Speech to the Homelessness Taskforce Policy Forum  
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Public Space Issues and Street Offences

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Introduction

- Thank you for the invitation to speak at this forum today.
- Acknowledge traditional owners

I’m a newcomer to homelessness sector. Before taking up my current role as coordinator for the HPLC I was working in the private legal sector as a litigation lawyer. So my ability to view where the policy debate is shifting from a historical perspective is limited. However, what I will aim to do in the next 20 minutes is provide you all with a legal perspective about current public space issues which may be of use to the Taskforce in developing new policies and updating existing policies – particularly in relation to law reform advocacy, which I note is the first policy theme of the Homelessness Taskforce.

I will speak about 3 things today:

1. look at the main laws that regulate public space and provide a brief legal analysis of those laws;
2. give you an update on the move-on powers debate; and
3. talk about new diversionary programs in Queensland for public space offences.

Homeless Persons’ Legal Clinic

Before I get started I would like to give you all a very quick overview of the work that our Clinic does. Our service is new and developing and there may be some of you who aren’t familiar with the work we do.

The Homeless Persons’ Legal Clinic is a project of the Queensland Public Interest Law Clearing House. We operate 7 legal clinics in Brisbane at areas where homeless people frequent (I know some of our host agencies are represented in this Forum). They include the Red Cross Youth Night Café, West End Community House through the 4AAA Kiosk on Boundary Street, Ozcare Men’s Hostel, Salvation Army Pindari Women’s and Men’s Hostel, Mission Australia Café One on Wickham in Fortitude Valley and the Anglican Women’s Hostel in New Farm.

1 Coordinator of the Homeless Persons’ Legal Clinic, QPILCH.
Our lawyers work in private law firms and volunteer their time to participate in the Clinics. QPILCH member firms generously donate the time of their solicitors to work at the Clinics.

It is recognised that legal issues are often a contributing factor to someone entering the cycle homelessness and can also prevent someone from exiting that cycle. The law can also be a powerful tool to create a pathway out of homelessness.

Our service does not take on criminal and family law matters however we can refer these onto other agencies. Anything else – housing, debt, discrimination, social security, guardianship or administration, wills, bankruptcy… if any of you have clients with these sort of legal issues – refer them to us!

**Public space law**

The key legislation in Queensland that regulates behaviour in public space is the *Summary Offences Act*.

The *Summary Offences Act* replaced the old *Vagrants* legislation. The Rights in Public Space Action Group - of which QPILCH is a member, lobbied hard to ensure the new Act would remove many of the old public space offences contained in the Vagrants legislation. Despite their efforts, the new Act retained a lot of the offences and as RIPS described, was essentially an Act “written by the Queensland Police Service for the Queensland Police Service”.

There are a number of public space offences in the legislation. The Act:

- criminalises begging in a public place (maximum penalty $750 or 6 months imprisonment). There is no statutory defence.

- criminalises being drunk in a public place (maximum penalty $150) no statutory defence.

- creates the offence of “being a public nuisance” by behaving in a disorderly, offensive, violent or threatening manner. This can be done by using offensive language.

In recent years there has been a huge growth in critical analysis of Queensland’s public space law. I’d like to acknowledge the work of Tamara Walsh and the extent of her contribution to the debate.

What we currently have in Queensland is legislation that criminalises behaviour which, but for that behaviour being conducted in public space, would not be perfectly legal.

Take alcohol for example. It’s not illegal to drink beer. I’d say a lot of us would be locked up if it was illegal to have a pint. Luckily for me, I do not risk being charged and fined for having a drink because I tend to drink my alcohol
indoors or at a licensed venue. People living in public space don’t have that luxury. For them, the legal act of drinking alcohol is transformed into a criminal offence simply because they consume alcohol in a public space.

The simple fact is that the offences contained in the Summary Offences Act disproportionately target and discriminate against marginalised people and impedes their ability to enjoy fundamental freedoms that the majority of Queenslanders take for granted.

The statistics of speak for themselves – they reveal a pretty grim picture of who these laws are targeting.

A study conducted by Tamara Walsh found that of the 57 public space offenders in the Brisbane Magistrates Court in February 2004:

- up to 60% of offenders were very poor or homeless;
- 41% were Indigenous
- 39% were aged between 17 and 25 years
- 10% were stated to have a severe mental illness or intellectual disability.

February 2004 was not a “blip” - similar findings were made in a recent ‘Homelessness and Street Offences Project’ conducted by Legal Aid Queensland, which finished in June 2005.

That project:
- provided representation to homeless people in the Brisbane Magistrates Court;
- researched the offences homeless people were charged with; and
- how they were dealt with by the Courts.

