and other service providers.

Aftercare clients

These clients still suffer from substance abuse problems, and frequent public spaces though they have previously been housed and referred to other service providers. Aftercare clients almost exclusively require remedial supports.

of the proposed legislative amendments. This includes acknowledging broader social challenges presented by the current health and housing crises.

A health- and welfare-based response

As of February 2021, Queensland became the only remaining state not to have implemented recommendations of the 1991 *Royal Commission into Aboriginal Deaths in Custody* regarding the decriminalisation of public intoxication.[1] The Royal Commission, and multiple other reports and inquiries, have noted the human impacts of a criminal justice approach to public intoxication — in particular, the over-representation of Aboriginal and Torres Strait Islander people detained in police custody for public intoxication,[2] and the consequent harm associated with detention.[3]

The arguments for an alternate health and welfare-based approach to public intoxication, on the other hand, recognise that those most likely to be routinely arrested for public intoxication have multiple, intersecting social, physical and/or mental challenges that may be exacerbated — or at the very least, are not addressed — by detention. In correspondence to the Queensland Government, the Queensland Law Society noted that an integrated public health approach must be capable of addressing these multiple challenges, and that it needs to include culturally appropriate and tailored responses for people who are over-represented within this cohort.[4]

Ensuring capability in the health system for this purpose requires dedicated funding, as well as specific expertise and a broader view that takes into account the social and cultural context in which the desired shift is expected to take place.

"Inadequate funding of the health response must not be used as an excuse to justify involvement of police and/or more extensive police powers"[5]

The capacity of the health and welfare system to address the complexities of public intoxication has in fact been the elephant in the room for decades, across multiple jurisdictions. A 2001 report provided case studies on jurisdictions where public intoxication had already been decriminalised, and noted criticisms that had been levelled at Western Australia and South Australia for decriminalising public drunkenness before establishing sufficient and appropriate services, particularly in rural and regional areas.[6] Twenty years later, the Victorian report, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness [Clear Light of Day]*, pointed out that in Australian jurisdictions where decriminalisation legislation has previously been passed, the use of police cells for public intoxication cases has continued; and that a significant reason for this failure has been the lack of "an effective health-based service system response that makes places of safety available as an alternative to police cells".[7]

Each jurisdiction has its own distinctive characteristics (demography, geography, legal and health systems for example) that will impact successful implementation of decriminalisation legislation, and it will be important for the Queensland Government to seek informed advice regarding the appropriate wording for a legislative response to the unique conditions in this

state. Bodies such as the Queensland Law Society are actively facilitating discussion among members to help identify solutions that address the complexities of reform in this area. Similarly to the *Clear Light of Day* report above, they note the ineffectiveness of 'protective custody' regimes in other states that still result in large numbers of at-risk people being held in police cells; as well as the need to avoid strategies that lead to an increase in 'replacement offences' such as public nuisance offences (that have higher fines and higher maximum penalties),[8, 9] and can further marginalise vulnerable people.[10]

Addressing successful decriminalisation in a challenging environment

Queensland can however learn from similar challenges faced in other states and territories. The transition to a health- and welfare-based response to habitual public intoxication requires more than legislative reform, as the terms of reference for this inquiry recognise. It needs significant fiscal investment for services such as sobering-up centres, outreach programs, and adequate transport capacity, with careful modelling that acknowledges the challenges faced by the providers of these services.

At least as far back as 2001, for example, sobering-up facilities in Victoria ended up as crisis accommodation for people who were experiencing homelessness as well as being "habitually drunk".[11] In the current housing crisis, the risk of sobering-up facilities inadvertently (or deliberately) transforming into general crisis accommodation is a real one. The pressing need for social and affordable housing, and more crisis accommodation, is beyond the scope of this document, but it is important here to note and address the flow-on effects of the housing shortage into this sphere as well as others.

Similarly, current stresses on almost all facets of the Queensland health system are well recognised, with wait times for emergency services,[12] bed and staff number pressures,[13] and demand for mental health services,[14] among other challenges, presenting as simultaneous priorities. Despite this context, a successful health- and welfare-based response to the decriminalisation of public intoxication will require designated, ongoing (not short-term contracts) funding to effectively address the particular vulnerabilities of people like those we support through the MPIP program.

