Nowhere to hide: when the home is not a haven

Michelle Bradfield

It is my firm belief that the ultimate test of our worth as a democratic nation is how we treat our most disadvantaged and vulnerable. Sir William Dean

The “Smart State” criminalises the basic acts that its citizens carry out in their own homes. Public space is often the only space homeless people have to undertake their daily living activities, and many regard this space to be their home. Basic acts performed in public spaces such as sleeping, storing goods, begging, swearing, drinking alcohol, and going to the toilet are criminal offences. The ridiculousness of these laws extends further, to criminalise those who have insufficient means.

The Vagrancy, Gaming and Other Offences Act 1931 (Qld) (Vagrancy Act) and other similar laws disproportionately and detrimentally affect the homeless. These laws are unjust as they criminalise behaviour on the basis of housing status rather than behaviour being wrong.

The Smart State’s laws

The Vagrancy Act creates several offences that seriously affect the homeless and are specifically targeted at criminalising poverty.

A Vagrant includes any person who:

- has insufficient or no visible lawful means of support (s 4(1)(a));
- is a habitual drunkard who behaves in a disorderly or riotous manner in a public place (s 4(1)(c)), (the Liquor Act 1992 (Qld) also prohibits consuming liquor in a public place); or
- loiters or places himself/herself in a public place to beg or gather alms (s 4(1)(k)).

The penalty for being a Vagrant is a fine of $100 or 6 months imprisonment.

The only exemption from being penalised for having insufficient means is if a person is bona fide unemployed and in search of employment. This does not assist the homeless who are unable to effectively compete in the labour market due to a number of factors including lack of financial means, no fixed addressed, mental illness, substance abuse or limited education.

The Queensland Minister for Police and Corrective Services, the Hon Tony McGrady MP, described prosecuting the poor under the Vagrancy Act as 'unjust' and indicated the criminal sanctions would be dumped because they were 'incongruent with social programs being developed by the Beattie Government'. On 25 November 2003 the Vagrancy Act was amended by the passing of a Bill tabled by the Minister. The positive reform expected was not forthcoming. To the contrary, the amendments introduced a new criminal offence of public nuisance.

A public nuisance is committed if a person behaves in a disorderly, offensive, threatening, or violent way, and the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

It is feared that this new offence will provide a further basis for charging the homeless. The scope of the law is extended by the use of the words 'is likely to interfere' and increases the police's potential for arbitrary abuse. In addition, the section specifically provides that it is unnecessary for a complaint to be made before a charge can be made.

It is not only the State Government that criminalises basic acts of the homeless, but also the Local Councils of Brisbane, Mount Isa, Townsville, Cairns, Gold Coast, Ipswich and Toowoomba.

The Brisbane City Council Ordinances prohibit:

---

1 LLB (Hons) (QUT), BBus (Dist) (QUT); Solicitor, Minter Ellison Lawyers; Coordinator, Queensland Homeless Persons’ Legal Clinic. The views expressed are those of the author and not necessarily views held by Minter Ellison Lawyers.
3 Chapter 9, section 28, 37; Chapter 10, section 9, 26; Chapter 19, section 11.
The following examples demonstrate the unjustness of public space offences:

1. During a 5 week period, a client from the Queensland Homeless Persons' Legal Clinic was charged with numerous offences and incurred a debt in excess of $2,400. The charges were as follows:

   - Consuming liquor in a public place - 5 charges
   - Using threatening words - 3 charges
   - Contravening a move on direction - 3 charges
   - Obstructing police officers - 2 charges
   - Behaving in an insulting manner - 1 charge
   - Possession of a knife - 2 charges. The knife was carried with all his other possessions, and used for meals.

   Statistics provided by the Crime Statistics Unit of Queensland’s Office of Economics and Statistical Research (Codes 13131, 13132 and 13133).

---


5 Statistics provided by the Crime Statistics Unit of Queensland’s Office of Economics and Statistical Research (Codes 13131, 13132 and 13133).
Often three or more charges were given at the same time.

2. An indigenous man begging for a cigarette was jailed for 6 weeks. He asked a police officer for a cigarette, who refused and then approached three other people. He had been homeless for 8 years.  

3. A man was charged with having insufficient means of support. He was arrested, fingerprinted, handcuffed and locked in a watch house for 15 hours. Thankfully, the Gold Coast Magistrate dismissed the charge and stated the Courts are not a satisfactory way of dealing with homelessness.