Of the 60 homeless people that were referred to the Project:

- 39% had been charged with public order or police offences;
- 74% had previous criminal histories, mostly for summary offences;
- up to 56% of clients had mental health issues;
- approximately 33% were substance abusers;
- the majority were sleeping rough at the time of the offence.

So really, the message is:

- Qld’s public space law is providing an entry point for homeless people into the criminal justice system;
- reforming the legislation is necessary to achieve its object of protecting the community without resulting in undue hardship for the homeless.

**Move on Powers**

The problem is mirrored with move-on powers.
Whilst the powers do not criminalise behaviour, they target behaviour that is often associated with homelessness. The criminalising effect comes into play when a person contravenes a lawful move-on direction, which attracts a fine of up to $3,000.

No doubt you would have read in Monday’s Courier-Mail that the Lord Mayor Campbell Newman intends to proceed with an application to the Minister for Police for move-on powers, despite 85% of public submissions opposing the introduction of the powers.

The process from here is a statutory application to the Minister for Police who decides whether to accept or reject the application.

Council must provide the Minister with a copy of every submission received and, because it relies on public order problems as a reason for its application, Council must also include written information verifying the existence of the problems – notably crime statistics.

You may or may not know that Council has refused to provide those statistics to QPILCH and says they are subject to a confidentiality agreement with the Queensland Police Service. So Council’s evidence that it must provide QPS has been confidentially provided to Council by QPS – hardly a transparent application process. Our request for the statistics from the QPS has also been met with no response.

QPILCH and the HPLC that the introduction of move-on powers will result in:

- more public space offences being committed by homeless people as they will be reluctant to move-on;
- a compromised ability for service providers to assist homeless people and an increased vulnerability of people who miss out on accessing vital support services;
- potential for police abuse by police
- shifting the problem from one area to another and failing to address the structural causes of homelessness.

At this stage, what we can do is maintain the public debate on move-on powers. Keep the issue alive in the press by letters to the editor, joint statements, opinion pieces, radio etc. Council’s application has not yet been made and there is a window of time to keep the pressure on.

**Diversionary schemes**

What I have been talking about is pretty doom and gloom. Let’s look at something positive.

We all know that reforming legislation is a key outcome for positive change of our legal system with respect to public space offences.
But legislative reform is just one plank. Reform of policing and sentencing processes can also alleviate the burden on marginalised public space offenders.

In December 2004, State Cabinet approved a range of initiatives to minimise the impacts of the *Summary Offences Act 2005* on homeless and Indigenous people.

One of those initiatives was the establishment of a pilot court diversion program for homeless people charged with public space offences.

Some of the key objectives of the pilot program are to:

- support homeless people charged with public space offences through the court system;
- divert homeless people away from sentencing and into support services such as accommodation and health services;
- reduce the number of fines for public space offences for homeless people;
- prevent the entrenchment of homeless people in a cycle of offending and punishment.

Our service is one of the agencies on the multi-agency reference group supporting the program.

The pilot program is a positive step and indicates an acknowledgment by the State government of the effects of the *Summary Offences Act* on homeless people. Of course, one could be forgiven for querying the value of spending money at the sentencing stage when it would be more economical to simply reform the legislation.

A potential issue that we see is actually getting people to court. The ‘failure to appear’ rate is significant. Legal Aid’s Homelessness and Street Offences Project found 18% of homeless people charged with a public space offence failed to appear, which resulted in warrants for their arrest being issued.

However, we remain optimistic about the pilot program and it is very much a “watch this space” for the sector.

**Conclusion & Human rights framework**

I hope this presentation has been useful for informing your discussions this afternoon. Policies about advocating for law reform are an important aspect of effecting positive change for homeless people.

QPILCH, the HPLC, RIPS and legal academics have a degree of knowledge about advocating for law reform – and we are keen to share that knowledge.
Law reform work best when it is informed by actual case studies and stories from homeless people, so let's keep the lines of communication open.

Human rights are increasingly used as a framework for responding to laws that effect homeless people. In developing new or updating existing policy positions, it is useful to use human rights as a basis for advocating change.

Basically:

Australia is a signatory to many international treaties focusing on human rights. When Australia ratified those treaties it agreed to the full implementation of the rights specified – that includes implementation not only at a federal government level, but also by state and local governments. The Beattie government and the Brisbane City Council are obliged to protect the human rights of all Brisbane residents, including homeless people.

The argument is about asserting, protecting and supporting the full range of human rights – civil, political, economic, social and cultural rights of people living in public space.

Thank you for giving me the time to speak today. I look forward to listening to the policy debates that follow. Hopefully together we can work towards a reality where homeless people do not live in what Casandra Goldie has termed a “human rights wasteland”.

Thank you.