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

Submission No: 22

Submitted by: Shane Cuthbert

Publication: Make the submission and your name public

Attachments: See attachment

Submitter Comments:

Submitter Recommendations:

To – Committee Secretary

Community Support and Services Committee

Email – cssc@parliament.qld.gov.au

Author – Shane Cuthbert

[redacted]

[redacted]

SUBMISSION TO QUEENSLAND GOVERNMENT INQUIRY INTO THE DECRIMINILISATION OF CERTAIN PUBLIC OFFENCES, HEALTH, AND WELFARE RESPONSES

Introduction

As a future legal practitioner and an advocate for human rights, I have a professional and personal responsibility to protect the rule of law, the integrity of the legal system and the rights of others. To do this, I engage regularly with law review and encourage law reforms. I would like to share my personal insights into and discuss some positive and negative considerations in this submission to the Queensland Government, *Community Support and Services Committee: Inquiry into the decriminalisation of certain public offences, and health and welfare responses*.

As both a law student and an individual that has been charged with simple offences in the past, I understand crime prevention measures and have also experienced the procedures currently utilised by police in addressing and dealing with similar crimes. As a community leader, human rights activist and more specifically, a Cairns resident, I am all too familiar with the issues of public intoxication and public urination where I live in this regional community.

Begging in a Public Place

Section 8 of the Summary Offences Act 2005 [1], provides for 'Begging in a public place'.

> (1) A person must not—
> (a) beg for money or goods in a public place; or
> (b) cause, procure or encourage a child to beg for money or goods in a public place; or
> (c) solicit donations of money or goods in a public place.
> *Penalty—*
> Maximum penalty—10 penalty units or 6 months imprisonment.
>
> (2) *Subsection (1) (c)* does not apply to a person who—
> (a) is an individual authorised by a charity registered under the *Collections Act 1966* to solicit donations for the charity; or
> (b) is authorised by a local government to busk in a public place.
>
> (3) In this section—
> **"procure"** includes—
> (a) enable; and
> (b) facilitate.

Personal Experience

I have personally experienced, being asked for money, food and even coffee within the Cairns CBD. Sometimes, I must admit, it is rather uncomfortable, and I have been approached by rather persistent individuals over the years however, the vast majority of 'beggars' are not invasive and/or intrusive and simply hold a sign. This means that their

1 *Summary Offences Act* 2005 (Qld) s8

presence is not intimidating anyone or causing anxiety and those that choose to donate coins etc, do so of their own free will.

I feel very strongly that this offence should be decriminilised and was quite shocked to learn recently that this was an offence in Queensland. I was in the Cairns Magistrates Court recently (2021) whilst undergoing some of the practical work required as a student of law. I was sitting in the Court one day when a disabled person, (disabled as they had a prosthetic leg) entered the Court room, charged with one count of 'begging'. As it turns out, this individual has been before the same Court on 4 separate occasions prior, charged with the same offence, known to frequent the Woolworths store located in the CBD, a popular spot for beggars and buskers because of its high foot traffic during the day, its central location and access to toilets and food.

The individual entered a guilty plea, and the Magistrate asked the self-represented individual whether, there was any explanation for the offence and whether there was anything they would like the Court to know prior to sentencing. The individual told the Court that they were currently homeless as they were on a waiting list for public housing and unable to work due to the obvious physical disability and a mental disability. This individual was receiving a disability allowance from Centrelink.

The Magistrate dealt with this individual in a very kind and humane manner, even apologising to the individual, stating that although she would not this day order a fine, the individual would still need to pay the offender levy of $133.60 an amount payable and outside of the Magistrates powers of discretion. The Magistrate mentioned also that issuing a fine as a penalty for someone that was asking for money was counterproductive. The prosecution provided when reading the facts that at the time of arrest, the individual was holding a sign requesting $10 for a bus fare and when searched by police, they located approx. $7.

Counter Productive

The Magistrate correctly identified this offence as counter-productive and balanced appropriately (in my view) the expectations of the public with the needs of the offender. The individual was not charged with any other offences such as resisting police, failing to move-on or any of the other common public space offences (often charged together).

