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

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QUEENSLAND YOUTH POLICY COLLECTIVE

SUBMISSION TO THE QUEENSLAND PARLIAMENT COMMUNITY SUPPORT AND SERVICES COMMITTEE

INQUIRY INTO THE DECRIMINALISATION OF CERTAIN PUBLIC OFFENCES AND HEALTH AND WELFARE RESPONSES

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

Submission by the Queensland Youth Policy Collective ("**QYPC**")

1 Contents

2 Background

2.1 THE SUMMARY OFFENCES ACT

Section 10 of the *Summary Offences Act 2005* (Qld) ("**the Summary Offences Act**") prohibits intoxication in a public place. The maximum penalty for contravening the section is two penalty units which, pursuant to section 5A of the *Penalties and Sentences Act 1992* (Qld), is currently equal to $287.50. Begging is an offence pursuant to section 8 of the Summary Offences Act with the maximum penalty fine of 10 penalty units ($1437.50) or up to 6 months imprisonment.

Section 10(2) of the Act defines "intoxicated" as "drunk or otherwise adversely affected by drugs or another intoxicating substance". However, the subjective nature of when a person is

sufficiently 'drunk' to enliven this provision (such as, for instance, how a person appears on the street prior to arrest), combined the police's general discretion as to whether to take enforcement action against a person who has prima facie committed an offence, means this law is enforced inconsistently.

2.2 The Impact of Certain Public Offences on First Nations People

Public order offences have a disproportionate impact on First Nations people. In July 2022, less than 5% of Queenslanders identified as First Nations People.[1] However, in 2021, more than 50% of the 1256 people charged with public intoxication in Queensland[2] identified as Aboriginal and/or Torres Strait Islander.[3] In 2020-21, 1,044 per 100,000 First Nations people were processed by the Queensland Police Service ("**QPS**") for public order offences, which is inclusive of public intoxication.[4] In comparison, 94 per 100,000 non-Indigenous people were processed for the same group of offences.[5] This demonstrates that First Nations people are disproportionately more likely to be prosecuted for public offences than non-indigenous Australians. Therefore, First Nations people should be at the centre of policy considerations regarding the decriminalisation of certain public offences.

Recommendation: The QYPC recommends in the strongest terms consulting with Aboriginal and Torres Strait Islander communities and community-controlled organisations in any reform to the Summary Offences Act.

2.2.1 Deaths in Custody

The overrepresentation of First Nations people being processed for public order offences is particularly dangerous when considered in conjunction with the disproportionate rate at which First Nations people die in police custody. The Royal Commission into Aboriginal Deaths in Custody ("**RCIADIC**") was established in 1987 to investigate this issue.[6] RCIADIC focused on the 99 Aboriginal and Torres Strait Islander people who died in the custody of prison, police or juvenile detention institutions between 1980 and 1989.[7]

RCIADIC's Final Report, published in 1991, confirmed that 'facts associated in every case with their Aboriginality played a significant and, in most cases, a dominant role in their being in custody and dying in custody'.[8] The report also identified public drunkenness as 'the most serious offence resulting in the final detention in 27 of the 37 people for which this information is relevant'.[9]

1 'Snapshot of Queensland', *Australian Bureau of Statistics* (Data Summary, 1 July 2022) <https://www.abs.gov.au/articles/queensland-aboriginal-and-torres-strait-islander-population-summary>.
2 Matt Dennien, 'Lawyers Flag Support for Offensive Language Law Rethink Amid Broader Reforms', *Newspaper* (online, 14 July 2022) <https://www.brisbanetimes.com.au/national/queensland/lawyers-seek-overhaul-of-public-swearing-laws-amid-broader-reforms-20220707-p5azud.html>.
3 Ibid.
4 'Recorded Crime – Offenders', *Australian Bureau of Statistics* (Data Summary, 10 February 2022) Table 22 <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#data-download>.
5 Ibid.
6 *Royal Commission into Aboriginal Deaths in Custody* (Final Report, April 1991) vol 1, [1.1.1]–[1.1.2].
7 Ibid [1.1.1].
8 Ibid [1.7].
9 Ibid [2.4.2].

