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

Submission No: 34

Submitted by: Legal Aid Queensland

Publication: Make the submission public

Attachments:

Submitter Comments:

Submitter Recommendations:

Community Support and Services Committee

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

Submission by Legal Aid Queensland
19 August 2022

Legal Aid QUEENSLAND

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

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make this submission to the Community Support and Services Committee inquiry into decriminalising public intoxication and begging offences, and health and social welfare-based responses (the Inquiry).

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997* (Qld), LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the state". Consistent with these statutory objectives, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and based on the extensive experience of LAQ in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This submission has been prepared by the Criminal Law Services, the Civil Justice Services and Information and Advice Services Divisions of LAQ, with input from our First Nations Advisory Committee.

LAQ's Information and Advice Services Division provides over the telephone, face to face and videoconference legal information and advice services to vulnerable and disadvantaged Queenslanders. The division plays an important role in our state's justice system responding to over 145,000 telephone queries a year, conducting a state- wide legal advice clinic and providing legal advice and assistance to prisoners through the state-wide Prison Advice Service.

LAQ's Criminal Law Services Division is the largest criminal law legal practice in Queensland providing legal representation across the full range of criminal offences, including the offences referred to in the terms of reference for the inquiry.

LAQ's Civil Justice Services lawyers have extensive experience providing specialist advice and representation to complainants in human rights, discrimination and social security matters under both State and Commonwealth legislation.

This submission is therefore informed by our knowledge and experience working with individuals who have been charged with public order offences. It is intended to address matters being considered by the Inquiry that are relevant to our particular areas of practice.

At the outset, LAQ supports reform that diverts vulnerable or disadvantaged people from the criminal justice system and minimises the risk of incarceration. Reform would implement long-standing recommendations from the final report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) published in 1991.

Executive Summary

LAQ recommends:

1. removing the offences of public intoxication, begging and public urination from the *Summary Offences Act 2005*[1] (SOA); and

2. a co-ordinated and human-rights informed move to a public health and social-welfare based response to the offences of public intoxication, begging and public urination.

Decriminalising public offences under the *Summary Offences Act 2005*

LAQ supports alternative approaches to the criminalisation of public begging, public intoxication, and public urination, moving towards a more humane, just and health-based response.

Decriminalisation would recognise the three identified offences as health and social issues, with approaches that address those needs within a more appropriate, socially progressive and humane context.

It is our view, that minimising incarceration and other punitive responses to these minor offences, would result in an improvement to health and social outcomes for some of Queensland's most vulnerable people, and in particular our First Nations citizens.

LAQ considers that retaining these offences does not achieve the purported aims of deterring persons from engaging in that conduct and/or maintaining the right of the public to enjoy public places. These criminal offences only serve to further entrench poverty and other structural disadvantage due to the disproportionate way in which they are enforced against First Nations people, people experiencing homelessness and/or mental illness and people with disabilities.

Queensland has the second largest First Nations population in Australia. The National Agreement on Closing the Gap has 17 national socio-economic targets across areas which impact on life outcomes for First Nations people. These include reducing over representation in the criminal justice system by 2031 of adults by at least 15%, and children by at least 30%.[2] One of the key priorities in

---

1 Sections 10, 8 and 7 respectively of the *Summary Offences Act 2005*.
2 National Agreement on Closing the Gap, targets 10 and 1.

Queensland's Closing the Gap implementation plan of 2021 is to "work in partnership with communities to address the broad economic and social factors leading to offending including poverty and unemployment, and problematic drug and alcohol use."[3]

Decriminalisation and evidence-based reform supports these targets.

Public Intoxication

Section 10 of the SOA currently makes it an offence to be intoxicated in a public place.

LAQ notes that Queensland is the only Australian state that has not decriminalised public drunkenness.[4] Reform will align Queensland with the other State and Territories. The Northern Territory decriminalised public drunkenness in 1974, followed by NSW in 1979, the Australian Capital Territory in 1983, South Australia in 1984, Western Australia in 1990, and Tasmania in 2004.

Abolishing the offence of public drunkenness was one of the key recommendations of the RCIADIC.[5] The RCIADIC observed that public drunkenness was a significant reason for Aboriginal persons ending up in police custody.

LAQ acknowledges that public drunkenness offences continue to have a disproportionate impact on First Nations people, resulting in more frequent contact with police and at times an infringement of human rights and some discriminatory treatment of those communities, which can have tragic consequences. We have elaborated on aspects of these issues below.

Studies also reveal the demographic most likely to be charged with intoxication in a public place have low socio-economic backgrounds.[6]

LAQ supports the position of the Queensland Law Society (QLS), published in 2021, on the need for reform of our public intoxication laws.[7] In this publication, QLS highlighted the discrepancy between the prosecution of public order offences against First Nations people compared to non-indigenous people, when First Nations people account for only 4% of Queensland's population.[8] These figures are mirrored in the Queensland Police Service response to this Inquiry which contains statistics regarding the total number of charges and persons charged with this offence, and reveals an over representation of indigenous people.[9]

---

3 Queensland's 2021 Closing the Gap Implementation Plan, page 34.
4 Staggering: Queensland now the only state with public drunkenness law (inqld.com.au).
5 Recommendation 79 Royal Commission into Aboriginal Deaths in Custody, http://www.austlii.edu.au/au/other/IndigLRes/rciadic/.
6 Expert Reference Group on Decriminalising Public Drunkenness, *Seeing the Clear Light of Day,* Report to the Victorian Attorney -General, August 2020, p 1.
7 As submitted to the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence Shannon Fentiman: Public intoxication in Queensland - the need for law reform, President of QLS, Elizabeth Shearer, 22 December 2021.
8 Ibid, page 2 referring to ABS, Table 22, Selected Offenders - Indigenous status and principal offence by selected states and territories, 2008-09 to 2019-20 and ABS, Aboriginal and Torres Strait Islander Population - Queensland, (2016 Census Data Summary).
9 See QPS submission to the inquiry, https://documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/Queensland%20Police%20Service%20%E2%80%93%2011%20July%202022.pdf Attachment 1: QPS Statistics – s 7, s 8 & s 10 of the *Summary Offences Act 2005.*

The Disability Royal Commission (DRC) is currently investigating violence, neglect, abuse and exploitation of people with disability and will deliver its findings in September 2023. In December 2020 the DRC delivered an 'Overview of responses to the criminal justice system issues paper'.[10]

Respondents to the paper indicated that people with disability are overrepresented throughout the criminal justice system. The paper refers to the Law Council of Australia's report that people with impairments are often interpreted as difficult or having defiant behaviours leading to disproportionate interactions with police and the criminalisation of disability.[11]

Respondents also indicated that "*the criminalisation of disability occurs when people with disability come into contact with the criminal justice system in circumstances where another system may have been better placed to respond. At times, the criminal justice system is invoked as a response to disability, health or trauma related behaviours that have not been properly recognised and understood.*"[12]

Lawyers from LAQ's Civil Justice Services division are familiar with circumstances in which people with disabilities may be treated by police as drunk and disorderly, in situations where their behaviour is a characteristic of their disability.

Lawyers within our Criminal Law Services division are also familiar with circumstances in which police have failed to distinguish between intoxication and mental illness, in the context of what can appear to be a public disorder offence. The failure by police to accurately assess their behaviour can result in harsh criminal sanctions, including arrest, pecuniary sanctions and incarceration. Such a response fails to address the underlying cause of the behaviour, or provide any assistance to the individual to seek appropriate care to address their mental health needs.

Recent Legislative History - Safe Night Out Legislation Amendment Act 2014 (Qld)

The offences under consideration in this Inquiry, were among those amended by the *Safe Night Out Legislation Amendment Act 2014* (Qld). That Act focused on measures to reduce alcohol and drug fueled violence, in particular in Queensland's nightlife areas. Public urination appeared to be identified as an underlying behaviour contributing to the unacceptable culture that led to violence and antisocial behaviour.

The Act introduced firmer penalties for antisocial behaviour around licensed premises. Section 10 was amended by section 126 *Safe Night Out Legislation Amendment Act 2014* (Qld). The consequence of the amendment was to broaden the scope of the section to not only prohibit being "drunk" but also being "otherwise adversely affected by drugs or another intoxicating substance".

The Act also introduced the trial of sober safe centres in October 2014, which operated on a "user-pays" basis (that is, people detained in the centres were required to pay a proportion of the cost of their detention). This was discontinued after the initial 12 month period. A similar trial in NSW was discontinued and is referred to later in this submission.

---

10 *Overview of responses to the Criminal justice system issues paper:* https://disability.royalcommission.gov.au/publications/criminal-justice-system

11 Ibid, page 3.

12 Ibid, pages 3 – 4.

There is merit in revisiting the option of sober safe centres to provide vulnerable and disadvantaged people with a rest and recovery service, that could also involve relevant referral pathways. However, LAQ does not support the re-introduction of a user-pays drunk tank model.

It is acknowledged that public safety will always remain an important consideration, incorporating both the safety of the broader community and the safety of intoxicated persons. Any reforms would need to balance community safety against the broader aims of providing a health and welfare response to these behaviours.