I do not know how much money this individual managed to collect over the last few months, but it is clear from the facts that at least on this occasion, even in the absence of a fine, the offender levy ensured that this individual becomes more disadvantaged. I suspect that this type of decision is not isolated, and Magistrates regularly use their discretion when issuing fines for this type of offence. Not only is this counterproductive for the clearly disadvantaged individual but, it also disadvantages the Courts and the Police when you consider the resources that have been used to prosecute the offence.

As a business owner, with businesses located in the CBD and as a member of the Cairns Young Chamber of Commerce, I too share some of the opinions and views of other business owners in that, it is certainly undesirable to have beggars outside any place of business interfering with potential customers and the public, but the slight inconvenience caused must be weighed appropriately against the costs associated with any prosecution.

Does Prosecution Act as a Deterrent?

I suspect it does not as the example provided shows, this individual had been charged with this offence on four prior occasions, clearly showing that this offence did not serve as a deterrent. Those that receive Centrelink benefits can also have any fine referred to SPER and deductions made from their benefit however, if an individual is experiencing such severe hardship such as homelessness, this can be waived.

It is my submission that this offence does not act as a deterrent, does not adequately address the issues of the individual or the community. The costs associated with prosecuting this offence would be better utilised providing additional support and shelters in these areas.

Being Intoxicated in a Public Place

Section 10 of the Summary Offences Act 2005 [2], provides for 'Being Intoxicated in a public place'.

> (1)A person must not be intoxicated in a public place.
>
> Maximum penalty—2 penalty units.
>
> (2)In this section—
> ***intoxicated*** means drunk or otherwise adversely affected by drugs or another intoxicating substance.

Public Safety Considerations

More than 60 percent of all assaults in Queensland, listed alcohol as a contributing factor which means that intoxicated people in public, are more likely to become involved in an altercation and in Cairns, serious assaults are three times more likely to occur than in Brisbane, despite a much lower population. The consideration of Public Safety is an important one, and not just in terms of preventing assaults.

The prevention of injuries related to alcohol consumption such as trips and falls should also be considered however, it is difficult to see how Police intervention, at least in circumstances where a fine is issued, or an individual charged with a criminal offence for public intoxication would reduce these types of injuries and provide better protections for the community. The Police already have discretionary powers and there are diversionary facilities available here in Cairns that are underutilised.

Quite simply, not every intoxicated person is causing trouble and most publicly intoxicated people are on the way home, waiting for taxis and other transports, purchasing food after a night out and generally doing the right thing. What happens is that this offence indirectly discriminates against indigenous Australians who gather and drink in public spaces by application of the legislation.

Royal Commission into Aboriginal Deaths in Custody

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2 *Summary Offences Act 2005* (Qld) s10

Following the Royal Commission into Aboriginal Deaths in Custody the Queensland Law Society, in consultation with First Nations stakeholders, actively advocated for law reform to address the overrepresentation of Aboriginal and Torres Strait Islander people in Australia's justice system however, Aboriginal deaths in custody are not the result of this over-representation.

When you consider each case, you will find that these deaths were mostly preventable and only occurred because of Police not following procedures, often whilst in the watchhouse. Aboriginal deaths in custody are not prevented by taking less people into custody, although that may contribute to a reduction statistically, the prevention will only occur because of Police officers following the internal processes and procedures. I have personally experienced poor treatment in the watchhouse and witnessed the inhumane treatment of indigenous individuals.

Personal Experience

Recently, I was arrested in relation to a public nuisance offence (discontinued by Police) and spent a night in the Cairns Watchhouse, where I witnessed several breaches of various Human Rights Acts and the Police Powers and Responsibilities legislation [3].

A group of indigenous individuals were arguing and two of those individuals raised their fists and were threatening to assault each other. I placed myself (at risk) between the two individuals and convinced them not to fight one another. I had asked both whether they had ever spent time in Lotus Glen (local correctional facility) of which they affirmed, and I told them that to avoid going back there, they would need to stop.

Shortly afterwards, local Police arrived at the scene and began threatening the group with the use of Capsicum spray if they did not disperse, before arresting one of the instigators. I told Police that this individual had not yet assaulted anyone and there was no need to arrest this individual as I had been a witness to the preceding incident. I was told I was being a 'public nuisance' and arrested.