Sadly, three decades later, this situation has not changed. In 2020–21, 0.45 of every 100,000 First Nation people died in police custody and during custody-related operations.[10] By comparison, just 0.06 per 100,000 non-Indigenous Australians died in these circumstances.[11] Further, between 1989–90 and 2020–21, 24% of Indigenous People who died in police custody Australia-wide were suspected of committing a good order offence, such as public intoxication, in comparison to just 13% of non-Indigenous people.[12/13]

Of the 339 recommendations handed down in RCIADIC's Final Report, two recommendations specifically focused on decriminalising public drunkenness. These were:

- Recommendation 79: *That, in jurisdictions where intoxication has not been decriminalised, governments should legislate to abolish the offence of public drunkenness; and*
- Recommendation 80: *That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.*

2.3 QUEENSLAND IS BEING LEFT BEHIND – REFORM IN VICTORIA

Queensland will soon be the only jurisdiction in Australia where public intoxication remains a criminal offence.

Currently, both Queensland and Victoria criminalise public intoxication. In February 2021, Victoria passed the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic) which will come into force in late 2023. This Act will repeal the offences relating to drunkenness found in sections 13–16 of the *Summary Offences Act 1966* (Vic) and leave Queensland as the only jurisdiction in Australia which continues to criminalise public intoxication.

The decriminalisation of public drunkenness offences in Victoria was legislated after a coronial inquest into the death of Tanya Day, a Yorta Yorta woman who died in police custody. On 5 December 2017, police exercised their power to arrest Ms Day for being drunk in a public place. She was subsequently taken into police custody for the sole purpose of "sobering up". Ms Day was left unattended for three hours, during which time she hit her head on the wall of the police cell and died. On the eve of the inquest into Ms Day's death, the Victorian Government promised to decriminalise public drunkenness.[14]

Recommendation: To cohere with other state jurisdictions and work towards eliminating Aboriginal and Torres Strait Islander deaths in custody, public intoxication should be decriminalised.

10 Laura Doherty, *Deaths in Custody in Australia 2020-21* (Statistical Report No 37, 28 June 2022) Table B5.
11 Ibid.
12 Ibid Table E17.
13 Ibid Table E18.
14 Daniel Andrews, 'New Health-Based Response to Public Drunkenness' (Media Release, 22 August 2019) <https://www.premier.vic.gov.au/new-health-based-response-public-drunkenness>.

3 THE HUMAN RIGHTS ACT AND THE OFFENCES OF PUBLIC INTOXICATION AND BEGGING

There are three aspects of the *Human Rights Act 2019* (Qld) ("**the HRA**") that are relevant to this Inquiry. First, public intoxication and begging are, inherently, human rights issues. Second, the HRA requires public entities, such as the Queensland Police Service ("**QPS**") and the Queensland Corrective Services, to act in a manner that is compatible with human rights. Third, specific human rights are identified in the HRA which are relevant to this Inquiry; namely, the right to life, the right to liberty and security, and the right to humane treatment when deprived of liberty. These rights apply both in relation to the validity of the offences of begging and public intoxication themselves, as well as the appropriateness of police intervention and arrest in circumstances where people are found to be begging or publicly drunk.

3.1 PUBLIC INTOXICATION AND BEGGING AS A HUMAN RIGHTS ISSUE

The criminalisation of public intoxication and begging is effectively the criminalisation of homelessness and social disadvantage. The offence disproportionately affects vulnerable groups including First Nations people.

Begging is generally an activity of last resort. It is an activity undertaken by people who are otherwise unable to afford basic needs.[15] Charging, arresting and fining people for public begging does not address this underlying issue and instead may encourage participation in other criminal activity to generate the necessary income, such as shoplifting.

Further, public intoxication is often undertaken by people who cannot drink in private spaces. This includes people who do not have a secure, stable or safe home environment[16] or have financial circumstances preventing them from going to private places where it was lawful to drink. As established above, First Nations people are also disproportionately charged with public intoxication.[17]

Consequently, the offences of begging and public intoxication are incompatible with human rights. They disproportionately target people who are homeless or facing social disadvantage, thus violating section 15(3) of the HRA. It represents an arbitrary deprivation of life and the liberty and security of a person.[18] Furthermore, where people are arrested and detained on charges of public intoxication are denied access to health services which would be afforded to people who were found critically intoxicated in private spaces where it is lawful to drink, in breach of section 37(1) of the HRA.

Recommendation: The offences of public intoxication and begging are discriminatory and should be decriminalised

15 James Farrell, 'Forget your coins, we want change: Begging should not be a crime' *The Conversation* 25 January 2012 <https://theconversation.com/forget-your-coins-we-want-change-begging-should-not-be-a-crime-4658>.

