

22 December 2021

Our ref: [MC-BDS]

The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice,
Minister for Women and Minister for the
Prevention of Domestic and Family Violence
GPO Box 149 Brisbane Qld 4001

By email: [REDACTED]

Dear Attorney

Public intoxication in Queensland – the need for law reform

April 2021 marked the 30th anniversary of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)'s final report. In its report, RCIADIC identified high rates of incarceration or detention in police custody of Aboriginal and Torres Strait Islander Peoples for public drunkenness. To divert Indigenous people from police custody, and reduce the associated risks of deaths in custody, the Royal Commission recommended the decriminalisation of public drunkenness.¹ Specifically, recommendation 79 stated '(t)hat, in jurisdictions where intoxication has not been decriminalised, governments should legislate to abolish the offence of public drunkenness' and, as noted by 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'.²

In February 2021, the Victorian Parliament passed the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021* (Vic) leaving Queensland the only remaining state that has not implemented the Royal Commission's recommendations and continues to treat public intoxication as an offence.³ It is our submission that it is time Queensland law was brought into line with the other Australian jurisdictions, and public intoxication was removed from the *Summary Offences Act 2005* (Qld).

Impact on Aboriginal and Torres Strait Islander Peoples

In 1991, RCIADIC concluded Indigenous people were no more likely to die in custody than non-Indigenous people, however, they were significantly more likely to be arrested and imprisoned.

¹ Recommendations 79-85.

² Royal Commission into Aboriginal Deaths in Custody,
<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

³ See *Summary Offences Act 2005* (Qld) section 10.

Public intoxication in Queensland – the need for law reform

The same remains true today.⁴ As a consequence of their disproportionate incarceration, as a percentage of total population, Aboriginal and Torres Strait Islander Peoples are six times more likely to die in police custody than non-Indigenous people.⁵ Between 1979-80 and 2018-19, Indigenous deaths comprised 18% of prison custody deaths and 22% of police custody deaths across Australia, despite making up just over 3% of the Australian population.⁶

Public intoxication laws in particular have long been criticised for being unevenly enforced, with a disproportionate number of Aboriginal and Torres Strait Islander Peoples arrested for behaviour that is generally not seen as criminal when engaged in by non-Indigenous people. Since 1989-90, nearly a quarter (24%) of Indigenous persons who died in police custody Australia-wide have been suspected of committing a good order offence, such as public drunkenness, disorderly conduct or unpaid fines.⁷ Over the same time period, non-Indigenous persons who have died in custody have most commonly been suspected of committing a violent offence (38%).⁸ In this context, we note the inquests into the death of Benjamin Richard Ware,⁹ and Mulrunji.¹⁰

During 2019-20 in Queensland, 1,009 per 100,000 Aboriginal and Torres Strait Islander People were proceeded against by Queensland police for public order offences, of which public intoxication is counted.¹¹ This is compared to 87 per 100,000 non-Indigenous people who were proceeded against by the Queensland police for the same group of offences. As with the national statistics, this discrepancy is made worse by the fact that Aboriginal and Torres Strait Islander Peoples represent just 4% of Queensland's population.¹²

⁴ Alexandra Gannoni and Samantha Bricknell, *Indigenous deaths in custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody* (Australian Institute of Criminology, Statistical Bulletin 17, February 2019) https://www.aic.gov.au/sites/default/files/2021-05/sb17_indigenous_deaths_in_custody_-_25_years_since_the_rciadic_v2_0.pdf

⁵ Laura Doherty and Samantha Bricknell, *Deaths in custody in Australia 2018-19* (Australian Institute of Criminology, Statistical Report 31, 2020) 12, https://www.aic.gov.au/sites/default/files/2021-05/sr31_deaths_in_custody_in_australia_2018-19_v2.pdf. The death rate of non-Indigenous persons in police custody was 0.09 per 100,000 non-Indigenous population aged 10 years and over, while the death rate of Indigenous persons in police custody was 0.61 per 100,000 Aboriginal and Torres Strait Islander population aged 10 years and over.

⁶ Australian Institute of Criminology, *National Deaths in Custody Program*, <https://www.aic.gov.au/statistics/national-deaths-custody-program>.

⁷ Laura Doherty and Samantha Bricknell, *Deaths in custody in Australia 2018-19* (Australian Institute of Criminology, Statistical Report 31, 2020) 15 https://www.aic.gov.au/sites/default/files/2021-05/sr31_deaths_in_custody_in_australia_2018-19_v2.pdf.