Community-led and holistic responses

Understanding the ways in which these vulnerabilities play out for individuals in a community requires a localised response. Research has noted the appropriateness of community engagement models for sobering-up centres, particularly in rural, remote and Aboriginal and Torres Strait Islander communities, where the local community is best placed to provide "comprehensive descriptions of the sort of local problems that resulted from public drunkenness ...'[15] and thus inform an appropriate response. The Victorian Aboriginal Legal Service made the point that:

> Aboriginal and/ or Torres Strait Islander communities must be empowered to develop and implement Aboriginal-led responses that are culturally safe and tailored to the needs of local communities. [16]

Anglicare staff point out that sobering-up and outreach services such as those mentioned above also need to be integrated into a holistic model that has the capacity, when people are looking for change, to provide collaborative case management. Effective individualised support addresses the intersectionality of other issues, including homelessness, family violence and the use of other drugs as well as alcohol,[17] with public drunkenness.

The recent Victorian report mentioned above, *Clear Light of Day,* also highlights the value of community-led responses in their 'Proposed Health Model'.[18] The report flags a tiered system that includes the establishment of an expanded range of First Responders (such as outreach and health workers, Indigenous night patrols and transport assistance) that are capable of responding to individual need. According to the report, available data suggests that most people found intoxicated in public are unlikely to need longer term assistance under a public health model, but that for those 'high intensity' clients (like some of our MPIP clients), the more individualised and holistic model may provide:

> a greater level of ongoing support beyond their immediate needs through better links with housing, community mental health services in addition alcohol and drug rehabilitation programs.[19]

Principles for action

Our final comment draws again from *Clear Light of Day*, which outlines a sound set of principles for a public health response to public intoxication that is worth quoting at length, with some adaptations for the Queensland context.[20] The principles, as follows, provide a valuable starting point for any discussion of this issue in Queensland.

> *A public health response to public intoxication should be:*
>
> ***human-rights informed –*** *reflecting the rights embedded in the Queensland Human Rights Act*
>
> ***shaped by self-determination –*** *Aboriginal and Torres Strait Islander Queenslanders will be empowered to make decisions about how the new model can best support Aboriginal communities*
>
> ***based on engagement and collaboration –*** *engaging and collaborating with communities, service users, service providers and researchers will help to ensure that implementation models are fit for purpose and service responses are integrated and supported by strong relationships*
>
> ***locally tailored and consistent with overarching scheme –*** *while service and operational responses should vary and adapt according to local conditions, there will be fair and consistent procedures for determining an intoxicated person's risk of harm and health and safety needs. Agency roles and responsibilities will be clear, with connected referral pathways*

scalable – *model designs can be scaled and adjusted according to changing needs, including responding to seasonal demand variation. Where appropriate, new programs and services can be trialled in one area and expanded across the state*

safe – *cultural and psychological safety will be essential to meet the needs of Aboriginal and Torres Strait Islander Queenslanders and a range of other groups who may be at greater risk of public intoxication-related harm, including: people experiencing mental illness; harmful substance use and/or homelessness; survivors and perpetrators of family violence; young people; culturally and linguistically diverse communities; and people with disabilities*

evidence-informed – *new models will be informed by the best available evidence on problems, solutions and opportunities, while being adaptive and innovative*

feasible and implementable – *new models will take advantage of Queensland's existing strengths – including protective factors, efforts, expertise and service infrastructure – and be adequately and sustainably resourced*

sustainable – *funding models will predictably allow services to deliver care and support in line with these principles, with consideration to changing demand levels, costs of service delivery and availability of other funding sources*

underpinned by ongoing evaluation and adaptability – *service system responses designed to implement a public health approach must be reviewed, evaluated and adapted on an ongoing basis, based on clearly identified service system parameters and quality available data.*

Conclusion

This submission concludes on four final points.

First, we draw on the deep expertise and experience of Anglicare SQ staff to affirm our belief that a health- and welfare-based response is a more effective and humane way to address public intoxication than a criminal justice response.

Second, we are strong supporters of holistic, collaborative models of service provision that leverage worker and organisational expertise and resources, and enable individualised, wrap-around responses to those we work with.

Third, we recognise the value of localised responses that reflect the nature, issues and strengths of local communities in helping them to address their own problems.

Finally, without ignoring the complexities of such a response or the unique environment in this state, we are confident that learnings from other jurisdictions have much to offer in flagging potential problems, identifying opportunities, and suggesting innovations that could be adapted and trialed in Queensland.

References

1 In February 2021, the Victorian Parliament passed the Summary *Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic).