Alternatives to arrest and diversionary options after arrest

The *Police Powers and Responsibilities Act 2000 (Qld)* provides alternatives to the arrest of an adult in relation to particular offences. The *Queensland Police Service Operational Procedures Manual* (OPM) also provides for a considered approach.

The issue of a Notice to Appear or summons exposes a person to the broader processes and outcomes of the criminal justice system. The OPM states that officers should not commence proceedings by way of arrest if an appropriate alternative exists.[13] An investigating officer is to adopt the PLAN approach (Proportionate, Lawful, Accountable, Necessary) to assess whether an action or decision is compatible with human rights. Before deciding to commence proceedings against a person, the investigating officer is required to consider all disposition and diversionary options. This includes taking a person to a place of safety if intoxicated in a public place.[14]

An infringement notice can be issued for offences which include urinating in a public place, and begging in a public place, but not an offence of being intoxicated in a public place. If an infringement notice is issued, the arrest may be discontinued and the person released from custody.

Where a person is arrested for being intoxicated in a public place, police are provided with further alternatives which do not require attendance at court. Police may take the person to a place where that person can receive the treatment or care necessary to help them safely recover from their intoxication. Such places may include a hospital, the person's home, or the home of the person's friend or relative[15]. The officer must take the person and release them to a place of safety "at the earliest reasonable opportunity".[16]

The provision rests on the police officer being "*satisfied that it is more appropriate for the person to be taken to a place, other than a watch-house, the police officer considers is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of being intoxicated*".[17]

The relevant police operational procedures for dealing with public intoxication are set out in Annexure 1 of this submission.

The exercise of the discretion to arrest, or to take a person to a place of safety, and not proceed with charges remains with the individual investigating officer. The discretion is also reliant upon an

---

13 Queensland Police Service Operational Procedures Manual, 3.5.9.
14 Ibid 3.1.1.
15 *Police Powers and Responsibilities Act 2000*, section 378.
16 Ibid, section 378(2).
17 Ibid, section 378(1)(b).

understanding of various "medical conditions which may produce signs and symptoms similar to intoxication".[18]

LAQ is of the view that this broad discretion can create disproportionate outcomes if exercised in an inconsistent and unequal way.

Further, it is noted that persons of lower socio-economic status, and those who are homeless, are less likely to have a home and support network to be released to.

Whilst the figures referred to in the QPS response to this inquiry show a decline;[19] the volume is perhaps higher than expected given the requirements outlined in the OPM.

It is also unclear in what context charges are being preferred against persons charged under this provision.

LAQ supports treatment of public intoxication as a social, health and safety issue and prefers a solution that sees the pairing of police intervention with well-resourced alternatives to watch houses, rather than entry into the criminal justice system.

LAQ contends that the principle of last resort to incarceration be applied in the management by police of intoxicated people. That is, an intoxicated person should be detained in police custody or in a police watchhouse only as a last resort. This is in keeping with Recommendation 87 of the final report of the RCIADIC, that *"all police services should adopt and apply the principle of arrest as being the sanction of last resort in dealing with offenders".*

Alternatives to arrest and incarceration currently exist within our legislation and are reliant on the appropriate exercise of discretion of police officers. Arrest is not legislated as a sanction of last resort for adults.

Queensland has limited services which operate to assist publicly intoxicated people. Safe Night Precinct Support Services identify at-risk individuals who need help due to intoxication within a designated safe night or drink-safe precinct. The initiative provides rest and recovery spaces and is limited to Friday and Saturday nights, generally after 10 or 11 pm. It covers Airlie Beach, Brisbane CBD, Brisbane Inner West, Broadbeach, Bundaberg CBD, Cairns, Fortitude Valley, Gladstone, Ipswich, Mackay, Rockhampton, Sunshine Coast, Surfers Paradise, Toowoomba, and Townsville.[20]

In addition to these limited services, there are several diversionary centres across the State which offer necessary care. These centres extend overnight care and can include medical attention, meals, hygiene services, accommodation and referrals to social support in the regions of Cairns, Townsville, Mt Isa, Rockhampton and South Brisbane.

---

18 Queensland Police Service Operational Procedures Manual, 13.7.9.

19 See QPS submission to the inquiry, https://documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/Queensland%20Police%20Service%20%E2%80%93%2011%20July%202022.pdf Attachment 1: QPS Statistics – s 7, s 8 & s 10 of the *Summary Offences Act 2005*.

20 https://www.qld.gov.au/community/getting-support-health-social-issue/safe-night-precinct-support-services#:~:text=Safe%20Night%20Precinct%20Support%20Services%20(SNPSS)%20are%20a%20component%20of,in%20the%20Safe%20Night%20Precincts.

As per the QPS submission to the inquiry, the table below compares the police districts where the number of persons charged for public intoxication was most prevalent during 2020-21, compared with diversion centres available:[21]

Police District	# of persons charged	Diversion centre availability
Gold Coast	347	None available
Far North	291	Lyons Street Diversionary Centre, Cairns
Sunshine Coast	163	Non available
Townsville	135	The Reverend Charles Harris Diversionary Centre, Ross River Road, Bohle and Palm Island Diversionary Centre
North Brisbane	85	None available
Mackay	47	None available
Mount Isa	40	40 Arthur Petersen Diversionary Centre, Camooweal Str, Mt Isa
South Brisbane	40	Murri Watch, Woolloongabba
Darling Downs	28	None available
Capricornia	27	Edward Chubb Diversion Service, Alma Street, Rockhampton.

LAQ supports the introduction of more diversionary centres to offer alternatives to police watch house custody and to provide appropriate and supportive places of safety.

It is recommended that such places be well-resourced, with supports, systems and staffing in place to respond to the needs of those who require assistance. This will ensure that persons placed in their care will have adequate health-based care, and will safeguard against unintended outcomes, such as assaults of staff.

21 See page 7 of the QPS submission to the inquiry

LAQ notes that specific provisions should be in place to address steps that could be taken in circumstances where persons are not able to attend particular diversionary centres (for example where court orders are prohibitive, or due to prior interaction with a particular service).

Given Queensland's particular geographical concerns, sufficient funding will be needed to properly resource the services required, to avoid disadvantage to regional and remote areas.

Begging

Section 8 of the SOA currently makes it an offence to beg in a public place.

LAQ acknowledges there are well-known and significant factors contributing to increased homelessness in Queensland in 2022. These factors include inadequate welfare payments, public housing shortages, low rental vacancy rates, increased cost of living, and increased pressures on the public health system (specifically mental health and alcohol and drug services).

Further, LAQ observes that many individuals experiencing homelessness may have compounding and intersectional vulnerabilities, such as being victims of domestic violence, and/or people with disabilities and often untreated mental illness. In our experience, a large proportion of those who come to the attention of police as a result of begging suffer from mental health conditions. These conditions are often undiagnosed or have been untreated as a result of the person's personal circumstances and disengagement from treatment and support services.

Begging is related to social exclusion and financial poverty and is predominantly committed by those experiencing homelessness. There is consistent evidence of a nexus between begging and severe hardship, which includes those who experience mental illness, homelessness and substance dependency issues.[22] They are among the most marginalised, disadvantaged and disenfranchised in society.[23] Begging is a last resort to provide income in an alternative way to other less acceptable means such as by theft, prostitution and drug dealing.[24]

LAQ considers that the criminalisation of begging in these circumstances only serves to further entrench individuals in a life of poverty. Moving away from a justice system that punishes poverty, acknowledges that begging is not a harmful or socially destructive behaviour. It is not worthy of criminal intervention but is, rather, a consequence of broader societal factors.

It is noted that, of the offences under current consideration, begging in a public place is the only offence punishable by a potential term of imprisonment. The principle of imprisonment as a last resort[25] is applicable to this offence, which supports recommendation 92 of the RCIADIC's final report. The maximum penalty of imprisonment for begging is, however, disproportionate to the criminality of the act. It is equivalent to public nuisance, an offence in our view involving more serious conduct.

---

22 Justice Connect, *Submission to the United Nations on the Decriminalisation of Homelessness* (November 2021) p 15.
23 Philip Lynch, 'Understanding and Responding to Begging' [2005] *Melbourne Law Review 16*, 3.
24 Tamara Walsh, 'Defending Begging Offenders' [2004] *QUT Law and Justice Journal 4*, 59.
25 Section 9(2)(a)(i) *Penalties and Sentences Act 1992*.

The statistics in the QPS response to the inquiry indicate that an already relatively low number of charges are being pursued against these provisions.

LAQ's legal advice statistics support the low demand on our services for advice in relation to all three offences under consideration. This is depicted in the table below which refers to advice given in relation to the three offences, (on their own or in conjunction with other offences), over the past three financial years:

		Advices with
	Advice Count	Only Designated Charges
2019-20	19	5
2020-21	27	11
2021-22	22	4
Total	68	20

Urinating in a public place

Section 7 of the SOA currently makes it an offence to urinate in a public place.

Like the other offences being considered in this Inquiry, LAQ considers that the offence of 'Urinating in a public place' disproportionately affects First Nations people, people experiencing homelessness and/or people with disabilities.

This offence was introduced by s 4 *Summary Offences and Other Acts Amendment Act 2008* (Qld), which became operational on 1 December 2008. The intention of the amendment was to provide police with discretion to charge public urination under this specific provision, rather than as the more-serious offence of public nuisance.