⁸ Laura Doherty and Samantha Bricknell, *Deaths in custody in Australia 2018-19* (Australian Institute of Criminology, Statistical Report 31, 2020) 15 https://www.aic.gov.au/sites/default/files/2021-05/sr31_deaths_in_custody_in_australia_2018-19_v2.pdf

⁹ Inquest into the death of Benjamin Richard Ware (28 March 2013), https://www.courts.qld.gov.au/_data/assets/pdf_file/0008/178217/cif-ware-br-20130328.pdf.

¹⁰ Inquest into the death of Mulrunji (27 September 2006) https://www.courts.qld.gov.au/_data/assets/pdf_file/0008/86642/cif-doomadgee-mulrunji-20060927.pdf.

¹¹ ABS, Table 22, *Selected Offenders – Indigenous status and principal offence by selected states and territories, 2008–09 to 2019–20*, <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#data-download>.

¹² ABS, *Aboriginal and Torres Strait Islander Population – Queensland*, (2016 Census Data Summary), <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20-%20Queensland~10003#:~:text=Aboriginal%20and%20Torres%20Strait%20Islander%20people%20re-presented%204.0%25%20of%20the,%2C%20and%203.3%25%20in%202006>.

These statistics are replicated across Australia. For example, recent studies have found that in Victoria, Aboriginal and Torres Strait Islander Peoples account for 29.6% of all people imprisoned for public order offences, including public intoxication, and account for over 9% of those in prison in Victoria for such offences.¹³ This is despite Aboriginal and Torres Strait Islander Peoples comprising less than 1% of the Victorian population.¹⁴

While QLS acknowledges the importance of maintaining community safety, we consider that a punitive, criminal justice response to intoxicated people is not an appropriate means to achieve this end. In our view, community safety is adequately safeguarded by other offences that deal with anti-social behaviour, and given the existence of these provisions the offence of public intoxication does little to further protect the community. On the contrary, the offence contributes to the problematic and disproportionate criminalisation of Aboriginal and Torres Strait Islander Peoples for minor offences, increasing the number of Indigenous persons held in custody and increasing the associated risks of Indigenous deaths in custody.

The approach of other States

As noted, all Australian states and territories, except Queensland, have decriminalised public intoxication.

Most recently, Victoria moved to decriminalise public drunkenness in February 2021 after the findings of a coronial inquest in the death in custody of a Yorta Yorta woman, Ms Tanya Day. In the inquiry into her death, the Coroner noted that:

*‘... there was no justification for the offence of public drunkenness to remain in the Summary Offences Act 1966 some 30 years after the RCIADIC had recommended its abolition. Victoria and Queensland remained the two states that had not followed that recommendation. That offence was the reason police were able to arrest Ms Day on 5 December 2017 and take her into police custody and detain her. She was in custody, neither on remand nor as a sentenced prisoner, but on the basis of the power to arrest for being drunk in a public place. The RCIADIC (the Royal Commission into Aboriginal Deaths in Custody) recommended its abolition on the basis it unfairly impacted Aboriginal people and contributed to the high rate of Aboriginal people in custody’.*¹⁵

In light of the Coroner’s findings, an Expert Reference Group was formed to advise the Victorian Government on the decriminalisation of public intoxication and the development of an alternative health-based response. The subsequent report, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness (Seeing the Clear Light of Day)*, found ‘(t)here is a clear, compelling and urgent imperative to overhaul Victoria’s current approach to people who are intoxicated in public. The current punitive, criminal justice led

¹³ Karin Derkley, *Public Drunkenness law should be abolished*, Law Institute of Victoria (Article, 12 April 2019) <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/April-2019/Public-drunkenness-law-should-be-abolished>

¹⁴ ABS, *2016 Census QuickStats*, https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/2?opendocument

¹⁵ Inquest into the Death of Tanya Louise Day (9 April 2020), [72] <https://www.coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%2009.04.2020.pdf?fbclid=IwAR3U4RJDcjf3RfZtBCPzpqfvGVewkEndkQ-MeOmMhx0wvEeE775JlypQhM>

response to intoxicated people is unsafe, unnecessary and inconsistent with current community standards'.¹⁶

