

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

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Submission to Community Support and Services Committee

23 August 2022

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Introduction

1. Thank you for the opportunity to make submissions to this inquiry.
2. The Queensland Human Rights Commission (QHRC) is a statutory authority established under the Queensland *Anti-Discrimination Act 1991* (**AD Act**).
3. The QHRC has functions under the AD Act and the *Human Rights Act 2019* (**HR Act**) to promote an understanding and public discussion of human rights in Queensland, and to provide information and education about human rights.
4. The QHRC also deals with complaints of discrimination, vilification and other objectionable conduct under the AD Act, reprisal under the *Public Interest Disclosure Act 2009*, and human rights complaints under the HR Act.
5. This submission focusses primarily on the potential application of the HR Act and AD Act to the relevant sections of the *Summary Offences Act 2005* (Qld) (**SO Act**) addressing clauses (a), (b), (e), (f), (g), and (i) of the inquiry's terms of reference.

Recommendations

6. The QHRC suggests that a less restrictive way of achieving the purpose of the offences and police responses under review would be to:
 - Decriminalise the offences of public urination (s 7), begging (s 8) and public intoxication (s 10) under the *Summary Offences Act 2005* (Qld) (**SO**);
 - Instead resource further diversion practices particularly health and welfare policies and services;
 - Consider amendments to related offences and police powers, including in relation to public nuisance and move-on powers to ensure these do not replace current criminal justice responses with even more punitive ones (resulting in a greater limitation on human rights); and
 - Consider if further education and cultural change is required within law enforcement agencies.
7. The Commission appreciates that these outcomes may be beyond the scope of this inquiry and a suitable recommendation may therefore be for further work and research in this area. However, this work must progress as a priority given the significant impact the current criminal justice response is having on vulnerable members of the community, particularly First Nations peoples.

Human rights in Queensland

8. The substantive provisions of the HR Act commenced on 1 January 2020. The HR Act establishes and consolidates statutory protections for human rights, primarily drawn from the United Nations *International Covenant on Civil and Political Rights*, with two rights from the *International Covenant on Economic, Social and Cultural Rights*.

Compatibility with human rights

9. The terms of reference for the inquiry include changes to policy responses to decriminalise public intoxication and begging offences, and the compatibility of the proposed legislative amendments service delivery responses to public intoxication and begging with the HR Act.
10. While the terms of reference to refer to ‘the compatibility of proposed legislative amendments, and health and social welfare-based service delivery responses to public intoxication and begging’, the Commission suggests the compatibility of the current legislative framework and policing response must also be considered.
11. This legislation, and the policing response, must balance the ability of the Queensland Police Service (**QPS**) to ensure community safety and public order, with the rights of individuals and vulnerable persons who are disproportionately subject to the offences and policing response under review.
12. The HR Act provides a framework for assessing whether an act, decision or statutory provision is ‘compatible with human rights’. A decision or action is compatible with human rights if the action or decision either:
 - a. does not limit a human right, or
 - b. limits a human right only to the extent that is reasonably and demonstrably justifiable in accordance with section 13.¹
13. An act or decision (or statutory provision) will ‘limit’ a human right if it ‘places limitations or restrictions on or interferes with’ a human right.²
14. Section 13(1) of the HR Act provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Factors relevant to deciding whether a limit is reasonable and justifiable are set out in section 13(2) of the HR Act and include:

¹ *Human Rights Act 2019* s 8.

² *Innes v Electoral Commission of Queensland (No 2)* [2020] QSC 293; (2020) 5 QR 623 (Ryan J) [291]-[292]; *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 (Martin J) [130]; *PJB v Melbourne Health (Patrick’s case)* (2011) 39 VR 373 (Bell J) 384 [36].