The provision was then amended by s 125 *Safe Night Out Legislation Amendment Act 2014* (Qld). The amendment increased the maximum penalty to 4 penalty units where the urination occurred within, or in the vicinity of, licensed premises.

In our experience, anecdotally this type of offending is almost always associated with a state of intoxication, an urgent bodily need and/or lack of suitable accessible facilities.

Anti-discrimination lawyers from LAQ's Civil Justice Services division note in their experience that the lack of accessibility of public toilets can affect the ability of people with disabilities who suffer incontinence, to enjoy and participate in public life. Increasing access to public toilets would be consistent with the rights of people with disabilities and human rights generally.

The number of accessible public toilet facilities also continues to dwindle significantly. Those in public parks can be locked overnight. Entertainment venues, and restaurants and cafes in large public buildings are generally restricted to patrons only. Investment is needed in the creation of portable public toilets especially in areas of high density human activity.

LAQ's duty lawyer services report that offences of public urination are rarely seen before the arrest courts, and if they are they tend to be in conjunction with more serious offences. Our legal advice statistics are also supportive of this, as noted above. The more usual approach is a diversionary one, with police exercising alternative options to deal with such behaviour. There is a perception that

a greater increase in the issuing of tickets for this offence may explain the lower numbers of this charge before the courts in recent years.

The options that are generally available for this charge include:

1. If arrested and charged with the offence, watchhouse bail can be set at a nominal amount. The Court is generally unlikely to issue an arrest warrant if a person fails to appear and the matter is dealt with on an ex-parte basis, with the cash bail forfeited to the state.

2. If the defendant appears to answer the charge, and enters a plea of guilty, a fine is imposed which is usually referred to SPER. The defendant can also opt to seek a DAAR (Drug and Alcohol Referral) if they were affected by alcohol at the time of the offence. This involves them being placed on a recognisance and being ordered to attend an education session, thereby incurring further cost to the State. If the defendant fails to attend that session, then a new criminal charge can be brought for breaching the DAAR order and the defendant returned to court and the recognisance can be forfeited.

3. Police can also choose to issue a ticket for a fine on-the-spot, which if not paid, will be referred to SPER for collection unless the defendant completes a section in the form indicating a contest - then a charge will follow and it will proceed through court. LAQ supports the ticket option as a useful way of diverting matters.

4. Police also can choose to administer an adult caution.[26]

Repealing the offence of urinating in a public place – some concerns

LAQ holds some reservations in relation to the removal of this offence.

With removal of section 7, there is a concern that a person urinating in a public place could fall foul of section 9(2) *Summary Offences Act 2005* (Qld) (*SOA*) – a limb of the offence of wilful exposure, which is not a ticketable offence. There is a concern, then, that abolishing the offence removes an avenue of police discretion to deal with the conduct in a way that does not require arrest and attendance before a court.

Further, the removal raises the possibility that a person urinating in a public place could be prosecuted for a "disorderly" or "offensive" public nuisance offence, pursuant to section 6 of the *SOA.* That offence is punishable by 25 penalty units or 6 months imprisonment if the offence is committed within, or in the vicinity of, a licensed premises.[27] Both of those maximum sentence approaches are notably higher than the maximum of 2 to 4 penalty units currently prescribed for the offence of urinating in a public place.

Removal of the offence therefore has the strong potential to expose the public to more serious criminal sanction. For example, a public nuisance or wilful exposure conviction would breach a suspended sentence, whereas the current offence would not.

---

[26] Queensland Police Service Operational Procedures Manual, 3.2.
[27] Otherwise, it is punishable by 10 penalty units or 6 months imprisonment.

Amending section 6 of the *SOA* to remove disorderly and offensive from the definition of a public nuisance, could ameliorate this concern. Behaviour would have to be threatening or violent to warrant a charge of public nuisance. This would protect those who do not engage in such conduct, from being captured by the current definition. Alternatively, section 6 (and similarly sections 7 and 9 in relation to urinating in public and wilful exposure respectively) could be amended to add a further subsection to the effect, "A person's conduct is not disorderly or offensive only because they are intoxicated or urinating in a public place".

Further, removal of the ability to charge offences of public urination or intoxication creates potential for the police - in absence of these options - to expose members of the public to further banning notices, public nuisance offences, and potential breaches of banning notices.

It is conceded the criteria to issue a banning notice would exist in many cases where offences of public intoxication and urination are charged. However, the deterrent effect on a person of being dealt with by notice to appear, or by a fine through an infringement notice, may be enough of a factor to avoid the police giving further consideration to issuing a banning notice.

Despite these reservations, LAQ recommends repealing this offence and reinvesting public resources in the creation and maintenance of accessible public toilets, alongside other public health and social-welfare measures. To address some of our reservations, such reform should be accompanied by amendments to the public nuisance definition of the SOA, as above.

Impact of decriminalising public offences on regional and remote communities

Our regional LAQ lawyers, particularly those practising in Central, Far North Queensland and Mt Isa, offer a valuable perspective on the operation of these laws.

Anecdotally, offences of public intoxication are problematic for First Nations communities, given the trifecta phenomenon,[28] over-policing and the limitations on mental health and other services.

LAQ notes that individuals charged with these offences can accumulate SPER debts that run into tens of thousands of dollars, of which they have little hope of ever being able to repay. While accumulation of SPER debts affects people throughout Queensland, the problem may be most acute in regional communities.

A common situation to arise in regional communities is when an individual who has an alcohol/drug related health issue is repeatedly charged and arrested by police for public intoxication and associated public offences; quite often the individual is a recipient of a Centrelink benefit and becomes stuck in a cycle of accumulating fines and increasing SPER debt. An individual who

[28] That is, the police escalation of a situation involving only a minor offence, which invites/creates an aggressive response from a person who then ends up being charged with three particular offences, usually offensive language (the initial offence), which leads to resist arrest and finally, assault police. See parts 4.5, 6.4, 7.2 and 7.3: https://humanrights.gov.au/our-work/indigenous-deaths-custody-report-summary

becomes caught up in a cycle of generating debt due to illness loses any capacity or hope of accumulating wealth, or even money for the basic necessities of life. There are flow-on effects for individuals receiving Centrelink benefits who have trouble with paying their mounting SPER debts. One of the flow-on effects is the possibility of suspension of a driver's licence.[29] If an individual's drivers' licence is suspended by SPER, SPER requires the total amount of the debt to be paid before they will lift their suspension.[30]

In regional areas where no public transport is available, losing a driver's licence will significantly affect a person's ability to stay employed and/or become employed, and similarly will make it harder for persons to access health or other social welfare services. It also makes it harder for people to get to Court, which can lead to warrants being issued for failure to appear, and further incarceration.

In the event that an individual living in a regional area wishes to pay their SPER debt by way of Fine Order Option; hardship partners are required to facilitate community service within the community.[31]/[32] Hardship partners in some regional areas either do not exist; do not have capacity to supervise individuals wishing to perform community service or have reduced capacity because of COVID. This means a Fine Order Option is effectively not an option at present.

Generally in practice, our lawyers observe that police will arrest for public intoxication and take the person to the watchhouse. They are held there until they sober up and are released on a nominal bail, such as 10 cents. These charges are often dealt before the court on an ex-parte basis under the *Justices Act 1886*. They are therefore not subject to the scrutiny of the duty lawyers who would generally act for those charged and remove the ability to case conference and engage in negotiations that may see the defendant discharged rather than punished. Occasionally, a prosecutor might request a warrant be issued for a failure to appear in answer to the bail, given a person's criminal history. This in turn leads to a failure to appear charge and more time in a watchhouse.

Areas around the CBD, or near rivers and the ocean, were once regularly frequented by First Nations people and were a space to gather, eat and drink. Police responses to public gatherings and pressure from local Councils to move people on, and pour out powers[33] can contribute to distrust in the indigenous community. Arrests often occur in the context of objection being raised to police use of these powers. Areas which attract tourists in particular, are often over-policed in an effort to respond to Council pressure.

LAQ does not consider that criminalisation is a deterrent to those whose social connection and belonging is supported by being part of a group who frequently congregates together in a public space.

---

29 Driver licence suspension by SPER | Your rights, crime and the law | Queensland Government (www.qld.gov.au)
30 Driver licence suspension by SPER | Your rights, crime and the law | Queensland Government (www.qld.gov.au).
31 Community service - an overview | Your rights, crime and the law | Queensland Government (www.qld.gov.au)..
32 Driver licence supspension by SPER | Your rights, crime and the law | Queensland Government (www.qld.gov.au).
33 Powers under s.53 of the *Police Powers and Responsibilities Act 2000* to seize alcohol from a person in certain circumstances and dispose of it, in our experience by pouring it out in front of the person.

Health and social-welfare based responses that are necessary to support legislative amendments

In Victoria, the tragic death in custody of Tanya Day, a Yorta Yorta woman, in December 2017 reignited calls for the decriminalisation of public drunkenness from Aboriginal communities and the broader public.

The Victorian Government acknowledged that repealing the *Summary Offences Act 1966* (Vic), whilst a crucial first step, was not enough on its own.