16 Tamara Walsh, 'Who is the 'Public' in 'Public Space'?: A Queensland Perspective on Poverty, Homelessness and Vagrancy (2004) 29 (2) *Alternative Law Journal* https://journals.sagepub.com/doi/pdf/10.1177/1037969X0402900205?casa_token=ApmcTtEX-KEAAAAA%3ApKwb7m9UL6mhtKJ0BvBYpWzv6I13lguUtk013GqUSKgUP2FjpIf8X0qs6C_ymUknbt85YxuoRdn9& at pg. 83.

17 Ibid 84.

18 *Human Rights Act 2019* (Qld) ss 16, 29(1), 29(2).

3.2 REQUIREMENT OF PUBLIC ENTITIES TO COMPLY WITH THE HRA

Section 58(1) of the HRA makes it unlawful for a public entity to act or make a decision in a way that is incompatible with human rights.[19] However, section 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. Public entities are defined in the HRA to expressly include the QPS[20] and encompass Queensland Corrective Services in the operation of places of detention.[21]

Within this framework, police and corrective services officers who charge and/or detain people for begging or public drunkenness are acting in a manner that is compatible with human rights. This is because there are express provisions in the Summary Offences Act criminalising this behaviour. However, should the offences be repealed, police and corrective services officers will not have the protection offered by s 58(2) of the HRA, and will be required to adhere to the obligations under s 58(1). Below is a discussion on the relevant human rights to consider.

3.3 RELEVANT HUMAN RIGHTS UNDER THE HRA

The HRA acts to protect human rights in Queensland, which are recognised as an essential aspect of a democratic and inclusive society that respects the rule of law.[22] The Preamble of the HRA specifies that human rights should be limited only after careful consideration, and should only be limited in a way that can be justified in a free and democratic society based on human dignity, equality, freedom and the rule of law'.[23]

It is arguable that the summary offences of begging in a public place[24] and being intoxicated in a public place[25] impose an unreasonable limitation[26] on human rights specifically protected by the HRA. A couple of the human rights impeded by the prosecution of these summary offences are addressed below:

3.3.1 Right to Life

Section 16 of the HRA provides:

> *"Every person has the right to life and has the right not to be arbitrarily deprived of life."*

The summary offence of being intoxicated in a public place occasions an unreasonable limit on a person's right to life due to the link between deaths in custody and being arrested for public intoxication. As established earlier, this is particularly pertinent for First Nations people who are overrepresented in deaths in custody.

19 *Human Rights Act 2019* (Qld) s 58(1).
20 Ibid s 9(1)(c).
21 Ibid ss 9(1)(h), 10(3).
22 Ibid Preamble.
23 Ibid Preamble.
24 *Summary Offences Act 2005* (Qld) s 8.
25 Ibid s 10.
26 See *Human Rights Act 2019* (Qld) s 13.

The Office of the United Nations High Commissioner for Human Rights' General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, relevant in the interpretation of the HRA,[27] notes that:

> *"The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity*."[28]

Considering the link between deaths in custody and arrest for public intoxication, it is arguable that these offences which criminalise public intoxication can be expected to cause a person's unnatural or premature death.

3.3.2 Recognition and equality before the law

Section 15 of the HRA provides that:

> *(1) Every person has the right to recognition as a person before the law.*
>
> *(2) Every person has the right to enjoy the person's human rights without discrimination.*
>
> *(3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination.*
>
> *(4) Every person has the right to equal and effective protection against discrimination.*
>
> *(5) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.*

Discrimination is defined in relation to a person and "includes direct discrimination or indirect discrimination", within the meaning of the *Anti-Discrimination Act 1991*, on the basis of an attribute stated in section 7 of that Act.[29] The *Anti-Discrimination Act* lists attributes in relation to which discrimination is prohibited, which includes race and impairment.

The summary offence of public intoxication and begging are, on their face, neutral. However, in practice, they indirectly discriminate against vulnerable members of Queensland's society including First Nations people and those suffering from homelessness and poverty.

Despite the RCIADIC's 1991 report finding that First nations people were disproportionality arrested for public intoxication than non-Indigenous people, this still remains true over 20 years later.[30] As the Queensland Law Society noted:

> *"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*

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27 *Human Rights Act 2019* (Qld) s 48(3)

28 *Human Rights Committee, General comment No 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc CCPR/C/GC/36 (30 October 2018) ('General Comment').

29 *Human Rights Act 2019* (Qld) schedule 1, definition of 'discrimination'.

30 Royal Commission into Aboriginal Deaths in Custody (1991) *National Report*, Volume 5, report prepared for the Governor-General, Adelaide, Royal Commission into Aboriginal Deaths in Custody.