- a. the nature of the human right;
- b. the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
- c. the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
- d. whether there are any less restrictive and reasonably available ways to achieve the purpose;
- e. the importance of the purpose of the limitation;
- f. the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
- g. the balance between the matters mentioned in paragraphs (e) and (f).³

Rights of victims

15. The rights of those potentially subject to anti-social behaviour must be considered.

16. The rights of potential victims and those who engage in this behaviour do not necessarily conflict. The Victorian Law Reform Commission's 2016 report, *The Role of Victims of Crime in the Criminal Trial Process*, noted that the state's control of all elements of the criminal process has resulted in a focus on how to address the power imbalance and 'equality of arms' with the accused. This focus has eclipsed the recognition of the victim's inherent interest in the response by the criminal justice system to the crime. The report notes that the Victorian *Charter of Rights and Responsibilities Act 2006*, substantially similar to Queensland's HR Act, reinforces several rights of the accused relevant to receiving a fair trial. While primarily discussing the right to fair trial, the report noted the interests of the accused do not prevent the interests of the victim being considered:

The legitimate rights of the accused should be protected and fulfilled. So too the rights of the community. The legitimate rights of victims, properly understood, do not undermine those of the accused or of the community. The true interrelationship of the three is complementary.⁴

17. The most effective response in addressing and preventing repeated anti-social behaviour, which may be a health and welfare response, will also reduce the likelihood of victims being subjected to such behaviour.

³ *Human Rights Act 2019* s 13(2).

⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 29.

Obligations on public entities

18. Whether the Committee recommends changes in this area, or the status quo remains, public entities such as the QPS are subject to human rights obligations in discharging their functions. Section 58(1) of the HR Act requires public entities to act and make decisions compatibly with human rights, and to give proper consideration to human rights when making decisions. These obligations are likely to inform any discretion public entities have in responding to the offences considered by this inquiry.
19. In material provided to the inquiry, QPS notes that s 58(2) of the HR Act provides that subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.
20. The QHRC suggests that an appropriate response to these issues would not likely involve the application of s 58(2). That is, that all public entities involved in responding to this form of behaviour should retain a high degree of discretion as how best to respond, giving proper consideration to human rights each time a decision is made.

Background

21. The SO Act received assent on 3 March 2005. It repealed the *Vagrants Gaming and Other Offences Act 1931*, and provides a criminal justice response to the offences of:
 - Urination in a public place; (s 7);
 - Begging in a public place; (s 8);
 - Being intoxicated in a public place (s 10).
22. For the purpose of s 10, 'intoxicated' means drunk or otherwise adversely affected by drugs or another intoxicating substance.
23. Clause (a) of the terms of reference consider changes to legislation and operational policing responses to decriminalise the public intoxication and begging offences. Clause (i) of the terms of reference consider the appropriateness of repealing the 'urinating in a public place' offence.
24. The SO Act came into effect after the 1991 *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) which recommended changes to how the criminal law, and police, approach public drunkenness:

Recommendation 79: In jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.

Recommendation 80: The abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.

Recommendation 81: That legislation decriminalising drunkenness should place a statutory duty upon police to consider and utilise alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.

Recommendation 127(i): That Police Services should move immediately in negotiation with Aboriginal Health Services and government health and medical agencies to examine the delivery of medical services to persons in police custody. Such examination should include, but not be limited to, the following: (i) intoxicated persons.

25. Queensland is the last jurisdiction to decriminalise public intoxication in line with these recommendations.
26. Academics have noted that people experiencing homelessness 'are exposed to high levels of policing because their human experience is engaged in outdoors and without the 'luxury' of carrying it out in the privacy of their own homes.'⁵
27. Further analysis states that 'criminal law enforcement practices—including searches, 'move-on' directions, on-the-spot fines, arrest and charges, remand detention and court-imposed punishment— can be especially punitive for a person suffering serious, and often multiple, disadvantages.'⁶ Such disadvantages may include substance use, alcoholism, social impairments, physical or cognitive disabilities in addition to the current housing crisis and cost of living.
28. Australian Institute of Criminology's Deaths in police custody data shows that between 1989 to 2019, there were a total of 40 deaths in police custody of Indigenous people arrested under 'good order offences'.⁷ This represents almost a quarter of Indigenous deaths in police custody during this period.
29. QPS has provided this inquiry with recent statistics for begging, public urination, and public intoxication offences. These statistics reveal that Aboriginal peoples and Torres

⁵ L McNamara et al, 'Homelessness and contact with the criminal justice system: insights from specialist lawyers and allied professionals in Australia' (2021) *International Journal for Crime, Justice, and Social Democracy* 112, 114; T Walsh, Submission to the Australian Law Reform Commission, *inquiry into incarceration rates of aboriginal and Torres Strait Islander peoples* (4 September 2017).