In August 2019, an Expert Reference Group (ERG) was appointed to advise the Victorian Government on the decriminalisation of public drunkenness. The comprehensive report, 'Seeing the Clear Light of Day" is referenced throughout this submission.[34]

The Expert Reference Group Report (ERGR) addressed similar terms of reference to this Inquiry.

The overall emphasis of the ERGR was to provide an alternative response to police intervention to public intoxication by introducing a Proposed Health Model. LAQ considers there is merit in a similar model being introduced in Queensland with tailored adjustments. The ERG Proposed Health Model sets out five key stages:[35]

1. First response
2. Transportation to a place of safety
3. Meeting the immediate health needs of an intoxicated person
4. Providing health and social care pathways for high needs individuals
5. Broader prevention strategies

The terms of reference of this inquiry refer to culturally safe and appropriate responses that are informed by First Nations people. Community consultation between Community Justice Groups, Local Government, health and outreach services is essential to determine capacity and capabilities within individual communities.

LAQ is unable to provide further general comments in this regard except to note that an assessment of individual communities, their needs and capacity will be required in order to implement a Proposed Health Model that will ensure organisations are adequately resourced and able to provide culturally safe and appropriate services.

---

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

[35] Ibid, pages 7 – 13.

Compatibility with the *Human Rights Act 2019*

Application of *Human Rights Act* 2019 to the Queensland Police Service

The *Human Rights Act* 2019 (*HRA*) applies to all decisions being made by members of the Queensland Police Service, as a public entity for the purposes of the Act. The Act requires that police exercise their powers in a way that is proportionate to the situation and least restrictive to achieve their objective.

Human rights enlivened by the current laws

In Queensland, it is arguable that the criminalisation of begging and to a more limited degree, public intoxication offends some of the human rights protected by the HRA. The identified sections are set out below:

Section 15: Recognition and equality before the law

Section 15 is founded on the principal of equality, and that differences between people should not lead to disadvantage. It is arguable that laws against public begging disproportionately target members of the community who are experiencing homelessness, poverty and social exclusion.

From our experiences in representing clients in a variety of jurisdictions across Queensland, we know that those people experiencing homelessness are subject to multiple barriers to access justice. They have limited knowledge of the resources available, and limited means to obtain assistance and pursue their legal rights. By failing to address the underlying issues through a social and welfare-based response, this cohort is further disadvantaged and exposed to hardship by the imposition of criminal sanctions.

Section 16: Right to life

Section 16 states that every person has the right to life and has the right not to be arbitrarily deprived of life.

Internationally, the right to life has been interpreted broadly and imposes positive obligations on states to ensure its protection.[36] It has been held that the right includes the right to live with dignity, and the acquisition of the necessities of life, including food, clothing and shelter.[37]

Persons committing offences of begging and public intoxication may be fleeing domestic violence, family violence or suffer from mental health and cognitive disabilities. They may engage in begging behaviour as a means to provide for the basic necessities of life. The criminalisation of this behaviour punishes the person when they often have no other choices available to them and denies them the opportunity to seek assistance from the community in which they live.

---

[36] Pilch Homeless Persons' Legal Clinic, *We want change! Calling for the abolition of the criminal offence of begging* (November 2010) p11; Gosselin v Quebec (Attorney-General) 2002 SCC 84.

[37] Pilch Homeless Persons' Legal Clinic, *We want change! Calling for the abolition of the criminal offence of begging* (November 2010) p11; Francis Coralie Mullin v Administrator; Union Territory of Delhi & Ors (1981) 2 SCR 516, 524.

Section 17: The protection from torture and cruel, inhuman or degrading treatment

Police exercising "move-on" powers. searches, and pouring out alcohol, in public spaces, in front of the community, is humiliating and belittling.

Section 21: Freedom of expression:

The protection of freedom of expression encompasses the ability to impart ideas and information of all kinds by various modes of communication. The right has been broadly interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others and is not confined to political, cultural or artistic expression.[38]

International case law from Canada has recognised that begging is a "tool used by those suffering poverty to engage in dialogue with the rest of society about their plight".[39] It has been seen as a form of expression for the purposes of the *Canadian Charter of Rights and Freedoms.*

It is arguable that a blanket ban on begging is not a reasonable, proportionate or justifiable limitation on a person's human right to freedom of expression. It can be said that people who beg, are doing so to convey that they are destitute and require assistance. The criminalisation of this behaviour may constitute a breach of the right to freedom of expression as it denies a person the right to communicate their social needs. It punishes those in dire circumstances and leads them to further disadvantage by the imposition of criminal sanctions.

Section 22: Peaceful assembly and freedom of association

People have the right of freedom of association. Aboriginal and Torres
Strait Islander peoples have distinct cultural rights to meet publicly with their community and to maintain a relationship with the coastal seas, waters and territories with which they have a connection.

Section 25: Right to privacy and reputation

This section recognises that all people have the right not to have their privacy, family or home unlawfully or arbitrarily interfered with. They also have the right to enjoy their human rights without discrimination.

The offence of begging disproportionately targets those experiencing homelessness and those with disabilities, for whom begging is an attempt to provide for their basic needs In ***Lăcătuş v. Switzerland***,[40] the European Court on Human Rights, (ECtHR) held that an outright or blanket ban on begging in public places was a violation of the right to respect for private and family life, in article 8 of the European Convention on Human Rights.[41]

---

38 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

39 Justice Connect, *Submission to the United Nations on the decriminalisation of homelessness* (November 2021) p 18; *Ramsden v Peterborough (City)*, [1993] SCR 1084.

40 App. No. 14065/15 (Jan. 19, 2021), https://hudoc.echr.coe.int/eng?i=001-207377.

41 Begging the Question: *Lăcătuş v. Switzerland* and the European Court of Human Rights Recognition of begging as a human rights issue, Daniel Rietiker & Mary Levine, Harvard International Law Journal, https://harvardilj.org/2022/04/begging-the-question-la%CC%86ca%CC%86tus%CC%A7-v-switzerland-and-the-european-court-of-human-rights-recognition-of-begging-as-a-human-rights-issue/.

The laws in relation to public intoxication also disproportionately impact those experiencing homelessness as they live their lives in public spaces. Behaviour such as general rowdiness when drinking alcohol, is not a criminal offence in the privacy of one's home, but is criminalised for those subject to homelessness. The criminalisation of this behaviour has the potential to result in pecuniary penalties which further entrench this cohort in their disadvantaged circumstances.

Section 29: The right to liberty and security of person

This removes any justification for arbitrary arrest and detention.

Section 37: The right to access health services

This includes access to emergency medical care.

Reinvesting resources in public health and social-welfare responses will better ensure the ability of First Nations people, people experiencing homelessness, mental illness and/or people with disabilities to access health services without discrimination.

Human Rights Act 2019 **and a health and social welfare - based approach**

A health and social welfare-based approach has the potential to provide a response which promotes positive outcomes, both for the individual and community. In doing so, this model may provide a framework which supports and promotes the human rights of the individual, rather than impinging on those rights as outlined above.

A health and social welfare-based response requires the coordination of numerous stakeholders. The policies and protocols developed by those implementing the response should give proper consideration to the protections created by the Act and give effect to the least restrictive means of achieving their intended outcome.

Any approach which involves transportation, medical or therapeutic intervention should be based upon consent wherever possible so as to not impinge upon an individual's protection under the Act from medical treatment without consent, freedom of movement, right to privacy and liberty.

A health and social welfare-based approach should recognise the importance of specialist cultural and First Nations service providers so as to support and advance the rights of Aboriginal and Torres Strait Islander peoples.

LAQ does not consider that decriminalisation of these public offences would unjustifiably limit other human rights (for example, by reducing the ability of people to enjoy or feel safe in public places), because there is little evidence to suggest that decriminalisation will result in a marked increase in undesirable public behaviour. This risk will be appropriately addressed if the resources currently allocated to policing of public offences are reinvested in public health and social-welfare responses.

The costs and benefits of responses in other Australian jurisdictions

Victoria

Public Intoxication

The ERG's report, "*Seeing the Clear Light of Day"*, found that the current response to public drunkenness was "unsafe, unnecessary and inconsistent with current community standards". The ERG recommended decriminalisation of the public drunkenness offences in the *Summary Offences Act 1966 (*Vic) along with a range of other measures and considerations for the development and implementation of a holistic public health model. It also recommended a 24-month implementation period to enable sufficient time to develop, trial and implement the holistic health model.[42]

In terms of where intoxicated people will be taken under the new health model, the ERG's report spoke in broad terms about transporting these people to a private residence, an Emergency Department or an urgent care centre; a hospital facility if they require urgent medical care, or a sobering up service if they require a short period of stay and cannot be cared for elsewhere.

On 2 March 2021, the Bill to repeal public drunkenness as a crime was given Royal Assent, to take effect in November 2022, substantially in line with the ERG's recommended 24-month implementation period. The *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020* reflected the fundamental premise that public drunkenness should be treated as a health issue, not a law enforcement issue.

When it takes effect, it will repeal public drunkenness offences in the *Summary Offences Act 1966* (Vic) and make consequential amendments to the *Bail Act 1977* (Vic) and the *Liquor Control Reform Act 1998* (Vic).

Analysis

Transitioning to a health-based response as proposed by the Victorian Government will require significant investment in health-based services including outreach services, sobering up centres and adequate transport capacity.