> *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. As with the national statistics, this discrepancy is made worse by the fact that Aboriginal and Torres Strait Islander Peoples represent just 4% of Queensland's population."*[31]

These statistics reveal that First Nations people are disproportionately affected by these laws. This remains the case, despite the fact that, by s 378 of the *Police Powers and Responsibilities Act 2000* (Qld), police have a duty to take a person arrested for public intoxication to a place of safety if they form an opinion that it is more appropriate for the person to be taken to that place, other than the watch-house. Therefore, there also remains a question as to whether the QPS act in a way which is compatible with human rights when they exercise the discretion to charge a person for public drunkenness, and in making decisions in accordance with s 378 of the PPRA.

Ultimately, the law can be changed to remove the offence of public begging and public intoxication while being compatible with human rights. QPS's role is further discussed in the following section.

4 WHAT HAPPENS IN THE ABSENCE OF THE OFFENCE OF PUBLIC INTOXICATION?

The QPS does not provide an express view as to whether public intoxication should be decriminalised. Rather, in their brief to the Committee,[32] the QPS comments on the interaction of the power to arrest a publicly intoxicated person and other powers designed to protect the public and the intoxicated person. By way of summary, the QPS brief makes the contention that, absent the power to arrest an individual on the basis of an offence against section 10 of the *Summary Offences Act 2005* (Qld), a police officer may:

(a) be unable to issue a banning notice;[33]
(b) be unable to remove the individual to a place of safety;[34] and
(c) have no alternative but to resort to the charging of individuals who are publicly intoxicated with more serious offences, including public nuisance.[35]

By inference, it seems the QPS supports maintaining the status quo or at the least considers that decriminalisation would lead to problematic policing outcomes. With respect, the QPS's position is untenable because decriminalisation:

(A) will not render police officers inadequately equipped to manage intoxicated persons who are committing other offences; and
(B) can be combined with other legislative reform designed to expand the powers of police officers to enable them to interact with and instruct intoxicated persons

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31 Queensland Law Society, Submission 4487: https://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

32 Briefing Paper – Queensland Police Service – 11 July 2022, pages 4–5.

33 Ibid, page 4.

34 Ibid, page 4.

35 Ibid, page 4. Section 6 of the *Summary Offences Act 2005* (Qld) establishes public nuisance as an offence. Notably, this maximum penalty of public nuisance is substantially higher than public intoxication.

without an arrest. Intervention without arrest is, for the reasons already outlined in other sections, preferable.

Recommendation: The offence of public intoxication is not required to ensure adequate policing

4.1 CURRENT *PPRA* POWERS AND THE DECRIMINALISATION OF PUBLIC INTOXICATION

The QPS has expressed concern that absent the criminalisation of public intoxication their powers to issue a banning notice and/or move intoxicated people to a 'place of safety' will be prejudiced. These issues are dealt with in turn.

The power to issue a banning notice,[36] is contingent upon, *inter alia*, disorderly, offensive, threatening or violent behaviour,[37] and does not require the offender to have committed a criminal offence. In this way, the QPS's concerns can be allayed as a police officer's power to issue a banning notice will withstand the decriminalisation of public intoxication.

Police officers may, pursuant to section 378 of the *PPRA*, move a publicly intoxicated person to a 'place of safety'[38] if they were arrested for 'being intoxicated in a public place' ("**relocation powers**").[39] As is rightly acknowledged by the QPS, a tension arises between the interests of decriminalising public intoxication and police officer's powers to effectively interact with intoxicated persons who may commit offences. Without the power to arrest a publicly intoxicated person a police officer may not exercise relocation powers and take them to a 'place of safety' under current legislation.

The tension can be displaced by reform to the *PPRA* which would empower police officers to interact and deal with publicly intoxicated people without first arresting them. The QYPC considers that the current relocation powers are appropriate for immediate implementation in order to deal with publicly intoxicated people without considering them to have considered an offence.

4.2 PUBLIC INTOXICATION OUGHT NOT BE A CRIMINAL OFFENCE

Whilst the QYPC recognises the extant benefits of the current legislated powers of police officers to arrest and deal with publicly intoxicated people, issue is taken, as a matter of principle, against the notion that public intoxication should be regarded as a criminal offence. This is because publicly intoxicated people are not necessarily likely to commit further offences.[40] It is submitted that with some expansion to police powers in conjunction with community support, the decriminalisation of public intoxication can be implemented without any effective loss to a police officer's powers to deal with intoxicated people.

At the outset, a police officer's source of power to arrest people committing offences ought to be considered in the context of the purpose for such power. Police officers have broad powers

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36 A written notice prohibiting a stated person from entering, attending or remaining at a which may include licensed premises, public places within a safe night precinct or a stated event or area. See: *PPRA* s 602B.

37 *PPRA* s 602C(3)(a).

38 Which might include, by way of example provided by the legislature, a hospital, care provider, a vehicle under the control of someone other than a police officer, the person's home or similar.

39 *PPRA* s 378(1)(a).

40 QPS Operational Procedures Manual, at 16.6.3.

to arrest people who are committing or are reasonably suspected to have committed an offence.[41] The purpose for such powers are set out in section 5 of the *Police Powers and Responsibilities Act 2000* (Qld) ("**PPRA**") which states, *inter alia*, that the purposes of the Act is "*to provide powers necessary for effective modern policing and law enforcement*".[42]

The QYPC takes issue with any suggestion, however, that people who are merely publicly intoxicated should be criminalised. It is the more serious offending (to which it is conceded public intoxication might be a precursor) which is to be the subject of criminal offence.[43] This is particularly true when the offence is so broadly defined as to be capable of capturing any number of people who, notwithstanding that they are publicly intoxicated, are unlikely to proceed to commit further offences, quite apart from the position that alcohol consumption is a prominent feature in more serious offending.[44] As the law stands, where an individual is intoxicated such that they outwardly express the ordinary pathologies associated with intoxication, they will be considered to be committing an offence. It is difficult to perceive that the reasonable Queenslander would consider such a person to be dangerous to the community in the absence of what might ordinarily be perceived to be more serious offending. This is especially true given that it is commonplace in Australia, and particularly Queensland culture, to be publicly intoxicated, in the ordinary sense of the phrase, and recognising that there is a spectrum in respect of how intoxicated on might become. The reality of our Queensland society is that public intoxication is commonplace, often recreational and unlikely to lead to serious offending in every case. To the extent that it does lead to other serious offending, there are other offences that a person can be charged with.

Public intoxication does not, prima facie, impact any other person in society. The police can still maintain adequate policing powers in light of their overall powers as explained. Accordingly, decriminalising public intoxication is not a 'soft on crime' policy, but instead reserves policing powers for dispersion in more appropriate circumstances. To the extent that the Queensland Police Service is concerned about their capacity to police in the absence of the offence of public drunkenness, there are other tools in the QPS's toolbox to address problematic behaviour.

Recommendation: Public intoxication should be decriminalised as there are other ways to manage or punish more problematic and harmful conduct, such as a banning notice, which can minimise harm

41 *PPRA* s 365(1)(a)-(l).

42 Ibid s 5(b); QPS brief to the committee, p.2.

43 For example, public nuisance under section 6 of the *Summary Offences Act 2005* (Qld), as has been proffered by the QPS as an alternate charge to being publicly intoxicated in the absence of such being enshrined as an offence under the SOA.

44 As described in Harris, C and Lehman, CF, 'Fixing Drinking Problems: Evidence and strategies for Alcohol Control as Crime Control' (2022) which, in its fourth footnote, provides "Examples of the older "correlational" literature include: Jacky M. Jennings et al., "Neighborhood Alcohol Outlets and the Association with Violent Crime in One Mid-Atlantic City: The Implications for Zoning Policy," Journal of Urban Health 91, no. 1 (Feb. 1, 2014): 62–71; D.M. Gorman et al., "Spatial Dynamics of Alcohol Availability, Neighborhood Structure and Violent Crime," Journal of Studies on Alcohol 62, no. 5 (July 2001): 628–36; Bruce L. Benson and Paul R. Zimmerman, "Alcohol and Rape: An Economics-of-Crime Perspective," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, Feb. 1, 2007); Steve Moffatt et al., "Liquor Licensing Enforcement and Assaults on Licensed Premises," Issue Paper, Crime and Justice Statistics Bureau Brief (Sydney: New South Wales Bureau of Crime Statistics and Research, October 2009)."

4.3 THE SOUTH AUSTRALIAN APPROACH

South Australia takes an approach to public intoxication that prioritises safety and harm minimisation. The objective of the *Public Intoxication Act 1984* (SA) is to 'promote the minimisation of harm that may befall a person in a public place as a result of a person's intoxication'. Importantly, the Act requires police officers to give primary concern to the health and wellbeing of any person apprehended under the Act.

Section 7 of the *Public Intoxication Act 1984* (SA) empowers police officers to apprehend a person who is in a public place where they believe the person is under the influence of drugs or alcohol and, as a result, is unable to take proper care of themselves. The officer must then take the person to either their home, a police station or a sobering-up centre for admission as a patient.

This is distinct from the Queensland approach in three critical ways:

(i) It places the safety and wellbeing of the intoxicated person at the forefront of the police's response;
(ii) It does not classify public intoxication as a criminal offence; and
(iii) It does not allow police to apprehend an intoxicated person unless the person's intoxication renders them unable to take proper care of themselves.

As such, given the issues outlined throughout this submission regarding the current, largely punitive, approach to public intoxication, the South Australian approach presents an attractive alternative. This strikes an adequate balance between maintaining the powers of the police to move intoxicated people on, while also focusing the inquiry on the health of the person. Further engaging health and social welfare groups would also be beneficial.

Recommendation: The South Australian Approach is an example which strikes the balance between safety and harm minimisation.

5 ALTERNATIVES: HEALTH AND SOCIAL WELFARE BASED RESPONSES

The need for alternative responses, such as health and social welfare-based responses, is also echoed in recommendation 81 of RCIADIC's report, which recommends:

> *"That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons."*.[45]

As such, the QYPC proposes a number of alternative approaches to public intoxication and begging that focuses on the health and social welfare on individuals.

[45] Royal Commission into Aboriginal Deaths in Custody (1991) National Report, Volume 5, report prepared for the Governor-General, Adelaide, Royal Commission into Aboriginal Deaths in Custody.

5.1 PLACES OF SAFETY RATHER THAN CELLS AND HOSPITALS

An important aspect of any new approach to public intoxication is that it does not simply shift language, but instead changes the way public intoxication is dealt with institutionally.[46] For example, when New South Wales decriminalised public intoxication, the *Intoxicated Persons Act 1979* (NSW) was enacted, which still permitted police to detain intoxicated persons who were behaving disorderly.[47] Instead of addressing public intoxication in a way that can change behaviour, New South Wales altered the source of police powers to arrest intoxicated persons and implemented an insufficient, temporary solution to the issue.[48] Despite this approach, there are existing models in Australia that suggest a health-based response to public intoxication provides better outcomes to individuals, while lowering burdens on police and health services.[49]

Sobering-up centres, like those developed in other Australian states, offer an alternative to traditional policing of public intoxication, particularly relating to the excessive consumption of alcohol. Sobering-up centres are designed to help individuals who are regularly drinking heavily and may be experiencing other health and social issues, such as housing insecurity. They are managed by health professionals, and individuals seeking assistance are primarily admitted via self-referral or night patrols. In these centres, individuals are provided with showers, clean clothing, food and a bed for up to 24 hours,[50] after which the health professionals offer the individual a referral for ongoing treatment.[51]

The implementation of these services have led to reductions in incarceration rates and drunken use of emergency services, thereby indicating they are cost effective.[52] Specifically, it is estimated that the implementation of these services could save the criminal justice system $284,000, public health survives $920,000, and public housing $350,000.[53] Across these three public sectors the government stands to save over $1.5 million from the implementation of these services.

In addition to significant savings, these services also provide better outcomes to individuals and communities. Sobering-up centres and similar initiatives provide individuals and communities with better outcomes than traditional policing intervention. The implementation of these type of programs in Canada have shown that these programs preserve the dignity of intoxicated persons by addressing their conditions with compassion.[54] When combining these

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46 Amy Pennay, Michael Savic, Kate Seear, Isabelle Volpe, Victoria Manning and Robin Room, 'Decriminalising Public Drunkenness: Accountability and Monitoring Needed in the Ongoing and Evolving Management of Public Intoxication' (2021) 40( ) *Drug and Alcohol Review* 205, 206.

47 Maggie Brady, Ruth Nicholls, Graham Henderson and Joe Byrne, 'The Role of a Rural Sobering-up Center in Managing Alcohol-Related Harm to Aboriginal People in South Australia' 25() *Drug and Alcohol Review* 201, 201.

48 Pennay, Savic, Seear, Volpe, Manning and Room (n 46) 206; Brady, Nicholls, Henderson and Byrne (n 47) 201.

49 Ibid.

50 Ibid.

51 Ibid.

52 Nadine Ezard, Michael Cecilio, Brendan Clifford, Eileen Baldry, Lucinda Burns, Carolyn Day, Mariana Shanahan and Kate Dolan, 'A Managed Alcohol Program in Sydney, Australia: Acceptability, cost-savings and non-beverage alcohol use' (2018) 37 *Drug and Alcohol Review* 184, 189.