⁶ L McNamara et al, 'Homelessness and contact with the criminal justice system: insights from specialist lawyers and allied professionals in Australia' (2021) *International Journal for Crime, Justice, and Social Democracy* 112.

⁷ The Australian Institute of Criminology, *Deaths in custody data tables* (2020-21) Table E17.

Strait Islander peoples are disproportionately represented in charges for all three offences considered by the inquiry. Evidence to the Committee from QPS suggests this impact may differ throughout the state, and be more acutely found outside of South-East Queensland.⁸

30. Nonetheless, Queensland Health Deputy Director-General Haylene Grogan has summarised the disproportionate impact the current criminal justice response to these issues has on the most disadvantaged and vulnerable members of society, including First Nations people. This compounds the disparities and inequities First Nations people face across all stages of their lives and in seeking access to services across the community.⁹

Begging

31. In Queensland, begging in a public place is an offence carrying a maximum penalty of 10 penalty units or 6 months imprisonment. Begging in a public place may involve:

- Money or goods (s 8(1)(a));
- Causing, procuring or encouraging a child to beg for money or goods (s 8(1)(b));
- Soliciting donations of money or goods (s 8(1)(c).

32. There is an option for police to issue infringement notices, attracting a fine of 1 penalty unit (\$143), for both ss 8(1)(a) and ss 8(1)(c). In 2020-21, 15 infringement notices were issued by police for offences against ss 8(1)(a) and 3 for offences against ss (8)(1)(c).

33. Rather than commencing proceedings against, or issuing an infringement notice to, a person for begging, police also have the option to use alternative approaches, such as taking no formal action, administering a caution, or issuing a move on direction. However, in instances where a person causes, procures or encourages a child to beg for money or goods in a public place, under ss 8(1)(b), issuing an infringement notice is not an option available to police.¹⁰

⁸ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 7.

⁹ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 10.

¹⁰ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 6.

34. In 2020-21, of the 44 people charged for begging, 64 per cent identified as being Indigenous.¹¹ Further, of the 13 begging offences reviewed by QPS for this inquiry, 10 (77%) of those charged were recorded as having no fixed address.¹²
35. Begging was decriminalised by New South Wales in 1979 and by Western Australia in 2004. Begging is not an offence in the Australian Capital Territory but remains prohibited in other jurisdictions as detailed in the jurisdictional comparison provided by QPS to the Committee.¹³
36. QPS notes that in the absence of public begging offence, police may be able to utilise existing move-on powers to control the behaviour, or with the person's consent, consider the suitability of commencing a police referral to a suitable service provider.¹⁴ The QHRC welcomes QPS' strategy to connecting at risk and vulnerable people to external support providers with the intention of delivering early and effective interventions.

Urinating in a public place

37. Public urination carries a maximum penalty of 4 penalty units (\$575) if committed within, or in the vicinity of, licensed premises, under ss 7(1)(a) of the SO Act; or otherwise 2 penalty units (\$287) under ss 7(1)(b). Both offence provisions are also infringement notice offences attracting fines of 2 penalty units (\$287) and 1 penalty unit respectively (\$143).
38. In 2020-21, police issued 263 infringement notices for offences against s 7(1)(a) and 339 infringement notices for offences against s 7(1)(b).
39. Of the 182 people charged with urinating in a public place, 47 per cent identified as being Indigenous.¹⁵ Further, of the 97 public urination occurrences reviewed by QPS for this inquiry, 3 (3%) of the people charged were recorded as having no fixed address.

¹¹ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022); Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 2.

¹² Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 1 August 2022, 4.

¹³ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022.

¹⁴ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 5.

¹⁵ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022); Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 2; T Walsh, Submission to the Australian Law Reform Commission, *inquiry into incarceration rates of aboriginal and Torres Strait Islander peoples* (4 September 2017).

40. A person detected urinating in public in a safe night precinct can be issued with a Police Banning Notice under s 602C of the *Police Powers and Responsibilities Act 2000* (PPRA) if, among other things, the respondent's behaviour is disorderly, threatening, offensive or violent in any way.
41. QPS notes that prior to 2008, public urination was a behaviour that constituted a public nuisance offence under the SO Act. The new s 7 offence was created via the *Summary Offences and Other Acts Amendment Act 2008*, in response to recommendations of the then Crime and Misconduct Commission (CMC). The rationale included that:
- numerous submissions to the Policing Public Order review held that public urination is a trivial behaviour that may not warrant criminal justice attention;
 - the public nuisance offence provisions were disproportionate to the level of offending behaviour.¹⁶

Public intoxication

42. In Queensland, public intoxication is not punishable by a term of imprisonment but is nevertheless an offence that carries a maximum penalty of 2 penalty units (a fine of approximately \$287). Section 10 of the SO Act has been amended to clarify the term 'intoxicated', extending it from just being drunk to also include being adversely affected by drugs or another intoxicating substance.¹⁷
43. Of the 1256 people charged with public intoxication in 2021-22, approximately half identified as Indigenous.¹⁸ Further, of the 59 public intoxication offences reviewed by QPS for this inquiry, 6 (10%) of the people charged were recorded as having no fixed address.¹⁹
44. In evidence to the Committee, QPS noted that the public intoxication offence is being used by police as a low-impact way of intervening to prevent other offences being committed or the offenders coming to serious harm and/or to prevent the escalation of their behaviour to more serious offending. Various anecdotal examples were provided. For example, an offender who would not leave the Fortitude Valley safe night precinct after being given a banning notice, being intoxicated and unable to understand the

¹⁶ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 10.

¹⁷ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 6.

¹⁸ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 7; Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 2.

¹⁹ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 1 August 2022, 4.

direction, was arrested and taken into custody for his own safety and to prevent further offending.²⁰

45. QPS note that the current law permits police to arrest intoxicated people and detain them in custody for a short time for their own safety or to protect others. However, detaining an intoxicated person in a police watchhouse is not the preferred operational option for Queensland Police. Under s 378 of the PPRA, and QPS operational policy, police are required to consider alternatives to detaining intoxicated people in police cells, including taking no formal action, administering a caution, or taking the person to a place of safety. If it is necessary to arrest a person for being intoxicated in a public place the PPRA permits a police officer to discontinue the arrest and deliver the person to their house, hospital or other place that provides care for intoxicated people.²¹ As QPS further note, such options remain in other jurisdictions despite where decriminalisation has occurred.
46. Where police transport intoxicated people to a place of safety to receive treatment or care, Queensland Health suggest that the short-term health response would be emergency and/or hospital based. Additionally, the Department of Communities, Housing and Digital Economy provides a number of non-government organisations in limited locations to support people are intoxicated.²²
47. According to the Department, total funding for Public Intoxication and Diversion Services was \$18.7 million in 2021-22. These diversion services 'assist Aboriginal and Torres Strait Islander people who are at risk of harm or of being taken into police custody as a result of intoxication in public spaces, or who are already in custody for intoxication related offences'.²³ The Department notes that service users are often dealing with multiple and complex social issues. Rather than withdrawal or rehabilitation programs, the Department suggests that these services provide culturally safe and appropriate places of safety.
48. Additionally, the Queensland Government funds non-government service providers to deliver the Safe Night Precinct Support Services (SNPSS). SNPSS contribute to creating a safer night-time environment for Queenslanders by providing assistance to vulnerable people who are at risk of harm and violence in the late-night entertainment

²⁰ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 7.

²¹ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022.

²² Letter from Shaun Drummond Acting Director General of Queensland Health to Community Support Services Committee, 11 July 2022.

²³ Department of Communities, Housing and Digital Economy, Briefing for the Community Support and Services Committee, *Inquiry into the decriminalisation of certain public offences and health and welfare responses* (11 July 2022).

precincts.²⁴

49. Queensland Health further notes that it provides a range of treatment and care responses for people who use alcohol and other drugs, including emergency responses through Queensland Ambulance Service and hospital emergency departments for people at immediate risk of harm due to high levels of intoxication.
50. Queensland Health suggests that offences for public intoxication and begging disproportionately impact vulnerable people, including Aboriginal and Torres Strait Islander peoples. Further, that ‘the proposed amendments are in line with recommendations from commissions, inquiries, and reports over decades to reduce the contact of First Nations people with the criminal justice system’.²⁵
51. Victorian Aboriginal Legal Service notes that of the 99 Aboriginal deaths in custody that were investigated by the RCAIDIC, 35 per cent involved Aboriginal people who were detained in relation to public intoxication.²⁶

Public nuisance

52. As QPS note, if the offences of begging, intoxication and public urination were decriminalised without proper consideration of the consequences, police may have to resort to considering the offence of public nuisance.
53. The public nuisance offence carries a maximum penalty of 25 penalty units or 6 months imprisonment if the offence is committed within licensed premises or in the vicinity of licensed premises; otherwise 10 penalty units or 6 months imprisonment.²⁷
54. It has been suggested that public nuisance offences in Queensland already disproportionately impact on Aboriginal and Torres Strait Islander peoples,²⁸ children and young people,²⁹ and people suffering from cognitive, behavioural or psychological impairment³⁰.

²⁴ Department of Communities, Housing and Digital Economy, Briefing for the Community Support and Services Committee, *Inquiry into the decriminalisation of certain public offences and health and welfare responses* (11 July 2022).

²⁵ Letter from Shaun Drummond Acting Director General of Queensland Health to Community Support Services Committee, 11 July 2022.

²⁶ Victorian Aboriginal Legal Service, ‘Decriminalisation of public intoxication must be done right’ *Victorian Aboriginal Legal Service* (media release, 23 April 2022) <<https://www.vals.org.au/decriminalisation-of-public-intoxication-must-be-done-right/>>.

²⁷ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 1 August 2022, 3.

²⁸ Queensland Sentencing Advisory Council, *Connecting the dots: The sentencing of Aboriginal and Torres Strait Islander peoples in Queensland* (Sentencing Profile, March 2021) 22.

²⁹ Tamara Walsh, *No Offence: The Enforcement of Offensive Language and Behaviour Offences in Queensland* (Report, April 2006) 20.

³⁰ *Ibid*, 21.

55. The goals of any reform would not be achieved if the present offences involving begging, urinating in public or public intoxication were simply replaced with public nuisance offences.

Relevant human rights

56. In light of available evidence, it appears that the application of the present offences limit the right to equality under the HR Act, due to the disproportionate impact they have on some members of the community.

57. Other rights potentially limited depending on the circumstances include:

- Right to life (s 16) and right to security (s 29) (which may encompass the right to be safe):

These rights will be relevant to ensuring an appropriate response, whether through the criminal justice system, health and welfare system, or otherwise, to ensure the person engaging in the behaviour is safe.

These rights may also be limited when members of the community witness or are subjected to this behaviour.

- Right to freedom of movement (s 19), Right to peaceful assembly and freedom of association (s 22), Right to liberty and security of the person (s 29), Right to privacy and reputation (s 25) and Protection from torture and cruel, inhumane or degrading treatment (s 17):

These rights will be limited by any involuntary action taken against the person engaging in this behaviour, particularly a criminal justice response such as requiring the person to move on or be detained. The history of the treatment of Aboriginal and Torres Strait Islander peoples in custody (often after arrest for the offences under review) is particularly relevant to the potential limits on s 17.

- Protection of families and children (s 26):

This right may be limited in circumstances when a child under the age of 18 is charged or subject to a police response regarding one of these offences.

The right may also be relevant to children being subjected to, or witnessing such behaviour.

Are the present limitations reasonable and proportionate?

58. The limitation of rights can be justified if they are legitimate, necessary, and proportionate.
59. Criminalising public intoxication engages an individual's rights to freedom of movement, peaceful assembly and, considering the number of deaths in custody for these offences, right to life. As mentioned in clause (g) of the terms of reference, this is balanced with the public's right to safety.
60. Prohibiting public urination balances the rights of children and others not to witness the potentially anti-social behaviour of public urination with the basic human need to urinate on occasions when individuals may not have adequate access to appropriate public or private amenities. Evidence to the Committee has already suggested that in some parts of the state, doors of public toilets are or were closed after hours.³¹
61. Many people experiencing homelessness will live in public areas and spaces, and they may inevitably have to have private experiences in public areas in order to live their daily lives. Those who are not homeless will be much less likely to have to engage in this behaviour, or be exposed to the indignity of arrest.
62. Anecdotes from those experiencing homelessness suggest that "laws of this type may not create a criminal offence as such, but they may empower the police to act in ways that make the persons on the receiving end feel very much like a criminalised subject."³²
63. It has been observed that:
- Decriminalisation is rarely productive of the complete absence of regulation. Other legal rules that authorise police intervention will often come into being...³³
64. Further, Professor Tamara Walsh observes that:
- The starting point for any discussion on fines is that fines should never be imposed upon people who have no means to pay them. It is

³¹ Dept Commissioner Taylor, Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 6.

³² L McNamara et al, 'Homelessness and contact with the criminal justice system: insights from specialist lawyers and allied professionals in Australia' (2021) *International Journal for Crime, Justice and Social Democracy* 112.

³³ L McNamara, J Quilter, T Walsh et alia, 'Homelessness and contact with the criminal justice system: insights from specialist lawyers and allied professionals in Australia' (2021) *International Journal for Crime, Justice and Social Democracy* 112, 115.

fundamentally unjust to require a person to pay a fine if they have no means to pay. Infringement notices have the effect of entrenching disadvantage and for people who rely on social security benefits, they may result in recidivism rather than acting as a deterrent.³⁴

Less restrictive options

65. Section 13 (d) of the HR Act requires a consideration of whether there are any less restrictive and reasonably available ways to achieve the purpose of a human rights limitation. That appears a critical consideration to this inquiry.
66. The purpose of the offences under review is to 'to ensure that members of the public should be able to lawfully use and pass through public places without interference from the unlawful acts of nuisance committed by other people.'³⁵
67. The Commission is of the view that a less restrictive way of achieving this purpose would be to decriminalise this behaviour. Considering clause (b), (f) and (g) of the terms of reference and the correspondence from the Department of Health outlining the current health and welfare model to public intoxication, the Commission agrees with the original proposal of RCIADIC recommendation 80 that the more appropriate response to public drunkenness is a health and welfare response. As outlined by RCIADIC, a health response may prevent deaths in custody like that of 'X' who died in her Brisbane watchhouse cell on 10 September 2020.³⁶
68. Therefore, as noted in material already before the Committee, any law reform in this area will need to consider strategies that avoid the use of replacement offences to deal with intoxication. That is, decriminalisation should not lead to an increased use of public nuisance offences and potentially higher penalties.
69. The QHRC appreciates the view of Queensland Health that a move to primarily providing a public health and social response will require consideration and funding of the models of support and care.
70. Further consultation with Aboriginal and Torres Strait Islander people and organisations will be necessary to effectively implement the scheme. Without appropriate consultation the modelling of service may not suit the cultural safety requirements or demographic needs of remote, rural, or metropolitan areas. We support the commitment of

³⁴ T Walsh, Submission to the Australian Law Reform Commission, *inquiry into incarceration rates of aboriginal and Torres Strait Islander peoples* (4 September 2017), 6.

³⁵ Summary Offences Bill 2004, Explanatory Notes, 3 and *Summary Offences Act 2005*, s 5.

³⁶ Cloe Read, 'Three-second check of dead prisoner not 'misconduct,'" *Brisbane Times* (Brisbane, 11 August 2022).

Queensland Health to health equity for First Nations peoples,³⁷ and agree with the recommendation of Queensland Health:

To develop meaningful and sustainable responses it is critical that the health and wellbeing needs of Aboriginal and Torres Strait Islander peoples are considered and Aboriginal and Torres Strait Islander communities are included in their co-design and development. To this end, it is important the Committee consults with the Queensland Aboriginal and Islander Health Council specifically, to ensure these responses are culturally appropriate and sensitive, and consider the holistic cultural, mental health and wellbeing needs of Aboriginal and Torres Strait Islander peoples. Advice should also be sought from Aboriginal and Torres Strait Islander representatives from urban, regional and remote communities to ensure the diversity of needs is represented and captured in the subsequent responses.³⁸

71. As QPS have noted, other consequential law reform may also have to be considered, such as to powers in the PPRA, including the issuing of Police Banning Notices in safe night precincts.³⁹ Local laws made by local governments may also need to be revisited.

72. The QHRC also appreciates that there may be complexities in police diverting a person to a health and welfare service. In evidence to the Committee, Deputy Commissioner Taylor of the QPS noted that:

- Diversion to a person's home may only be possible if there are people at that address able to look after them (assuming the person is not homeless);
- On presentation to a health service, a person's behaviour may be challenging;
- There may not always be a suitable diversionary centre, suitably staffed, in all parts of the state;
- The service may refuse to accept clients previously known to have been violent;
- The service may not accept children and young people aged under 18;
- Subject to the above, the person may ultimately end up in the watch house, which leaves the person and police in a vulnerable position;

³⁷ Deputy Director General Haylene Grogan, Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 11.

³⁸ Letter from Shaun Drummond Acting Director General of Queensland Health to Community Support Services Committee, 11 July 2022.

³⁹ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022.

- Particular consideration may be necessary in tourism and night-life areas such as in Cairns and Townsville.⁴⁰

73. However, complexities and any gaps in the health and welfare system should not prevent this reform. The criminal justice system cannot be a replacement for deficiencies in the public health and social response. Many of these issues raise human rights limitations of their own, for example services not being available for those aged under 18.

74. Once the health and welfare response is properly developed and funded, consideration may be given as to what role police should play to complement such a system.

75. As QPS have noted in its submissions to the inquiry, police in other jurisdictions retain some powers to manage people, particularly those who are intoxicated, even after decriminalisation. That may be a reasonable limitation on human rights (and appropriate) in some circumstances, but does not necessarily mean decriminalisation should not occur or that alternatives to police responses should be developed and funded.

76. Further, any police response must be based on the person's health and welfare. As QPS note, any criminal justice response entrenches their behaviour as criminal and further marginalises vulnerable people.⁴¹

Successful police referrals lead to a reduction in repeat calls for service, as well as the longer term benefits of reducing recidivism and victimisation.⁴²

77. It is likely that police will need to retain a degree of discretion after any such reform. Any legislative power, and its use, must be carefully calibrated to best respond to behaviour. Research in other jurisdictions indicates that powers such as asking a person to move on can similarly disproportionately impact on vulnerable members of the community such as First Nations people and the homeless.⁴³ The obligations on police under s 58 of the Human Rights Act is an important consideration in how any powers should be exercised. With this in mind, further education and cultural change may be necessary.

⁴⁰ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 304.

⁴¹ Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 4.

⁴² Letter from Katarina Carroll AMP Commissioner Queensland Police Service to Community Support Services Committee, 8 July 2022, 5.

⁴³ See for example NSW Ombudsman, *Policing intoxicated and disorderly conduct: Review of section 9 of the Summary Offences Act 1988* (Report, 2014), 3: which expressed concern about the impact of move on powers on Aboriginal and Torres Strait Islander people, young people and/or people who are experiencing or who have experienced mental illness, homelessness or cognitive impairment.

Conclusion

78. The QHRC endorses the conclusion reached by Haylene Grogan, Deputy Director-General of Queensland Health:

The current punitive criminal justice led approach to public intoxication is not only unsafe and unnecessary but also inconsistent with current community standards. A safe, pragmatic, health based approach is required—one that ensures the safety of all Queenslanders, particularly vulnerable First Nations people.⁴⁴

79. The same conclusion could be reached regarding all offences under consideration in this inquiry, requiring law reform to avoid further unreasonable limitation on human rights.

80. Thank you for the opportunity to make a submission to the inquiry. The QHRC would be happy to further assist the inquiry as required.

⁴⁴ Community Support and Services Committee, *Public Briefing – inquiry into decriminalisation of certain public offences and the health and welfare responses*, Transcript of proceedings (12 July 2022) 10.