2 The Queensland Law Society note: "During 2019–20 in Queensland, 1,009 per 100,000 Aboriginal and Torres Strait Islander people were proceeded against by Queensland police for public order offences, of which public intoxication is counted. This is compared to 87 per 100,000 non-Indigenous people who were proceeded against by the Queensland police for the same group of offences … this discrepancy is made worse by the fact that Aboriginal and Torres Strait Islander people represent just 4% of Queensland's population." Queensland Law Society. 2021. Correspondence to the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice regarding 'Public intoxication in Queensland — the need for law reform'. 22 Dec. At: www.qls.com.au/getattachment/d5f9b095-ca01-41d0-998d-03d77cbb27b9/4487-qls-submission-on-public-intoxication-in-queensland-the-need-for-law-reform_redacted.pdf

3 Expert Reference Group on Decriminalising Public Drunkenness. 2020. *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness, Report to the Victorian Attorney-General*. August. At: https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf

4 Queensland Law Society. 2021. Correspondence to the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice regarding 'Public intoxication in Queensland — the need for law reform'. 22 Dec. At: www.qls.com.au/getattachment/d5f9b095-ca01-41d0-998d-03d77cbb27b9/4487-qls-submission-on-public-intoxication-in-queensland-the-need-for-law-reform_redacted.pdf

5 Victorian Aboriginal Legal Service. 2022. Community Factsheet: Decriminalising public intoxication. August, p. 6. At: www.vals.org.au/wp-content/uploads/2022/08/Community-fact-sheet-Decriminalisation-of-public-intoxication-August-2022.pdf

6 Victorian Parliament Drugs and Crime Prevention Committee. 2001. *Inquiry into Public Drunkenness Final Report*. At: www.parliament.vic.gov.au/images/stories/committees/dcpc/Public_drunkenness/2001_Jun_Final_Report_Public_Drunkenness.pdf

7 Expert Reference Group on Decriminalising Public Drunkenness. 2020. *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness, Report to the Victorian Attorney-General*. August, p. 33. At: https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf

8 Queensland Law Society. 2021. Correspondence to the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice regarding 'Public intoxication in Queensland — the need for law reform'. 22 Dec. At: www.qls.com.au/getattachment/d5f9b095-ca01-41d0-998d-03d77cbb27b9/4487-qls-submission-on-public-intoxication-in-queensland-the-need-for-law-reform_redacted.pdf

9 Other stakeholders note that these are not simple issues to resolve — public intoxication and public nuisance behaviours for example can at times overlap, and antisocial actions driven by intoxication can have direct and negative flow-on impacts on, for example, commercial premises in areas where public drunkenness is common, and public use of parks and other recreational facilities.

10 Queensland Police Service. 2022. Briefing to the Community Support and Services Committee Inquiry into the Decriminalisation of Certain Public Offences and Health and Welfare Responses, p. 4. At: documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/Queensland%20Police%20Service%20%E2%80%93%2011%20July%202022.pdf

11 It is also worth noting that during consultation, workers pointed out that because they were short term (8-hour) facilities with no attached case management, people "had to actually get drunk again to get back in … it was almost perpetuating their addictions". Victorian Parliament Drugs and Crime Prevention Committee. 2001. *Inquiry into Public Drunkenness Final Report*, p. 208. At: www.parliament.vic.gov.au/images/stories/committees/dcpc/Public_drunkenness/2001_Jun_Final_Report_Public_Drunkenness.pdf

12 Riga, Rachel. 2022. Patients left waiting outside emergency departments for longer in Queensland as satellite hospitals delayed. *ABC News* [online], 29 July. At: www.abc.net.au/news/2022-07-29/qld-health-hospitals-construction-delay-budget-blowout/101276446

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[15] Midford, R. 1995, *A Practical Guide to the Establishment and Community Management of Sobering-Up Centres,* cited in Victorian Parliament Drugs and Crime Prevention Committee. 2001. *Inquiry into Public Drunkenness Final Report*, p. 219. At: www.parliament.vic.gov.au/images/stories/committees/dcpc/Public_drunkenness/2001_Jun_Final_Report_Public_Drunkenness.pdf

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[17] Expert Reference Group on Decriminalising Public Drunkenness. 2020. *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness, Report to the Victorian Attorney-General*. August, p. 26. At: https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf

[18] Expert Reference Group on Decriminalising Public Drunkenness. 2020. *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness, Report to the Victorian Attorney-General*. August, p. 51. At: https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf

[19] Expert Reference Group on Decriminalising Public Drunkenness. 2020. *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness, Report to the Victorian Attorney-General*. August, p. 51. At: https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf

[20] Expert Reference Group on Decriminalising Public Drunkenness. 2020. *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness, Report to the Victorian Attorney-General*. August, p. 17. At: https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf