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

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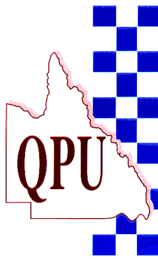

Queensland Police Union of Employees
217 North Quay, Brisbane QLD Phone: (07) 3259 1900
PO Box 13008, George Street, Brisbane QLD 4003
ABN 75 781 631 327

12 September 2022

Ms Corrine McMillan MP
Chair
Community Support and Services Committee
Queensland Parliament
George Street QLD 4000
Email: cssc@parliament.qld.gov.au

Dear Ms McMillan,

Re: Inquiry into the Decriminalisation of certain public offences and health and welfare responses

Thank you for the opportunity to provide a submission to the Community Support and Services Committee. The Queensland Police Union ("QPU") represents over 12,500 police officers, watchhouse officers, liaison officers and band members throughout Queensland.

The QPU has had cause to review the terms of reference of the inquiry and will provide a response to the terms of reference we believe are relevant to our experience.

Background

The *Summary Offences Act* came into force in 2005. The Act replaced the *Vagrants, Gaming and Other Offences Act 1931*, which contained many provisions that were antiquated and inconsistent with contemporary community standards.

The *Summary Offences Act* provides a law and order based response to the offences of:

- 'Urination in a public place (s 7);
- 'Begging in a public place' (s 8); and
- 'Being intoxicated in a public place' (s 10).

For the purposes of s 10 of the *Summary Offences Act*, ‘intoxicated’ means drunk or otherwise adversely affected by drugs or another intoxicating substance.

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).

Since 2005, the only amendment to s 10 of the *Summary Offences Act* has been to clarify the term ‘intoxicated’, extending it from just being drunk to also include being adversely affected by drugs or another intoxicating substance.

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 *Police Powers and Responsibilities Act* 2000 (PPRA), and consequently Queensland Police Service (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. Legislation in all other Australian jurisdictions also allows for the detention of intoxicated people in police custody, in certain circumstances, despite where decriminalisation has occurred.

In Queensland, begging in a public place is an offence carrying a maximum penalty of 10 penalty units or 6 months imprisonment. There are three limbs to the offence of ‘Begging in a public place’ of the *Summary Offences Act*, which are:

ss 8(1)(a) beg for money or goods in a public place; or
ss 8(1)(b) cause, procure or encourage a child to beg for money or goods in a public place; or
ss 8(1)(c) solicit donations of money or goods in a public place.

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

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.

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.

Terms of Reference Response

a) Changes to legislation and operational policing response to decriminalise the public intoxication and begging offences in the *Summary Offences Act 2005*

If public intoxication is decriminalised in Queensland, police contact with intoxicated people will still occur. In jurisdictions where, public drunkenness has been decriminalised police retain the ability to take a person into custody at a police facility as a last resort. It may not always be possible or desirable to take a person to a place of safety (e.g. a residence, medical facility or diversion centre) because of the person's behaviour.

The QPU is keen to see any changes around public intoxication laws in Queensland still allow Police the power and the scope to protect the community and the individual. We cannot see a situation in Queensland were the law directs Police to leave intoxicated people as a risk to themselves or the community.

The decriminalisation of public intoxication (currently a criminal offence under s 10 of the *Summary Offences Act*) would consequently impact on s 378 and s 394 of the PPRA, which provide for the discontinuation of arrest for offenders charged with public intoxication.

Police Banning Notices in Safe Night Precincts under Chapter 19, Part 5A of the PPRA, may also be impacted by this reform. Before Police Officers issue a Police Banning Notice, they must be reasonably satisfied that giving the notice is necessary because the respondent has behaved in a disorderly, offensive, threatening or violent way. The Police Banning Notice provisions provide examples of such behaviour, including urinating or being intoxicated in a public place in contravention of s 7 and s 10 of the *Summary Offences Act*.

Section 378 of the PPRA permits a Police Officer to discontinue an arrest for being intoxicated in a public place and deliver the person to their house, hospital or other place that provides care for intoxicated people. The QPU fundamentally believes that it is not the role of the Police to babysit individuals who are intoxicated, however our view is that public safety is paramount. Police are highly trained professionals who have to ensure public safety. This must include the ability to keep intoxicated people safe from themselves and the community.

In the absence of the power of detention provided by s 10 ‘Being intoxicated in public place’ of the *Summary Offence Act*, Police may have no alternative but to resort to other offences such as s 6 ‘Public nuisance’ of the *Summary Offences Act* as a means to protect the intoxicated person and/or the community, thereby entrenching their behaviour as criminal and further marginalising vulnerable people.

The public nuisance offence carries a maximum penalty of 25 penalty units or 6 months imprisonment if the offence is committed within licenced premises or in the vicinity of licenced premises; otherwise 10 penalty units or 6 months imprisonment.

The QPU believes that if a person is intoxicated on drugs and represents a danger to the community Police must have an enforceable mechanism. Police need a power to detain and arrest people high on drugs and severely intoxicated who are a potential risk to themselves or the community.

By way of comparison, the PPRA provides a framework at s 603 to 606 for dealing with persons affected by potentially harmful things (e.g. volatile substances such as glue, paint or solvents). This framework was modelled on s 378 of the PPRA; however, no criminal offending is involved. Like s 378, the provisions at s 603 to 606 allow Police to prioritise the safety of a person affected by a potentially harmful thing. As there is no offence nexus to s 10 of the *Summary Offences Act*, or an offence in any other law, the PPRA provisions relating to potentially harmful things give Police the power to detain a person for the purpose of taking the person to a place of safety. However, if that is not possible the person must be released and the detention power is exhausted, there is no ability to detain a person in Police custody.

The QPU understands that times are tough for a number of people and that gaps within welfare services and personal circumstances lead some people to begging. The response to this issue is multifaceted and should involve a number of agencies including Police.

In the absence of a public begging offence, if the behaviour occurs in the context of existing subsections 8(1)(a) or 8(1)(b) police should be able to use 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.

Police need to have a move-on power in relating to public begging. For the flow of commerce and the welfare of the rest of society police must be able to move-on people who are begging. The need for referral services and other measures to support individuals is necessary here but the Police need a power to keep the peace.

The construction of this power could become part of s 6 'Public nuisance' of the *Summary Offences Act* as a subsection that recognises public begging and collapses the offending elements into a power for police to move-on and recommend referral to service providers.

Placing public begging as a subsection to s 6 'Public nuisance' of the *Summary Offences Act* will place a further criminal burden on people who beg. However, Police need a power to be able to move beggars on and if compliance with this direction does not occur the power to arrest the offender.

b) <u>The compatibility of proposed legislative amendments, and health and social welfare-based service delivery responses to public intoxication and begging, with rights protected under the Human Rights Act 2019.</u>

The *Human Rights Act 2019* requires all members of the QPS to properly consider the human rights of citizens and to act and make decisions in a manner that is compatible with human rights. The QPU believes that all our members take this duty very seriously and has nothing further to say on this matter. We have read the submission from the Queensland Police Service and support their position.

c) <u>The costs and benefits of responses to public intoxication and begging in other Australian jurisdictions.</u>

The QPU is aware of discussions similar to the subject matter of this inquiry occurring in other jurisdictions. We are aware of a push in Victoria to move to a model that treats public drunkenness as a health matter rather then a law and order matter.

The QPU is in favour of a multifaceted response to public intoxication in Queensland. We would be very supportive of models that address public intoxication by referral to external community run health or support agencies. Police have a role to ensure safety in Safe Night Precincts and in communities across Queensland, however if an appropriately trained third party could be engaged to collect and support people who are publicly intoxicated that would be something we could accept.

There is a need for Police to have a power to ensure that people who are publicly intoxicated are not a risk to themselves or the community. They should also not be a risk to third parties who are there to assist, the need for laws that reflect the community's expectations is therefore paramount. We need to ensure Police still have a role in managing the safety of the community.

With respect to begging we need to ensure that the need for support and the referral to appropriate agencies is balanced by the need of the community to access public spaces. Unfortunately, some people who beg are unable or unwilling to participate with support services. In those instances the QPU fundamentally believes that the Police should have the power to move-on and in severe cases the power to arrest.

Balancing the many factors at play on this issue are complicated, on one hand we need to see a system of support and assistance provided to people struggling, on the other we need to ensure that public spaces can be used for their intended purpose and the flow of commerce is not impeded by people begging. The QPS should be part of a multifaceted response on this issue.

Ultimately social workers and other agency staff should be able to assist people begging in the community, however at some point the act of begging becomes a 'nuisance' or disrupts the amenity of public spaces. At this stage a police response is required to manage these individuals and to ensure the peace and amenity of public spaces is maintained.

If the Inquiry resolves to abolish s 7, 8 and 10 of the *Summary Offences Act 2005* the QPU would expect to see amendments to the PPRA. The removal of s 8 would require amendments to give Police the power to issue a move on direction to persons begging. This would then allow for arrest if this direction was breached.

The removal of s 10 would see the need for amendments to give Police the power to detain such person who are publicly intoxicated to a place of safety. The place of safety would include

a Police watchhouse or holding cell and would arise in circumstances were an officer reasonably suspects a person is a danger to themselves or the public, or otherwise needs medical assistance. The QPU believes that the detention period should be limited to no more than 8 hours to reflect the time it takes people to approach sobriety.

The QPU would prefer to see NGO's and Government agencies tasked with the welfare of vulnerable citizens doing their work in the first instance. After that has occurred there should be a power at law available to Police to ensure community safety and amenity is maintained.

d) The health and social welfare-based responses to public intoxication and begging necessary to support legislative amendments, having regard to existing responses, such as diversion services.

The QPU believes that a multifaceted approach to public intoxication and begging is required to meet the expectations of the community and ensure public safety. There is a role for Departments, Non-Government providers and third parties to assist in the care and wellbeing of individuals who are publicly intoxicated or begging.

The QPU would be supportive of the Government engaging with drug and alcohol services to operate in trial sites to act as a first step to managing public intoxication. The referral of individuals who are publicly drunk to a third party to care for them and sober them up would be a welcome.

The Police must have a role in this system to manage people who are intoxicated and represent a risk to themselves or the community. Community safety is paramount in managing intoxicated individuals.

The QPU would be supportive of a mechanism in a trial with drug and alcohol providers who are first responders to people intoxicated in public that allows people in this category to pass from Police custody into a third parties hands. Police do not need to be responsible for sobering people up but they do need to be responsible for ensuring intoxicated people on drugs or alcohol can be detained until they are deemed safe.

The QPS operates under a referrals system to match people begging with services that can assist them. The QPU would be supportive of a partnership between service providers in a trial site to link Police encounters with social workers or counsellors trained to assist people who are begging.

As with public intoxication Police need the power to move-on and detain people who are begging and resist a lawful direction to move-on. If a person who begs becomes a risk to the community the Police must be able to manage that risk to ensure public safety.

Ultimately public safety is our primary concern but we are supportive of building a system where public safety and the wellbeing of vulnerable people is the framework the Police and social and welfare services operate under.

e) The impacts of decriminalising public intoxication and begging in rural and remote communities.

The QPU has read the submission of the Queensland Police Service and has the following comments.

The data breakdown from the QPS demonstrates that public begging is predominant in the Brisbane Police Region. The QPU believes that this presents a challenge and an opportunity in managing this issue. The best resourcing to support disadvantaged Queenslanders would be in the Brisbane region. The inquiry has an opportunity to suggest a model to address the issue of begging and any associated law reform through the lens of the problem occur in the part of the state best equipped to support these people.

The QPS data suggests that public intoxication is an issue that occurs predominantly in the Far North District, Townsville District, Mackay District, Mt Isa District, Darling Downs District and Capricornia District. As previously stated the QPU is concerned about the continued safety of the community and the individual throughout this process and urges the committee to ensure community safety is protected at law and Police have powers with respect to community safety.

The QPU does not want to see a situation whereby someone high on drugs or severely intoxicated on alcohol is unable to be managed by the Police at law. Sections 7, 8 and 10 of the *Summary Offences Act 2005* currently give Police the power to manage public intoxication and begging in rural and remote communities. The wholesale removal of these sections will see Police employing more strict instruments to manage this issue. If these sections are to be removed we need to see amendments to the PPRA to ensure Police can still undertake issue move-on directions and detain people for theirs and the community's safety.

The community expects police to manage and detain people who are high on drugs or severely drunk and the law needs to reflect that power in some form. Similarly, Police must have the power to move-on and ultimately arrest someone who is begging if they refuse to be referred to a support agency or follow a lawful direction. Regional and Remote communities expect the Police to maintain law and order and manage people who are a risk to themselves and the community.

f) The design of health and social welfare-based responses that are culturally safe and appropriate and informed by First Nations people, including Aboriginal and Torres Strait Islander health and legal services and also representative bodies for seniors and people with a disability

The QPU is supportive of First Nations people, including Aboriginal and Torres Strait Islander people being involved in the development and administration of health and social welfare-based responses.

We would welcome an opportunity for an Aboriginal and Torres Strait Islander service to operate in a trial site to assist Police in first responses to public intoxication. The QPU is aware of the Night Patrol Hotline operating in the Northern Territory as a means of community members being able to get help without going to the Police. A model which empowers First Nations providers to operate in a Safe Night Out Precinct to assist people who are publicly intoxicated would be supported by the QPU on a trial basis.

We believe that elders and leaders with First Nations community have a very important role to play in addressing these issues and working with police and social welfare-based providers to reduce public intoxication and promote safer communities.

g) The appropriateness of other police powers and offences to ensure community safety and public order arising from public intoxication and begging, particularly in the context of events where there may be significant alcohol consumption.

In a number of communities Police are the only 24-hour service that people can call for instances of public intoxication. Other agencies and service providers do not operate on the same hours as Police and subsequently Police handle the volume of issues arising in community.

The alternative powers or legislative provisions (to s 8 and s 10 of the *Summary Offences Act*) listed in the table below may potentially be available to Police, depending on the circumstances, to ensure community safety and public order arising public begging or public intoxication. However, some of the laws identified could result in responses that are more punitive than s 8 and s 10 of the *Summary Offences Act* because they carry more serious penalties or have other impacts, such as limiting human rights.

Public Begging
Public Nuisance, s 6, Summary Offences Act.
Directions to move on, Part 5, Chapter 2, PPRA (Note: it is an offence to contravene a direction or requirement of a police officer under s 791 of the PPRA).
Referral to a Suspected Child Abuse and Neglect team (SCAN) under Chapter 5A, Part 3 of the Child Protection Act 1999.
Assault offences under Chapter 30 of the Criminal Code.
Demanding property with menaces with intent to steal, s 414 of the Criminal Code.
Various local laws or subordinate local laws made by local governments.

The reality is that the community expects to be able to use public spaces and to be free from begging in the course of their time spent in public spaces. The need for a social and welfare-based response to the issues around begging is not to be misunderstand. The contrast to that need is an equally valuable need for the public to be able to access community spaces and for the flow of commerce to not be impeded by people begging.

The Police have a role to play in adjudicating this matter in society, it is what the community expects. Law makers need to develop a system that balances the two aforementioned needs into laws which give Police the power to do their jobs.

People who beg must be managed by nuanced legislation that empowers Police to keep the peace. The QPU does not support a law reform process that potentially further criminalises those who beg with stricter provisions than those that currently exist.

Public Intoxication
Public Nuisance, s 6 Summary Offences Act.
Consumption of liquor in certain public places prohibited, s 173B, Liquor Act 1992 and potentially other Liquor Act offences.
Dealing with Breach of the Peace, s 50, PPRA. Police Banning Notices, Part 5 A, Chapter 19, PPRA.
Directions to move on, Part 5, Chapter 2, PPRA (Note: it is an offence to contravene a direction or requirement of a police officer under s 791 of the PPRA).
Out-of-control events, Part 7, Chapter 2, PPRA.
Assault offences under Chapter 30 of the Criminal Code.
Various local laws or subordinate local laws made by local governments.

Police need a power to detain people who are a risk to themselves or the community because they are intoxicated. The QPU firmly believes that the community expects Police to have a role in managing public intoxication to ensure public safety. Changes to the law need to reflect this expectation and meet the needs of the community effectively.

Changes to the law must be in line with community expectations and not force Police to stricter powers to manage public intoxication and ensure the safety of the community and individual intoxicated.

Managing someone high on drugs or intoxicated on alcohol can be a dangerous situation. We must not find ourselves in a situation where Police do not have nuanced powers that allow them to manage the situation. Any decriminalisation of offences needs to ensure appropriate powers are drawn in a manner that meets the expectations of the community.

h) How existing public messaging on the harm of alcohol and other drugs, including alcohol-related violence, can continue to be reinforced following the decriminalisation of public intoxication.

The QPU supports public messaging around the harm of alcohol and other drugs, including alcohol-related violence and drink driving. The QPS undertakes a number of activities to enforce this message in the community.

It is vitally important that any decriminalisation of public intoxication is well supported by a community campaign to explain that the risks of alcohol are still present. Decriminalisation, should it occur, is not about allowing people to wander the streets intoxicated but about prioritising public safety and using resources appropriately to manage public intoxication. The risk of alcohol related violence and drink driving will not decrease because of a law change and the practical applications of law reform should always be balanced against the realities of the situation.

The need for public safety in this process is paramount.

i) The appropriateness of repealing the 'Urinating in a public place' offence under the Summary Offences Act 2005.

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); 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). In 2020-21, police issued 263 infringement notices for offences against ss7(1)(a) and 339 infringement notices for offences against ss 7(1)(b).

A person detected urinating in public in a Safe Night Precinct can be issued with a Police Banning Notice under s 602C of the PPRA if, among other things, the respondent's behaviour is disorderly, threatening, offensive or violent in any way. Examples of disorderly, offensive, threatening or violent behaviour provided in s 602C include urinating, wilfully exposing genitals or being intoxicated in a public place in contravention of sections 7, 9 or 10 of the *Summary Offences Act*. A Police Banning Notice can be issued in such circumstances without also commencing proceedings against the recipient for public urination.

Prior to 2008, public urination was a behaviour that constituted a public nuisance offence under the *Summary Offences Act*. The new s 7 offence was created via the *Summary Offences and Other Acts Amendment Act 2008*, in response to the legislative recommendations of the then Crime and Misconduct Commission's (CMC) report on public nuisance offence, 'Policing Public Order: A review of the public nuisance offence'.

The CMC's rationale for the creation of a separate public urination offence 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; and
- that the alternative offence provision of wilful exposure, which at the time carried a lesser penalty than public nuisance, was often not preferred by prosecutors or defendants because of the sexual connotation of a wilful exposure charge on a person's record.

Wilful exposure remains an offence under s 9 of the *Summary Offences Act* and provides that:

1. A person in a public place must not wilfully expose his or her genitals, unless the person has a reasonable excuse.
   Maximum penalty—
   a) 2 penalty units; or
   b) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment.
2. A person who is so near a public place that the person may be seen from the public place must not wilfully expose his or her genitals so that the person's genitals may be seen from the public place, unless the person has a reasonable excuse.
   Maximum penalty—
   a) 2 penalty units; or
   b) if the offence involves circumstances of aggravation—40 penalty units or 1 year's imprisonment.
3. It is a circumstance of aggravation for this section for a person to wilfully expose his or her genitals so as to offend or embarrass another person.

The QPU believes that the rationale for section 7 of the *Summary Offences Act* is still present. The offence should remain but as a compromise perhaps a defence to the offence could be added. If an individual does not urinate on chattels (a park bench, children playground, mail

box, the door or wall of a shop) and takes steps to urinate in a manner which best removes themselves from public view there is no offence committed.

Public urination is something that we should reduce in our society and does not meet with the expectations of the community. The current model is sufficient for enforcing and penalising people who commit the offence. The Committee should be reluctant to remove this offence even if they chose to alleviate the burden of the offense in other ways.

Conclusion

The QPU is cautious about the intentions behind this inquiry, the need for public safety is vitally important. Any attempts to decriminalise should be weighed against the needs of Police to protect the community and enforce the community's expectations of how we should all conduct ourselves in public.

The need for a social and welfare-based response to some of the social harms and issues that people who engage in this type of offending cannot be diminished. Similarly, the consequences associated with these behaviours cannot be discarded because people committing these offenses are vulnerable or disadvantaged. As law makers the committee must balance the two in making recommendations from this inquiry.

The proposal to remove sections of the *Summary Offences Act 2005* is not something that the QPU supports. The construction of s 7, 8 and 10 is fit for purpose and any proposal to remove these sections risks setting up a stricter regime to manage these behaviours.

A model that recommends amendments to design these offences in a manner that considers the expectations of the community and ensures that Police can enforce them is desirable. Police need a power to detain individuals who are intoxicated on drugs or alcohol to manage their safety, the safety of the community and enforce medical attention. Police also need the power to issue a move-on direction to those who beg to ensure that they can manage the amenity of the community. The need for services and support mechanisms around these offences needs to be differentiated from the laws that govern how Police conduct themselves.

Public urination is an offence and should remain and offence. People cannot be able to urinate wherever they like and Police need powers to prevent and enforce the right behaviour. The QPU recognises that there is scope to reduce punitive effect on this offence but affirms that the offence is required.

The need for these measures to be punitive in nature is the remit of the committee. The QPU believes that there is a place at law for powers to be granted to the Police with respect to these behaviours.

Any system that removes those powers does not accurately reflect the needs of the community and potentially places Police in a situation were more strict laws will be used to Police this behaviour.

In making recommendations the committee should be very mindful of this.

I am available on [redacted] should you wish to discuss this matter further.

Yours faithfully,

IAN LEAVERS APM
GENERAL PRESIDENT & CEO