The incorrectness of these laws and the views of the most marginalised

Public space laws target the homeless and disproportionately affect the manner in which they carry out their basic daily activities. It is not fair or just to have different standards of behaviour based on one’s housing status. A number of the above laws are in direct contravention of human rights recognised by customary international law and the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

The purpose stated in the Vagrancy Act is to make better provision for the prevention and punishment of offences by vagrants. Fining or imprisoning individuals does not accord with prevention as these acts, through necessity, will still need to be carried out in the public space. Punishing the homeless for being poor achieves little and only compounds the problem as fines cannot be paid and imprisonment is potentially a doorway to greater involvement in the criminal justice system. If the objects of the Act cannot be achieved why does it still exist?

In regulating the homes of the disadvantaged, the opinions of those most affected have been overlooked. The Rights in the Public Space Action Group with the support of Caxton Legal Centre Inc undertook a study to obtain the perspectives of marginalised public space users in Queensland and their service providers about the use of public space.

Generally, the marginalised had similar concerns to the police and government about inappropriate behaviour in public space. They thought behaviour was inappropriate when there was cause for fear or violence was likely.

Insufficient means and begging

It is ridiculous that poverty can amount to a criminal offence and that resorting to begging to remedy such poverty is also criminalised. Begging is often critical to a homeless person's survival.

Public space users stated that begging was carried out for the following reasons; drug and alcoholic addictions, cigarettes, hunger, the need for shelter, public transport, medical expenses and debt. One person interviewed stated ‘we have to do it, we have to survive’ and another 'it's humiliating, I don't like to do it but sometimes I have to’. 97% of those interviewed believed criminal sanctions should not be imposed and the police should intervene only if behaviour was aggressive or threatening. Their service providers were of similar views.

A majority of those charged with begging are fined. Considering individuals beg due to a lack of finances, a fine seems a completely inappropriate and ineffective solution. It compounds the problem and may result in individuals committing more serious offences to pay their debts and survive.

Consuming Alcohol

Drinking is generally seen as an acceptable activity and citizens engage in this behaviour in their own homes as well as in many social venues. The homeless have limited options to drink in private spaces.

---

9 A report of the results of this study are contained in Monique Du-Briard, Public Space…Public Rights: The Views of Marginalised People Who Use Public Space (2003).
Frequently they are not welcome in private establishments or cannot afford the commodities on sale. Do they not have a right to consume alcohol like everyone else?

Obscene language

Who defines what words amount to an obscenity? Obscene words are used in movies, songs and TV shows, yet if the homeless use these terms in their homes they are charged. Charged for having a lack of education, limited vocabulary, repeating what friends, family, favourite movie stars and singers have said. Magistrate Heilpern stated in Police v Shannon Thomas Dunn, "for some people, offensive language is part of their everyday vocabulary, they do not use it to offend, but as a legitimate form of expression".10

97% of public space users were of the belief that obscene language alone should not attract criminal sanctions, however the police should intervene if it becomes threatening or excessively abusive.

Policing

Police have an enormous amount of discretion in exercising their powers and it is the experience of the Homeless Persons' Legal Clinic that the homeless are subjected to overpolicing. The law is not equally applied to all citizens in the public space and the homeless are charged when other members of society are not. In addition it is often the case that the homeless are charged as a result of their reaction to police behaviour.

Opinions held by the homeless of the police and their actions when policing public spaces are largely negative. One interviewee stated 'We people get picked on all the time. To tell you the truth I'm glad I'm not a blackfella. They cop lotsa shit. Poor blokes.'

Service providers were generally of the opinion that there are unfair practices of policing, and their clients are constantly harassed by police officers in their use of public space regardless of whether they are doing something wrong.

Reform

Queensland's regulation of public space requires urgent reform. There should be extensive consultation with the relevant government departments, community organisations and the homeless in order to develop a holistic system that addresses this social problem. Offences need to focus on behaviour that is wrong and not an individual's housing status.

Some suggestions for reform are as follows:

- Addressing the underlying causes of homelessness. It is essential to implement policies that address broader social issues such as unemployment, mental illness, family violence, addiction and social isolation.
- Increasing public housing.
- Developing programs that target employment, education and training for the homeless.
- Increasing Centrelink’s flexibility to accommodate homelessness. Payments should not be cancelled due to reasons that relate to a homeless person’s circumstances.
- Police need to undertake training to increase their understanding of the causes of homelessness and the circumstances of the homeless. Police should be required to refer individuals to welfare agencies, medical centres or rehabilitation services instead of charging them.
- The arbitrary power that the police have should be limited. The basis of a charge should be actual adverse impact on citizens other than the police.

We need to address homelessness as a social problem and reform the current system which only compounds the problem by relying on the criminal justice system. The Smart State needs to examine its laws that criminalise the basic behaviour of our most disadvantaged in their own homes. Let's hope the State of Queensland gets smarter and reforms these discriminatory and unjust laws before we miserably fail the ultimate test of our worth espoused by Sir William Deane.