

The Crime of Begging: Punishing Poverty in Australia

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Begging remains a criminal offence in Queensland, Tasmania, Victoria, Northern Territory, and South Australia.¹ Maximum penalties vary, but are as severe as 12 months imprisonment or a \$1570 fine. With two states currently considering the repeal of begging as an offence,² it is time to revisit the use of the criminal justice system to regulate begging in Australia.

We argue that the criminal justice system is an inappropriate and ineffective forum for addressing the issue of begging. Criminalisation fails to address individual needs which may cause a person to engage in begging, and in fact may further exacerbate hardship. It also fails to identify or rectify the systemic issues which relate directly to the incidence of begging in Australia.

The Problem with Criminalising Begging

The criminalisation of begging has a disproportionate impact on the most vulnerable members of society, who are significantly more likely to engage in begging on account of their circumstances.

Research into begging in Australia demonstrates a strong correlation between the practice of begging and several complex and interrelated individual factors, including long-term unemployment, homelessness, mental illness, substance dependency, recent domestic and family violence, and poverty.³ The research has also shown that begging is a shameful experience and undertaken out of necessity.⁴ People who commit the crime of begging do so out of desperation and because their basic needs are not being met.

In addition to individual factors, there are also structural factors which contribute to the incidence of begging, in particular inaccessible or inadequately funded welfare services, healthcare, housing, and social security. In his seminal study 'Understanding and Responding to Begging' Lynch (2005) found that 100 per cent of respondent beggars had sought but had been unable to access some form of social support in the previous month.⁵

This is consistent with 2010 data from Victoria, that during the period they were begging, 57.69 per cent of respondents indicated that they had been denied accommodation, and 53.85 per cent had been denied food.⁶ Across Australia, the unmet demand for specialist homelessness services continues to be high, with a daily average of 275 requests for assistance unable to be met, and a total of 100,302 in the 2015–16 period.⁷

Many arguments in favour of criminalising begging are not supported by the evidence. The 'broken windows theory' which argues that the incidence of begging correlates with a higher incidence of more serious crimes, has been criticised both domestically and internationally as factually inaccurate and reflective of public misconceptions and discomfort about poverty.⁸

Domestic research into begging has consistently found that the incidence of fraudulent or aggressive begging is low, and much lower than is reported in the media.⁹ Further, Walsh (2004) has rightly argued that aggressive, violent, or fraudulent begging can be prosecuted under separate, more appropriate criminal offences.¹⁰

The crime of begging also raises important access to justice questions, given that almost no charges are contested, offenders are largely unrepresented in court, and defences to the offence are limited.¹¹

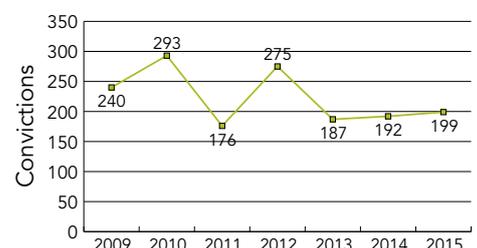
Punishing Beggars: The Numbers

Australia's current begging laws are rooted in the offence of 'vagrancy' which can be traced back to 1300s England.¹² Whilst seemingly archaic, the offence of begging is still regularly enforced in modern Australian society.

In the Queensland context, recently obtained data from the Queensland Police Service indicates that convictions for begging have persisted over time, and in the period of 2009 to 2015, there were a total of 1562 convictions for the offence. Over that period, there was an average of 227 convictions per year and no significant decrease in the rate of convictions over time. In fact, these statistics mark an increase in the figures cited by Walsh in 2004, who reported an annual rate of 147 convictions.¹³ This supports a conclusion that criminalisation has had a limited effect on the incidence of begging.

Police data also indicates that by far the most commonly imposed penalty

Begging conviction rates in Queensland Magistrates Courts



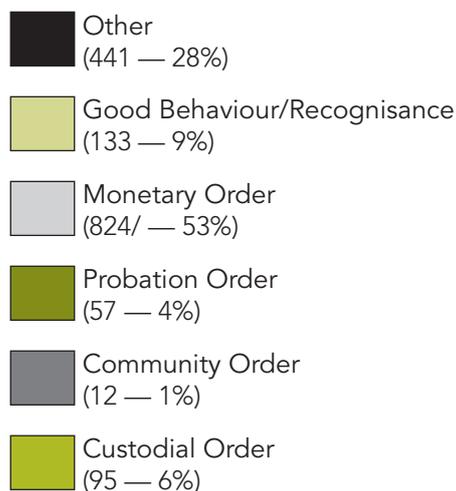
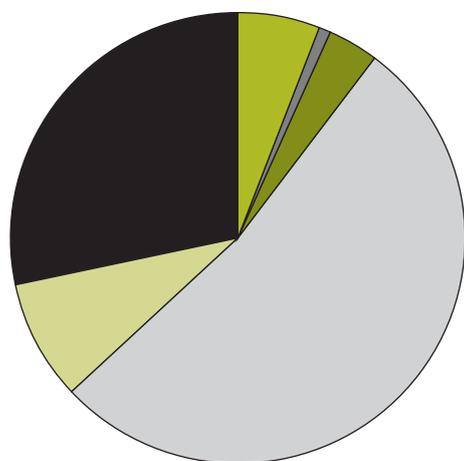
QPS data accessed April 2016

for begging in Queensland is a monetary order, which requires an offender to pay a fine as punishment. Monetary orders represented more than half of all sentences imposed for begging in Queensland in the 2009 to 2015 period.