Similarly, South Australia's review of the *Public Intoxication Act 1984* in 2012 recommended that the decriminalisation of public drunkenness be maintained.¹⁷

Recommended reform

We acknowledge that the *Police Powers and Responsibilities Act 2000* (Qld) 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. Nevertheless, this falls short of fully implementing the recommendations of RCIADIC, and in many cases police cells are still used as a temporary solution to intoxication. Indeed, RCIADIC, the Victorian Law Reform Commission and the Western Australian Law Reform Commission have all acknowledged that public order offences (of which public intoxication is a part) give police wide discretionary powers in deciding who and when to prosecute, and that this has the capacity to result in the selective enforcement of these laws.¹⁸ In our view, there remains a need for reform in Queensland, including by abolishing the offence of public intoxication in section 10 of the *Summary Offences Act 2005* (Qld).

QLS acknowledges that repealing section 10 of the *Summary Offences Act 2005* (Qld) will not resolve the issue of First Nations deaths in custody. Nevertheless, we consider that these types of offences contribute substantially to the problem, and reform in this area represents an essential first step in addressing the disproportionate incarceration of Aboriginal and Torres Strait Islander Peoples.

However, any law reform in this space will need to consider strategies that avoid the use of replacement offences to deal with intoxication. That is, we would not support decriminalisation of public drunkenness leading to an increased use of public nuisance offences, which carry a higher maximum penalty and a higher fine.

To address these risks, we suggest the Queensland government investigate a genuine, health-centred approach towards the issue, recognising that people who present intoxicated in public may be experiencing complex health and welfare challenges that contribute to their drinking patterns. The Victorian report *Seeing the Clear Light of Day* emphasised that simply decriminalising public drunkenness is insufficient without also adopting an effective health-based service system response that makes places of safety available as an alternative to police cells and provides health and social care pathways.¹⁹ This is clear from the experience in other jurisdictions. Where decriminalisation has occurred, the introduction of 'protective custody

¹⁶ Expert Reference Group, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness* (Report to Victorian Attorney-General, August 2020) page 1, <https://apo.org.au/sites/default/files/resource-files/2020-11/apo-nid309812.pdf>

¹⁷ Review of South Australia's *Public Intoxication Act 1984* (December 2012) pages 7-8, https://www.sahealth.sa.gov.au/wps/wcm/connect/e1c7e1804a206f95ac1bec90d529bdaa/Review+of+Public+Intoxication+Act+1984_DASSA_Oct+2015.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-e1c7e1804a206f95ac1bec90d529bdaa-niQA0ld.

¹⁸ Victorian Law Reform Commission, *Summary Offences Act 1966 and Vagrancy Act 1966 A Review* (1992); Western Australian Law Reform Commission, *Report on Police Act Offences* (1992), E Johnston, *Royal Commission into Aboriginal Deaths in Custody National Report Overview and Recommendations* (1991)

¹⁹ Expert Reference Group, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness* (Report to the Victorian Attorney-General, August 2020) 33 <https://apo.org.au/sites/default/files/resource-files/2020-11/apo-nid309812.pdf>.

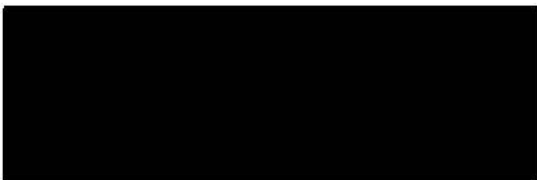
regimes' in the offence's place has meant that large numbers of vulnerable people are still being held in cells because they are drunk in public.²⁰ Such practices do not prevent deaths in custody.

We acknowledge that Queensland faces its own unique challenges, and the Victorian approach to decriminalisation of public intoxication is unlikely to be directly transferable to the Queensland context. We are in the process of facilitating discussions among our members to find solutions to these challenges. We would welcome the opportunity to work with the Queensland Government to develop a solution appropriately adapted to the needs of people in Queensland.

We have provided a copy of this correspondence to your colleagues, the Honourable Ms Leanne Linard MP, Minister for Children and Youth Justice and Minister for Multicultural Affairs and the Honourable Mr Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services and Mr Craig Crawford MP, Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
President

²⁰ Expert Reference Group, *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness* (Report to Victorian Attorney-General, August 2020) pages 33 and 34, <https://apo.org.au/sites/default/files/resource-files/2020-11/apo-nid309812.pdf>