53 Ibid.

54 Bernadette Pauly, Kate Vallance, Ashley Wettlaufer, Clifton Chow, Randi Brown, Joshua Evans, Evin Gray, Bonnie Krysowaty, Andrew Ivsins, Rebecca Schiff and Tim Stockwell, 'Community Managed Alcohol Programs in Canada: Overview of key Dimensions and Implementation' (2018) 37(1) *Drug and Alcohol Review* 132, 137.

services with referrals for ongoing treatment, these services assist alcohol dependency and recovery goals for individuals who access them.[55] Further, these health-based programs have received support from First Nations communities, especially where the services are operated by First Nations health practitioners.[56]

The implementation of sobering-up centres and similar facilities, combined with the decriminalisation of public intoxication, has numerous economic, health and social benefits for Queensland Government as well as the broader community. These facilities reduce burdens on the public sector, including the criminal justice system and health services. Further, in communities where they have been implemented, they have received widespread support from the communities and have led to better outcomes for individuals who access them.

Recommendation: Places of safety are cost saving and effective programs to manage public intoxication and have received support from some First Nations communities, especially where the services are operated by First Nations health practitioners

5.2 HEALTH-BASED RESPONSES

A health-based approach to public intoxication provides a safe alternative to punitive approaches currently implemented. As outlined in the 'Clear Light of Day' expert report provided to the Victorian Attorney-General in 2020,[57] health-based approaches to public intoxication will ensure safety of intoxicated persons, particularly of those that are most vulnerable such as First Nations people. Using safe places that are accessible and appropriate are key to ensuring the safety of persons that are intoxicated, and the wider community. The 'Clear Light of Day' report also highlights that utilising a public health approach creates opportunity to implement a broader prevention mechanism to reduce the impact of 'high-risk' drinking.

As per Queensland Health's brief,[58] Queensland Health already provide a range of health and welfare responses to populations charged with offences relating to public intoxication as well as alcohol and other drug treatment services. It is, therefore, plausible to build upon this existing model to provide for a broader public-health approach.

Further, a public health approach to public intoxication provides opportunity for community-driven responses. As seen in Western Australia, community development models for implementing sobering up centres are considered 'advantageous in handling the diversity of community opinion'.[59] As Queensland is the most decentralised state in Australia, it is vital that the responses to public intoxication acknowledge this. This community-driven approach

55 Ibid.
56 Pennay, Savic, Seear, Volpe, Manning and Room (n 47) 207.
57 Report to the Victorian Attorney-General, 'Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness', August 2020 <https://files.justice.vic.gov.au/2021-06/Seeing%20the%20Clear%20Light%20of%20Day%20ERG%20report.pdf>.
58 Letter from Associate Profession John Allan, Executive Director of Mental Health Alcohol and Other Drugs Branch (Queensland Health) to the Community Support and Services Committee <https://documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/Correspondence%20%20%E2%80%93%20Queensland%20Health%20-%2011%20July%202022.pdf>.
59 Richard Milford, 'The Decriminalisation of Public Drunkenness in Western Australia' (1991) 1(51) *Aboriginal Law Bulletin* 18 <http://classic.austlii.edu.au/au/journals/AboriginalLawB/1991/42.html>.

is critical for Queensland remote and regional communities that will need community-informed and tailored health-based responses.

It is recognised that undertaking a public health approach to public intoxication would require a significant expansion of current alcohol safety program. Caring for a person in safe detoxification space overnight will likely cost more than to incarcerate them.[60] However, given the overrepresentation of First Nations people in the criminal justice system, and specifically through being charged a public intoxication offence, providing a safe alternative system for dealing with public intoxication is a matter of urgency.[61]

Recommendation: The government should build on its investment in health-based approaches

6 DECRIMINALISATION OF BEGGING

In Queensland, begging is an offence with the maximum penalty fine of 10 penalty units ($1437.50) or up to 6 months imprisonment.[62] As can be expected, the populations that that are most likely to be partake in begging are also many of Australia's most vulnerable populations: homeless individuals people suffering from mental illness, cognitive impairment, disability or addiction, Aboriginal and Torres Strait Islander peoples, and young people. Subsequently, it is reasonable to suggest that the offence of begging for goods or currency should be decriminalised simply on the basis that is wrong to criminalise activity solely borne out of extreme poverty which does not harm others.