An assessment of the success of the proposed Victorian health model will in due course, assist in informing the Queensland approach.

The questions that have been raised before its implementation include:[43]

---

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

[43] Brendan Roberts, "Policy Hangover: The Missing Details in Victoria's Public Drunkenness Plan", April 2021 Journal: https://tpav.org.au/news/journals/2021-journals/april-2021-journal/policy-hangover--the-missing-details-in-victoria-s-public-drunkenness-plan.

- What will be done in circumstances where a person simply fails or refuses to consent to go into a service?
- Who is going to transport the intoxicated people?
- What happens when an intoxicated person becomes a management issue at the place they are taken to?
- Will the history or safety information held about an individual be accessible to other agencies which are called to assist?

Cultural considerations must be at the forefront of any new health response in Queensland, particularly in regional areas, and must be central to the reform process.

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

If a public health response is adopted, it is recommended that the role of the Queensland Police Service is to be re-defined in the context of the new amendments. Police involvement in terms of the arrest of an individual, is to be a last resort. It is recommended that the threshold for police involvement be high, for example, where there is a serious and imminent risk of significant harm to the intoxicated individual or other individuals.

If new powers to respond are implemented, these must be followed by safeguards and accountability mechanisms, to ensure appropriate exercise of these powers. These could include, for example:[44]

- Police must be bound by comprehensive legislation, regulations, guidelines, policies and procedures to ensure that police discretion is applied appropriately and reasonably to all members of the community.
- If police are given a power to detain individuals while they identify a safe place for the person to sober up (in circumstances where there is a serious and imminent risk of significant harm), any new detention powers must be limited to a maximum duration of 60 minutes.
- Police must be provided with training (including ongoing refresher training) on cultural awareness, systemic racism, unconscious bias, culturally appropriate service delivery, mental health and disability, de-escalation, and conflict resolution.
- Any charges that arise from a public intoxication incident, including any charges relating to assault police, must be authorised by someone senior, for example an Inspector.
- Police must be required to keep detailed and publicly available disaggregated data on:
    - All public intoxication incidents involving police.
    - Any enquiries made by police to locate a safe place for the intoxicated person including any reasons for concluding that the location is not a safe place, such as risk of family violence.
    - Use of “move on” powers to direct an intoxicated person to leave a public place.
    - Any arrest that is made in relation to a person who is intoxicated in public, including for assault police or other minor offences.

[44] Victorian Aboriginal Legal Service- Community Factsheet, Decriminalising Public Intoxication.

Like that recommended by the ERG,[45] the Queensland Government should empower an oversight body to adjudicate complaints and conduct investigations in relation to the implementation of any public intoxication reforms.

New South Wales

Public Intoxication

In New South Wales, the offence of 'public drunkenness' was abolished in 1979, however police continued to retain a power of 'protective custody' against intoxicated individuals under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)(*LEPRA*).[46]

The *LEPRA* contains 'move on' directions for intoxicated persons in public places.[47] Move on directions apply to persons under the age of 18 years. In addition, it remains an offence to be intoxicated and disorderly in a public place if police have issued a move on direction and the person has failed to move on.[48]

In 2013, New South Wales also trialed the operation of 3 sobering-up centres, a mandatory one in central Sydney and two voluntary centres in Randwick and Wollongong, with the aims of promoting the safety of public places and to reduce alcohol-related violence.

Despite the accredited centres being optional, the *Intoxicated Persons (Sobering Up Centres Trial) Act 2013* (NSW) provided police with powers to detain and transport a person to a centre if certain criteria were met.

Police were given powers to detain people who were behaving in a disorderly manner or in a manner likely to cause injury to themselves or another person/damage to property, or if the person was in need of physical protection due to their intoxicated.[49]

Despite the trial period being 12 months, the accredited centres were terminated early, in June 2014. The Minister for Family Community Services cited low usage rates and the Government's view that the money involved would be "better spent where it's needed on other programs. [50] At the same time, the operation of the police-run mandatory centre was extended for a further two years until 1 July 2016, and the catchment was increased.[51] The Act was repealed in July 2016.

Detention in the mandatory sobering up centre attracted a fee initially for all detainees. This was later confined to only those who were detained on a non-compliance or persistence basis.

Police powers to detain intoxicated persons under s206 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) were scrutinised following a coronial inquiry into the death of

---

45 Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness Report to the Victorian Attorney-General August 2020, Recommendation 56.
46 See section 206 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).
47 Ibid, section 198.
48 Section 9, *Summary Offences Act 1988* (NSW).
49 s5(1) the *Intoxicated Persons (Sobering Up Centres Trial) Act 2013* (NSW).
50 McNamara, L. J. and Quilter, J. (2015). Public intoxication in NSW: the contours of criminalisation. The Sydney Law Review, 37 (1), 32.
51 Intoxicated Persons (Sobering Up Centres Trial) Amendment (Extension) Regulation 2014.

Rebecca Maher in custody at Maitland Police Station on 19 July, 2016. Ms Maher was taken into custody when police observed that she appeared intoxicated in public, and died at the station five hours later. Ms Maher has been the only Aboriginal or Torres Strait Islander person to die in a NSW police cell since the state introduced the mandatory custody notification services (CNS) in 2000. Under the terms of the CNS, police must notify the Aboriginal Legal Service when an Aboriginal or Torres Strait Islander person is in custody for an offence, but not for a person detained for intoxication.[52] Following the coronial inquest, the criteria changed for the CNS. Police are now required to notify CNS when an Indigenous person is detained for intoxication, not only if they are taken into custody on suspicion of an offence.[53]

Analysis

Research describes the NSW experience of sobering up centres, as being "short-lived" and notes the "revival of a 'welfare' approach to public intoxication may have been illusory". The research also noted that the imposition of the user-pays system and the fact it was run by police and detainees were held in cells, suggests that criminalisation remains firmly embedded as a dominant response to the problem of public intoxication in NSW.[54]

LAQ considers that police powers under the NSW regime are very broad, and would not transfer well to the Queensland experience, in particular to our regional and remote communities. In these communities, most of those who are likely to receive a 'move on direction' would be intoxicated, homeless or itinerant persons. It is noted that being found intoxicated in the same or another public place within a six-hour period would almost be guaranteed.

It is LAQ's opinion that if adopted in Queensland, the threshold for police involvement would need to be high. It should involve for example, a test being met of serious and imminent risk of significant harm to the intoxicated individual or other individual.

Northern Territory

The offence of public intoxication was repealed by the *Police and Police Offences Ordinance 1974* (No. 86 of 1974), commencing 1 January 1975, some 47 years ago. The current iteration of the power to detain an intoxicated person is found in the *Police Administration Act 1978* ("Northern Territory Act"). The Act provides for protective detention in circumstances where because of the person's intoxication, the person:

(i) is unable to adequately care for himself or herself and it is not practicable at that time for the person to be cared for by someone else; or
(ii) may cause harm to himself or herself or someone else; or
(iii) may intimidate, alarm or cause substantial annoyance to people; or
(iv) is likely to commit an offence.[55]

---

52 Coroners Court of New South Wales "Inquest into the death of Rebecca Maher" File # 2016/218940 paragraph 190.
53 Law Enforcement (Powers and Responsibilities) Amendment (Custody Notification Service) Regulation 2019.
54 McNamara, L. J. and Quilter, J. (2015). Public intoxication in NSW: the contours of criminalisation. The Sydney Law Review, 37 (1), 33.
55 *Police Administration Act 1978*, s 128.

The concepts that underpin the power to detain a person, such as “adequately care”, “cause harm”, “alarm” and “substantial annoyance” are not defined in the legislation.

There is no reference to forms of detention other than police custody. It follows there is no obligation to consider other forms of detention other than police custody.

Analysis

A review of the Northern Territories’ alcohol policies from 1979 to 2021 concluded:

> *“Prohibiting public drinking results in displacement, demonstrates no evidence of reducing alcohol-related harm and negatively impacts marginalised groups by perpetuating harmful health and social inequities, including systemic racism. Aboriginal people were disproportionately represented in AMT, which showed no evidence of ongoing effectiveness”*[56]

Statistics are published by Northern Territory Police regarding the use of protective custody. The statistics do not record the proportion of persons detained in police custody.

NT People Taken into Police Protective Custody[57]

08/09	35,397	**14/15**	11,347
09/10	35,872	**15/16**	9,449
10/11	20,354	**16/17**	9,876
11/12	19,973	**17/18**	11,274
12/13	13,991	**18/19**	8,246
13/14	13,248	**19/20**	6,687

[56] Sarah Clifford and others, A historical overview of legislated alcohol policy in the Northern Territory of Australia: 1979–2021, BMC Public Health, p15 citing Pennay A, Room R. Prohibiting public drinking in urban public spaces: a review of the evidence. Drugs: education, prevention and policy. 2012;19(2): 91–101.

[57] Northern Territory Police, Fire & Emergency Services, Annual Report, 2019-20, p181.

The very significant drop in numbers in the 2010, 2011 coincides with a raft of reforms[58] introduced in 2011 which included a clear definition for intoxication, along with other measures including a banned drinkers register and specialist court. Both the banned drinkers register and the specialist court were repealed by the subsequent government but it is noted that a second iteration of the banned drinker register has since been reintroduced by yet another government.