The imposition of a fine for the offence of begging fails to achieve sentencing goals, and is likely to impose further hardship upon those who are already experiencing severe disadvantage. It also burdens the justice system with the impossible task of enforcing a debt against someone who has no means to pay it. In Queensland, the State Penalties Enforcement Registry (SPER) currently has \$1.19 billion of unpaid fines registered for enforcement, the subject of recent and ongoing political attention.¹⁴

In issuing a fine, Queensland Magistrates are obliged to consider the financial circumstances of the offender; and the burden that payment of the fine will be on the

Penalties imposed for begging in Queensland 2009–2015



QPS data accessed April 2016

offender.¹⁵ The above statistics about the rate of fines imposed on beggars raise concerns about to what extent this obligation is being heeded. Walsh (2005) found that those experiencing homelessness or on a low income received higher than average monetary penalties for public space offences heard in the Magistrates Court.¹⁶

Case study: HPLC client Bobby¹⁷

Bobby was a 50 year old Indigenous man living in Far North Queensland when he was charged with begging. At the time, Bobby was long-term unemployed, had a cognitive disability, and was homeless. Bobby begged for money because he was desperate and could not afford basic living expenses.

After being charged, Bobby appeared in the local Magistrates Court where he pleaded guilty and received a \$500 fine. At the time, Bobby already had a SPER debt of over \$2100, and because he could not afford to pay his new fine, it was soon added to his SPER debt for enforcement action.

Bobby's inability to pay back his debts caused him ongoing stress and exacerbated his pre-existing vulnerabilities. He continued to experience financial hardship and soon started begging again.

Addressing Begging

Begging is broadly recognised as a 'problem', including by those who beg.¹⁸ It is now widely acknowledged that begging is the manifestation of complex and multifaceted contributing factors, at both the individual and structural level.

Using the criminal justice system to punish those who beg is an ineffective and inappropriate solution. It fails to address individual needs linked to begging, such as homelessness, poverty, unemployment, mental illness and substance dependency. In fact, the imposition of criminal penalties, and in particular fines, is likely to further entrench disadvantage.

Criminalisation as a means of regulation also ignores broader structural issues which contribute to

the incidence of begging, including inadequately funded and inaccessible social supports, healthcare, and housing. Only by rectifying these structural issues, and supporting beggars to address their individual needs, will the problem of begging be remedied. The criminalisation of begging has no place in modern Australian society, and we will watch with interest the reforms being considered in Victoria and Tasmania.

Endnotes

1. Summary Offences Act 2005 (Qld) s8; Police Offences Act 1935 (Tas), s8; Summary Offences Act 1966 (Vic), s49A; Summary Offences Act (NT), s56; Summary Offences Act 1953 (SA), s12.
2. Police Offences Amendment (Begging) Bill 2016 (Tas) and Summary Offences Amendment (Begging or Gathering Alms) Bill 2016 (Vic).
3. Horn M and Cooke M 2001 'A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne', Hanover Welfare Services; Lynch P 2005 'Understanding and Responding to Begging' Melbourne University Law Review, vol.29, no.2, pp.518–555; Farrell J and Povey C 2010 'We Want Change! Calling for the Abolition of the Criminal Offence of Begging', PILCH Homeless Persons' Legal Clinic.
4. Lynch 2005, op cit, p.533.
5. ibid, p.529.
6. Farrell J and Povey C 2010, op cit, p.5.
7. Australian Institute for Health and Welfare, Specialist homelessness services 2015–16, Chapter 5: Unmet demand for specialist homelessness services.
8. Walsh T 2004 'Defending begging offences' QUT Law Review, vol. 4, no. 1, pp.58–76, p.60; Waldron J 2000 'Homelessness and Community' University of Toronto Law Journal vol. 50 no.4, pp.371–406, p.386.
9. Horn M and Cooke M 2001, op cit; Lynch P 2005, op cit; Adams L 2014 'Asking for change: Tackling begging with enforcement in Melbourne', Parity vol.27, no.9, pp.24–26.
10. Walsh T 2004, op cit.
11. ibid.
12. Kimber J 2013 'Poor Laws: A Historiography of Vagrancy in Australia' 11(8) History Compass, vol.11 no.8, p.537.
13. Walsh T 2004, op cit at p.58.
14. www.sper.qld.gov.au/about-us/statistics/, accessed 14 June 2017.
15. Penalties and Sentences Act 1992, s48.
16. Walsh T 2005 'Won't Pay or Can't Pay? Exploring the Use of Fines as a Sentencing Alternative for Public Nuisance Type Offences in Queensland', Current Issues in Criminal Justice, vol.17, no.2, pp.217–238, p.225.
17. Name has been changed.
18. Lynch P 2005, op cit, p.521.