There are more than 116,000 homeless Australians since 2018, with this number likely to increase as a result of the pandemic, the increased cost of living and the housing and rental crisis.[63] Of the 116,000 homeless people, at least 43,500 are people are under the age of 25.[64] Further, First Nations people represent 20% (roughly 23,437 persons) of all persons were homeless on census night in 2016.[65] These vulnerable groups intersect in the overrepresentation in the criminal justice system for begging offences, with 64% of people being charged for begging offences in Queensland.[66]

Queensland Premier Annastacia Palaszczuk has accepted that Queensland has been one of the last jurisdictions to act on this matter and acknowledges that change is necessary to

60 Jillian Brewer, 'Public Drunkness – Australian Law and Practice' (Research Paper No 3, Deaths in custody in Australia, 1980-1989), 44 <https://www.aic.gov.au/sites/default/files/2020-05/deaths-in-custody-australia-1980-1989.pdf#page=31>.

61 See Frank Guivarra, 'The survival of public drunkenness laws in Victoria' (2008) 7(5) *Indigenous Law Bulletin* 19 <https://search.informit.org/doi/epdf/10.3316/informit.395504429540574>.

62 *Summary Offences Act 2005* (Qld), section 8.

63 Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (Census Report, 14 March 2018).

64 Melissa Davey and Christopher Knaus, 'Homelessness in Australia up 14% in five years, ABS says', *The Guardian* (14 March, 2018). https://www.theguardian.com/australia-news/2018/mar/14/homelessness-in-australia-up-14-in-five-years-abs-says

65 Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (Census Report, 14 March 2018) https://www.abs.gov.au/statistics/people/housing/census-population-and-housing-estimating-homelessness/latest-release

66 Queensland Police Service Briefing To The Community Support and Services Committee, *Inquiry Into The Decriminalisation of Certain Public Offences and Health and Welfare Responses* (Inquiry, 8 July 2022).

reconcile with the First Nations people.[67] Deputy Commissioner Steve Gollschewski stated that the number of people charged for public intoxication and begging was minor, with only 2,102 people charged with the offences in 2021, nearly half of whom identified as First Nations people.[68] Professor Tamara Walsh of the University of Queensland's T.C. Beirne School of Law argues that it would be difficult to find people beyond First Nation groups being criminalised under these laws.[69]

The QPS acknowledged in their submission that they have the option to use a range of alternative options to policing public begging, such as administering a caution or issuing a move on direction.[70] Further, both NSW and the ACT have decriminalised begging and have the power to use alternative options, indicating that having begging as an offence is not a requirement in other jurisdictions to offer alternative options.[71]

Begging in and of itself should not be criminally punishable. This has been recognised by the QPS.[72] Further, the existence of an offence of begging continues to perpetrate existing inequities and disproportionally affects our most vulnerable groups. Therefore, the QYPC urges that the begging offence under section 8 of the *Summary Offences Act 2005* is decriminalised, with focus instead being diverted to alternative programs and networks.

Recommendation: Begging in and of itself should not be criminally punishable.

7 CONCLUSION

Urgent changes to legislation to decriminalise public intoxication and begging offences in the *Summary Offences Act 2005* are required. Current legislation maintains systematic inequalities, including sustaining the overrepresentation of First Nations people in the criminal justice system and impeding on the Human Rights of our most vulnerable Queenslanders. This submission proposes alternative approaches, including health and social welfare-rebased responses such as sobering-up centres and considers the approaches in Victoria, Western Australia and South Australia, and recommends the legislature consult with Aboriginal and Torres Strait Islander groups in the process of any proposed reform.

8 ABOUT THE QYPC

The Queensland Youth Policy Collective organises young people to be involved in the parliamentary and policy-making process so young people can advocate for a better future. We are constituted by young people who want to have a voice in the parliamentary decision-making process. We have three specialist policy areas: the environment, youth justice and human rights. The QYPC holds education seminars on the policy making process, make submissions to parliament on our specialist areas, and organise young people to contribute to

67 Matt Dennien, 'Lawyers flag support for offensive language law rethink amid broader reforms', *Brisbane Times* (14 July, 2022).
68 Ibid.
69 Ibid.
70 Queensland Police Service Briefing To The Community Support and Services Committee, *Inquiry Into The Decriminalisation of Certain Public Offences and Health and Welfare Responses* (Inquiry, 8 July 2022) https://documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/Queensland%20Police%20Service%20%E2%80%93%2011%20July%202022.pdf
71 Ibid.
72 Ibid.

the debate. Our research has been directly referenced in parliamentary reports and by members of parliament.

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