In 2017, The Human Rights Law Centre argued for reforms to the legislation to reduce the continued use of police custody, including raising the threshold for the exercise of the power to detain and mandating consideration of alternatives to police custody in line with legislation in other states.[59] The submission cited continuing criticism by the Norther Territory Coroner of the use of police custody as a response to public drunkenness as recently as 2012 when the Coroner stated:

> *"The fact that so many detainees suffer from a combination of alcohol toxicity and chronic ill health means that police must care for large numbers of very drunk, very sick people, in Watch Houses that are not designed for that purpose"*[60]

The submission also cited the pertinent observations of Wayne Harris, a retired Acting Commander of Northern Territory Police who observed:

> *"Why is it that an affluent, modern, first world economy such as Australia accepts as a matter of course that every night a significant cross section of the most disadvantaged social group in the community are held, often against their will in Police lockups. This reality cannot by any definition be considered to be morally just, the austere, bleak and depressingly punitive environment associated with these facilities is not the type of place any vulnerable person should be placed in order to provide protection."*[61]

Price Waterhouse Coopers were retained to review the operation of the Northern Territory's sobering up centres in 2018.[62] The focus of the review was the operation of the centres as opposed to the legislative framework for referrals. For the period June 2017 to May 2018, there were 10,080 admissions across the Territory's 5 centres.[63] 58% of those referrals, around 5,846, were made by police and 27%, around 2,721, were referred by community night patrols.[64]

The report notes (emphasis added), "Through consultations held in all SUS[65] locations it was widely considered that the SUS plays a key role in meeting the immediate safety and care needs of people who regularly abuse alcohol in a non-punitive environment while also offering a mechanism for

---

58 *Alcohol reform (Prevention of Alcohol-Related Crime and Substance Misuse) Act 2011*, *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (No 19 of 2011).

59 Human Rights Law Centre, Putting an end to the over-criminalisation of public drinking in the Northern Territory, Northern Territory Alcohol Policies and Legislation Review. (21 July 2017).

60 Inquest into the death of Kwementyaye Briscoe [2012] NTMC 032. See also Inquest into the death of Ms Dandy [2003] NTMC 012, [57] and Inquest into the death of Mr Corbett [2003] NTMC 044, [77].

61 Wayne Harris, 'Alternatives to Incarcerating Intoxicated Persons in Police Watch Houses' (The Churchill Memorial Trust of Australia, 2013), 6. Harris' report offers a snapshot of alternative programs, processes and models in the United States and Canada to care for intoxicated persons who have not committed a crime.

62 PwC's Indigenous Consulting, Department of Health (NT), Review of the Northern Territory Sobering Up Shelters.

63 Ibid, p3.

64 Ibid, p2.

65 Sobering up shelters

referral to other services to enable behavioural change. All stakeholders, specifically Police and Night Patrol services reported the value of this approach as an alternative to Police protective custody or hospital (unless required for health reasons) and that the SUS was also a more cost effective use of resources."[66]

The review proposed sobering up services could be improved by implementing a comprehensive model for services, a requirement for quality assurance accreditation, integration with other health services, and the use of the assessment Alcohol Use Disorders Identification Test (AUDIT) tool developed by the World Health Organisation which assist determine the most appropriate referral for treatment.

The report acknowledges the costs associated with filling service gaps to create an integrated service system but notes, "Indicative figures suggest that alcohol related hospital admissions are costing, on average up to $806, per bed per night. Predicative modelling suggests that there could be a reduction of 4 hospital/A&E admissions per night across the NT if intoxicated people were placed in the SUS, resulting in an indicative saving of around $700,000 per annum."[67]

Western Australia

Western Australia decriminalised public intoxication in response to the recommendations of both the State's own Interim Inquiry in Aboriginal Deaths in Custody and the Royal Commission into Aboriginal Deaths in Custody Interim Report. The reform was also informed by the Law Reform Commission of Western Australia, Police Act offences: Discussion paper, Project No. 85, Perth, WA, Law Reform Commission of Western Australia, 1989.

The *Acts Amendment (Detention of Drunken Persons) Act 1989* came into force on 27 April 1990. It repealed the offence of being drunk in a public place or whilst trespassing. It created a regime of protective detention of intoxicated persons.

Those provisions were repealed and a separate framework created by the *Protective Custody Act 2000* which came into effect in January 2001.

The basis for the power to "apprehend" a person is a reasonable suspicion, "a person who is in a public place or who is trespassing on private property —

(a) is intoxicated; and

(b) needs to be apprehended —

(i) to protect the health or safety of the person or any other person; or

(ii) to prevent the person causing serious damage to property."[68]

---

66 Ibid, p5.
67 Ibid, p10.
68 *Public Intoxication Act 2000*, s6.

Detention "must not be in a police station or lock-up unless" there are "exceptional circumstances that justify" that form of detention, or it is impractical to release a person to an adult or appropriate facility.

The requirement not to use a police station or lock up is expressed in stronger terms for a child in that there must be exceptional circumstances why a form or release cannot be used.[69]

Analysis

Crime statistics published by Western Australia Police do not include data for the use of protective custody.

In 2007, The Western Australian Office of Drug and Alcohol concluded, sobering up services were, "a very cost effective service as they avoid costs that would otherwise be incurred if people had been detained or admitted to a hospital".[70]

A sobering up centre began operation in Perth in May 1990 shortly after the abolition of public drunkenness as an offence and following consultation. Figures for the first 10 months of operation indicated 831 admissions, comparable to the 1249 arrests for the last full year preceding decriminalisation.[71]

Some have however expressed concerns that measures including the use of move on notices, infringements and banning notices have led to an effective recriminalisation of public drunkenness in Western Australia.[72]

South Australia

The *Public Intoxication Act 1984*, commenced on 3 September 1984, and created a regime of protective custody for persons found intoxicated in public. The framework, (which has remained largely unchanged since first introduced), provides the grounds for the power to apprehend as:

"a belief a person in public place "is under the influence of a drug and by reason of that fact, the person is unable to take proper care of himself or herself".[73]

There is no obligation to prefer the alternatives to detention at a police station despite the stated objects of the Act.

---

69 Ibid, s11(5).
70 Western Australia Drug and Alcohol Office, 'Utilisation of Sobering up Centres 1990-2005' Statistical Bulletin No. 36, June 2007 page A-12.
71 R. Milford, The Decriminalisation of Public Drunkenness in Western Australia, [1991] Aboriginal Law Review 42.
72 G. Swenson, The Management of Public Drunkenness in Western Australia: Policing the Unpoliceable, Limina, 2017, p24; B. Fischer and B. Poland, 'Exclusion, "risk", and social control - reflection on community policing and public health', Geoforum, vol. 29(2), 1998; A. Pennay, E. Manton, and M. Savic, 'Geographies of exclusion: street drinking, gentrification and contests over public space', International Journal of Drug Policy, vol. 25.
73 Ibid, s7.

Analysis

The Public Intoxication Act was subject to review in 2012.[74] The review identified the following issues:

1. As at 2012 there were no declared operating sobering up centres or authorised officers such that the burden of dealing with public intoxication remained with police.[75] Sobering-up centres were operating informally.[76]

2. Only limited statistics were kept, but the most comprehensive study dating back to 1986 found detentions under the Act were 50% higher than for the repealed offence and only 62 of 2,831 people detained over 6 months in 1985 were diverted to a centre or hospital, with 94% spending their entire detention in a police cell.[77]

3. Recent data from the financial years 2009/10, 2010/11, 2011/12 showed the power to detain was used 2,178, 3,007, 2,908 times respectively but that only around 20% were detained in police custody. Around 50% were released to friends or relatives while around 12% were referred to a sobering-up service. Indigenous over-representation remained an issue.[78]

The review noted that inquiries and academic research supported a conclusion, "It has also been said that civilian workers can handle drunks better than police, though there will always be exceptions in the case of potentially violent or troublesome persons" and that South Australia Police supported a reduced role under the Act noting it was a "waste of SAPOOL resources".[79]

The review concludes:

> "*Decriminalisation is the key philosophy associated with the change to the public intoxication laws and so the PIA provides for its 'civilianised' operation through the capacity to appoint authorised officers and to declare sobering-up centres. Yet, until this happens and services are expanded (particularly in areas where they are needed, such as outer metropolitan Adelaide) the responsibilities of administering the Act risk defaulting back to the police, with cells being the only legal places of detention. As has been said elsewhere in this Report this is undesirable. Other bodies have also recognised this fact: the Royal Commission into Aboriginal deaths in Custody recommended that 'legislation which decriminalised drunkenness should place a statutory duty on police to utilise alternatives to detention of apprehended persons in police cells.' Governments have accepted this too: Jillian Brewer reported that in May 1988 the Australian Police Ministers'*

---

74 CS. Reynolds, Review of South Australia's Public Intoxication Act 1984, December 2012.
75 Ibid, 1.1.
76 Ibid, 5.2.
77 Ibid,1,2.
78 Ibid 1.2.
79 Ibid, 5.1. Goode M 'Public Intoxication Laws: Policy, Impolicy and the South Australian Experience' (1980-1981) 7 Adel. L. Rev. 266; Aaronson D, Dienes C and Musheno M Improving Police Discretion Rationality In Handling Public Inebriates (Part 1), (1977) 29 Admin. L.R. 447 at 450.

Council recommended that police 'not hold in custody Aboriginal people found drunk in public except where the person behaves violently or continues to commit an offence."[80]

The objects expressed in the Act were inserted as a result of this Review.

Tasmania

It is an offence, maximum penalty 3 penalty units or 3 months imprisonment, to be drunk in a public place if in charge of a vehicle or dangerous weapon.[81] The term "Drunk" is not defined.

The *Police Offences Act 1985* provides a regime for protective detention. The grounds for the power to take a person into custody is a belief on reasonable grounds a person in public place "is intoxicated and:

(a) is behaving in a manner likely to cause injury to himself, herself or another person, or damage to any property; or
(b) is incapable of protecting himself or herself from physical harm"[82]

The officer may:

(a) Release the person to:

(i) the care of a "responsible person" (a person the officer reasonably believe is capable of providing adequate care) provided the intoxicated person does not object; or,
(ii) to a "place of safety", being "a hospital, charitable institution or any other appropriate facility that is capable of caring for an intoxicated person and includes a place declared by the Minister".[83]

(b) Hold a person in custody if it is not possible to release them as above.[84]

Australia Capital Territory

The offence of public drunkenness was repealed in 1983.[85]

The *Intoxicated People (Care and Protection) Act 1994* provides a regime for protective detention.

The grounds for the power to take a person into custody is a belief on reasonable grounds a person in public place "is intoxicated and because of that intoxication:

(a) behaving in a disorderly way; or

---

80 Ibid, 5.2. http://www.austlii.edu.au/au/other/IndigLRes/rciadic/ 3.28, rec 81 (1991); 9 Brewer J in Biles D and McDonald D ed Deaths in custody Australia, 1980-1989 (Australian Institute of Criminology, Canberra, 1992) 23.
81 *Police Offences Act 1985*, s4.
82 Ibid, s4A(2).
83 Ibid, s4A(3)(a).
84 Ibid, s4A(3)(b).
85 Police Offences (Amendment) Ordinance 1983.

(b) behaving in a way likely to cause injury to himself, herself or another person, or damage to any property; or
(c) incapable of protecting himself or herself from physical harm.[86]

The officer may only take a person into custody, "if the officer is satisfied that there is no other reasonable alternative for the person's care and protection."[87]

Analysis

The Commonwealth Ombudsman reviewed the operation of the legislation in 1998, 2001 and in 2008.[88]

The final report was prompted by "concerns over a pattern of complaints to this office since 2003, particularly in relation to use of force and alternatives to police custody."[89]

The Ombudsman made a total of 14 recommendations designed to improve emphasis on the care and protection focus of the laws and largely directed at police conduct and policy.

Before moving to the issues identified, it is worth noting the Commonwealth Ombudsman performs an important oversight role in respect of the Australian Federal Police whereas there are increasing concerns at the diminished independent oversight of Queensland Police.[90]

Statistics suggested large numbers of persons continued to be detained at police watchhouses as follows:

2005-2006	1,420
2006-2007	1,978
2007-2008	1,325
2003	699
2006	1,636
2007	1,418[91]

86 Ibid, s4(1).
87 Ibid, s4(2).
88 Prof. John McMillan, Report by the Commonwealth and Law Enforcement Ombudsman (Report I 2008).
89 Ibid, p1.
90 The Crime and Corruption Commission refers all but 1% of complaints against police back to police to investigate according to evidence on 1 August 2022 to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence.
91 Prof. John McMillan, Report by the Commonwealth and Law Enforcement Ombudsman (Report I 2008), 2.3-2.4.

The reasons for detention cited were rarely grounded in the need to protect the community as follows:

58% Disorderly behaviour.

29% A person incapable of protecting themselves.

7% A person likely to cause themselves injury.

3% A person likely to cause harm to others.

2% A person likely to damage property.

1% No reason recorded.[92]

52% of detentions occurred between 11:00pm and 5:00am on Thursday, Friday and Saturday evening.[93]

A sobering up centre was established as a trial in 1994 but closed in 1996. At the time of the Ombudsman's report a sobering up shelter had been in operation since 2004.

The Commonwealth Ombudsman identified the following issues:

1. Police had significantly under utilised the shelter when it first commenced, there being only 3 referrals in a 14 month period. From January 2006 to March 2008 quarterly admissions fluctuated from 23 to 74 people each quarter.[94] Some police concerns reflected a misunderstanding of shelter policies whilst others worried about questions of liability.[95]

2. There was an ongoing concern (previously expressed in the 1998 and 2001 reviews) that police were enforcing the laws in a manner that did not fully reflect the aim of caring for and protecting intoxicated persons. "In particular it appeared that on occasion officers used the provisions to control anti-social behaviour".[96]

3. That the degree of intoxication required to justify detention was not sufficiently defined. Two examples of persons who were not in fact intoxicated (including a diabetic) but were detained are cited.[97]

4. The lack of a clear definition of what constituted "disorderly behaviour" and that the lack of clarity was a source of conflict between intoxicated persons and police.[98]

---

92 Ibid, 2.5 and 2.7.
93 Ibid, 2.5.
94 Ibid, 2.18 and 2.22 (Figure 7).
95 Ibid, 3.92.
96 Ibid, s3.13.
97 Ibid, 3.15 and 3.16-3.17.
98 Ibid, 3.22.

5. The risk of escalating conflict with police because of an actual or apparent failure to consider alternative to detention including identifying a responsible person. The report cites a number of real life examples.[99]

6. The need for better education of police and police recruits as to the use of the powers and alternatives to detention and teaching conflict resolution skills.[100]

The Ombudsman endorsed the following practises:

1. The use of a breathalyser by the shelter as means of educating people as to the true extent of their level of intoxication.[101]

2. The involvement of a senior officer in making or reviewing decisions to detain.[102]

Conclusion

Decriminalisation would address the long-standing issue of disproportionate policing of First Nations people, people experiencing homelessness, and those with mental health conditions and disabilities.

LAQ considers that a public health model as proposed in Victoria could be introduced in Queensland, with appropriate adaptations for our state. LAQ supports the creation of an Expert Reference Group to advise on the development of an alternate health and social based response. This group should include representatives reflecting the diversity of our Aboriginal and Torres Strait Islanders peoples, disability advocates, and mental health and social welfare experts.

It is recommended that a Cultural Safety Framework be developed to identify key considerations relating to cultural safety and competence across both the health and justice systems, including health services, public hospitals, emergency departments, justice system and the community.

Design of a public health response for First Nations peoples should be guided by the following principles of self-determination and engagement and collaboration with communities, service users and service providers.

Consultation with local governments and stakeholders is also crucial to ensure appropriate localised responses and to support individual communities to follow the health-based model.

It is noted that decriminalisation of these offences will never entirely remove the possibility of police invocation of the criminal justice system. Police could charge more serious offence in the absence of lesser alternatives. To achieve its intention, decriminalisation would rely upon the appropriate exercise of discretion by police officers and prosecuting authorities.

---

[99] Ibid, 3.22 – 3.32.
[100] Ibid, 3.50-3.51.
[101] Ibid, 3.18.
[102] Ibid, 3.32.

It is submitted that the protective custody regimes of other jurisdictions do not appear to provide a comprehensive response to the issue of public intoxication and other offences of public disorder. The risks of our First Nations people dying in custody remains.

LAQ notes the Victorian ERG's criticism of other jurisdictions who have "largely failed to address the risk of death in police custody", as there "has been [a] failure to provide an effective health-based service system response that makes places of safety available as an alternative to police cells"[103].

A holistic, health-based and human-rights informed approach is recommended for Queensland, with accountability and review mechanisms built into reforms. It is recommended that an oversight body be created to adjudicate complaints and conduct investigations in relation to the implementation of these reforms.

Decriminalisation will be a positive step in acknowledging Queensland's commitment to improved outcomes for the vulnerable in our communities, in particular our First Nations people.

Legal Aid Queensland would welcome the opportunity to participate in further consultation in relation to future amendments.

[103] Expert Reference Group on Decriminalising Public Drunkenness (2020) p. 33.

Annexure 1:

Queensland Police Service Operational Procedures Manual

As to intoxication, the Queensland Police Service Operational Procedures Manual provides the following:

- OPM 13.7.9
  - Officers should use their discretion when considering what action is to be taken against a person who is found intoxicated in a public place.
  - Should a person be located in need of assistance, then a Police Referral to the appropriate agency should first be considered (see s. 6.3.14: "Police referrals" of this Manual).
  - Officers should also be mindful that a number of medical conditions may produce signs and symptoms similar to intoxication (see Appendix 16.10: "Drug and alcohol intoxication, overdose and withdrawal" of this Manual).
  - Officers should not arrest persons for being intoxicated in a public place, unless they consider that it is necessary to arrest the person to preserve the safety or welfare of any person, including the person arrested (see s. 365(g): "Arrest without warrant" of the PPRA).
  - Officers who arrest a person for being intoxicated in a public place are to comply with the provisions of s. 16.6.3: "Intoxication" of this Manual.

- OPM 16.6.3
  - Intoxication In accordance with s. 378: "Additional case when arrest for being intoxicated in a public place may be discontinued" of the PPRA, officers have the option of transporting a person arrested for being intoxicated in a public place to a place of safety, other than a watchhouse, discontinuing the arrest and releasing the person at that place.
  - In addition, s. 394: 'Duty of police officer receiving custody of person arrested for offence' of the PPRA authorises a watchhouse manager or the officer in charge of a police station or establishment who has custody of the arrested person, to decide whether to discontinue the arrest under s. 378 of the Act
  - However, these provisions do not apply in cases where the officer is satisfied a person at the 'place of safety' is unable to provide care for the person, or the person's behaviour may pose a risk of harm to other persons at the place of safety (see s. 378(3) of the PPRA).
  - When a person is arrested for being intoxicated in a public place and it is more appropriate for the person to be taken to a place of safety, other than a watchhouse, an officer at the earliest reasonable opportunity is to take the person to, and release the person, at a place of safety.
  - A "place of safety" is a place, other than a watchhouse, where the police officer considers the affected person can recover safely from the effects of being intoxicated. Examples of a "place of safety" include: (i) a hospital for a person who needs medical attention; (ii) a diversionary centre; (iii) a vehicle (not driven by an officer) used to transport persons to a place of safety; and (iv) the person's home, or the home of a relative or friend unless there is a risk of domestic violence or associated domestic violence happening at the

place or the person is prevented by a domestic violence order from entering or remaining at the place.

- Prior to releasing an arrested person at a place of safety, the officer is to ensure the person apparently in possession or in charge of the place of safety signs a Form 44: 'Place of safety undertaking (Intoxication Diversion)' to provide care for the person (available on QPRIME).
- Anything taken from the arrested person is to be given:
  (i) if the place of safety is the person's home, to a person at the home who is an adult member of the person's family;
  (ii) if the place of safety is the home of a friend or relative, to the friend or relative, for safe keeping while the person is at the place; or
  (iii) otherwise, to the person apparently in possession or in charge of the place of safety, for safe keeping while the person is at the place.

- PROCEDURE

The police officer who takes and releases the arrested person at a place of safety is to:
(i) complete the QPRIME custody entry as appropriate;
(ii) pass any relevant information regarding the arrested person onto the person at the place of safety;
(iii) ensure any proceeding against the person for the offence is discontinued in QPRIME; and
(iv) complete and scan the Form 44 into the relevant QPRIME occurrence. Signed copies of the Form 44 should be filed at the arresting officer's station or establishment.

POLICY

Officers in charge of stations or establishments should maintain a list of places of safety including information such as:

(i) its capacity;
(ii) hours of operation;
(iii) the type of persons able to be taken there; and
(iv) the notification process (i.e. whether it is necessary to call prior to attending).

Annexure 2: Table of Legislative Comparison of public drunkenness/intoxication[104]

Jurisdiction	Decriminalisation	Current legislation giving police the powers to take an intoxicated person into custody
ACT	Public drunkenness was decriminalised in 1983 through amendments to the *Crimes Act 1900 (NSW)*, as it applied in the ACT.	ACT Police may take a person into custody where there is no available sobering-up shelter or reasonable alternative under the *Intoxicated People (Care and Protection) Act 1994* (ACT). The intention of the Act is to "provide a legislative basis for places where people found intoxicated in public could sober up in a safe environment". A person can be taken into police custody if a police officer believes a person is intoxicated and is: a) behaving in a disorderly way; or b) behaving in a way likely to cause injury to himself, herself or another person, or damage to any property; or c) incapable of protecting himself or herself from physical harm. Intoxicated is defined in the Act as "apparently under the influence of alcohol, another drug or substance, or a combination of alcohol, drugs or substances". A person can only be taken into custody if there is no other reasonable alternative for the person's care, and they must be released if they cease to be intoxicated, or after eight hours.

[104] https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13982-summary-offences-amendment-decriminalisation-of-public-drunkenness-bill-2020.

NSW	Public drunkenness was decriminalised in 1979 by the *Intoxicated Persons Act 1979* (NSW).	Section 206 of the *Law Enforcement (Powers and Responsivities) Act 2002* (NSW) states that a police officer may detain an intoxicated person found in a public place who is: a) behaving in a disorderly manner or in a manner likely to cause injury to the person or another person or damage to property, or in need of physical protection because the person is intoxicated. b) in need of physical protection because the person is intoxicated. Intoxicated person is defined as: "a person who appears to be seriously affected by alcohol or another drug or a combination of drugs." A drunk person must be given reasonable time to find their own way home, and will only be taken to an authorised place of detention if there is no-one to take care of the person, or the behaviour of the intoxicated person is deemed to be a threat to a responsible person. Conditions of apprehension are set out in section 207 and stipulate that the person is not under the age of 18, that a drunk person must be kept separate from others where possible, and that they be released when they cease to be intoxicated. An intoxicated person must not be placed in a cell unless absolutely necessary.
NT	Public drunkenness was decriminalised in 1974 with an amendment to the Police and Police Offences Ordinance 1924 (NT).	The Northern Territory has Protective Custody and Intoxication laws under section 128 of the Police Administration Act 1978 (NT). Police can take any person who appears to be intoxicated and cannot look after themselves into custody. Section 130 states that a person who is apprehended under section 128: a) shall not be charged with an offence; and b) shall not be questioned by a member in relation to an offence. The Act states that a person is intoxicated if:

		a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and b) it is reasonable in the circumstances to believe the impairment results from the consumption or use of alcohol or a drug. A person can only remain in custody until they are no longer intoxicated.
SA	In 2016, South Australia amended Section 7 of the *Public Intoxication Act 1984* to decriminalise public drunkenness.	The object and guiding principles of the *Public Intoxication Act* 1984 is to: a) to promote the minimisation of harm that may befall a person in a public place as a result of a person's intoxication; and b) for that purpose, to confer appropriately limited powers— (i) to remove an intoxicated person from a public place in which the person is vulnerable or may become a threat; and (ii) to take the person to a place of safety until the person is recovered In the performance of their functions under this Act, the Minister, police officers, authorised officers and other persons or bodies involved in the administration of this Act are to be guided by the following principles: a) primary concern is to be given to the health and well-being of a person apprehended under this Act; b) a person detained under this Act should, where practicable, be detained in a place other than a police station. A person can be apprehended by police if the police have reasonable grounds to believe that: a) a person who is in a public place is under the influence of a drug; and b) by reason of that fact, the person is unable to take proper care of himself or herself.

		The Act defines "drug" as including: "alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning". Once a person is apprehended, police must, as soon as possible, transport the person to a place of residence, a police station or a sobering-up centre. The Act provides that, "where practicable", a person should not be detained at a police station.
TAS	*The Police Offences Amendment (Public Drunkenness) Act 2000* (Tas) was repealed on 27 March 2004.	Under the *Police Offences Act 1935* section 4A, a person can be taken into custody and held for up to eight hours if a police officer believes that the person is intoxicated and: a) is behaving in a manner likely to cause injury to himself, herself or another person, or damage to any property; or b) is incapable of protecting himself or herself from physical harm. "Intoxicated:"is defined in the Act as: "means under the influence of alcohol, another drug or a combination of drugs." A police officer must have made "reasonable inquiries" to find a place of safety, or a responsible person, before taking a person into custody. Section 4A does not include criminal charges or fines for being drunk in a public place. A person taken into custody must be released after a period of 8 hours, or when a police officer believes it is reasonable to.
WA	Public drunkenness was decriminalised in Western Australia in 1990 with the repeal of section 53 of the *Police Act 1892* (WA).	In 2000, the *Protective Custody Act 2000* (WA) introduced a legislative framework for detaining intoxicated people. A person may be apprehended: If an authorised officer reasonably suspects that a person who is in a public place or who is trespassing on private property — a) is intoxicated; and b) needs to be apprehended — (i) to protect the health or safety of the person or any other person; or (ii) to prevent the person causing serious damage to property.

		Intoxicated is defined in the Act as: "affected by, or apparently by, an intoxicant to such an extent that there is a significant impairment of judgment or behaviour". People cannot be detained longer than necessary, and detention in a lock-up or police station is considered a last resort.
VIC	Public drunkenness was decriminalised in 2021	The *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic) decriminalises public drunkenness and the changes will come into operation by 7 November 2022, allowing time for a health-based response to public drunkenness to be designed and implemented. The new legislation includes establishing sobering-up centres in Victoria, introducing a new offence of negligent conduct for police officers who allow an intoxicated person to come to harm in custody, and putting strict limits on police discretion to ensure that no one ends up in a police cell for public drunkenness. The Victoria's 2020-21 Budget provided $16M to start the new model and promote therapeutic and safer pathways to help intoxicated people in public places. The new model is based around the following key themes: • Police cells are not safe or appropriate • Availability of places of safety • Consent and voluntariness • Culturally responsive service system •Intersection with drug intoxication • Intersection with mental health • Community and cultural change. The August 2020, Seeing the Clear Light of Day report prepared by the Expert Reference Group for the Victoria Government, made 86 recommendations and outlined a proposed model for moving towards a health-based response to public drunkenness and how a potential trial could operate.