Further, in the watchhouse I was placed into a cell of my own however, a short time later two indigenous individuals were placed into the cell with me. There was no toilet paper in this cell denying each of us, a 'necessity of life'. More importantly, one of the indigenous individuals, an older man in his 50s or 60s began to experience chest pains.

I informed the Police via the intercom in the cell, (installed for medical emergencies), that this individual was experiencing chest pain and in need of medical attention immediately. I was told to 'shut up and go to bed'. The Police then disconnected the intercom, and I was no longer able to use it to request medical attention.

I began banging on the cell door to get the attention of officers nearby, who told me to 'pull my head in' and asked me 'who do you think you are? a humanitarian?". After responding in the affirmative and continuing to bang on the door, officers finally approached the cell and indicated they would enter.

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3 *Police Powers and Responsibilities Act 2000* (Qld)

Upon entering the cell, I was told to 'sit down' and 'shut up' and I complied with the direction. The officers then went over to the man that was experiencing chest pains and began to force his confession, for what sounded like a theft offence whilst he was under medical duress. I informed the officers that this type of forced confession was wrong, was not admissible and that I was a witness to the mistreatment of the individual. I was then taken by the group of officers to another cell where I was assaulted, my head was slammed into the concrete wall and my arm had been twisted and folded behind my back. I began to request medical attention from staff afterwards, but these repeated requests were denied.

Why Is It Important for Police to Act Only Within Their Powers?

Police are not above the law or immune to the law and are just as accountable before the law as anyone else. Firstly, because individuals have rights at common law and the courts place great importance on those rights.

> *"Personal liberty was held by Blackstone to be an absolute right vested in the individual by the immutable laws of nature and had never been abridged by the laws of England 'without sufficient cause. [4]'*

In the case of *Toobridge v Hardy [5]* Justice Fullagar stated that the;

> *'Right to personal liberty is the most fundamental, elementary right at common law.'*

This fundamental right was also referred to by Mason and Brennan JJ in their joint judgment in *Williams v The Queen. [6]*

Whilst Justice Dean in *Cleland v The Queen*7 says;

> *'It is of critical importance, to the existence and protection of personal liberty that the restraints the law places on police officers are scrupulously observed'.*

In other words, it is held by the courts at common law that, courts will not look too kindly on Police officers ignoring technicalities of law.

The International Covenant of Civil and Political Rights [8] provides;

> '*People shall not be detained arbitrarily'.*

The Need for Balance

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4 *Commentaries on the Laws of England* (Oxford, 1765), Bk 1, pp 120-121, 130-131

5 *Trobridge v Hardy* (1955) 94 CLR at 152

6 *Williams v The Queen* (1986) 161 CLR 278 at 292

7 *Cleland v The Queen* (1982) 151 CLR at 26

8 *International Covenant of Civil and Political Rights* Article 9

Police must balance the rights of individuals with their responsibility to protect themselves and the wider community. Where these needs are not balanced effectively, the result can endanger life.

Let's consider a spectrum. At one end of that spectrum, individual rights are temporarily breached however, no serious violation, injury, or assault against an individual takes place. Consider however, the other end of the spectrum, where the result of this breach is death.

Miss Dhu

The Miss dhu case [9] is another extreme example where failure of the Police to adequately fulfill their responsibilities, led to a death in custody, the death of Julieka Ivanna Dhu. In 2014, Miss Dhu was a 22-year-old Aboriginal Australian woman arrested in relation to unpaid fines.

Whilst in custody, Miss Dhu complained of pain and was taken to the hospital where hospital staff told Police that her complaints were exaggerated and associated with drug withdrawal. 2 days later Miss Dhu again complained to the police about her pain and could no longer stand. Police officers accused her of faking her condition and handcuffed her to the back of a prison van where she later died.

The official cause of death was an infection caused by an untreated fractured rib however, an internal Police investigation found that 11 officers had failed to comply with Police regulations and were guilty of misconduct, receiving written and oral warnings. A coronial inquest later found Miss Dhu had suffered "unprofessional and inhumane" handling by police and "deficient" treatment from the hospital staff. The Inquest also established that Police had been influenced by "pre-conceived ideas about aboriginal people" and recommended individuals no longer be imprisoned for unpaid fines.

In 2020, six years after the death of Miss Dhu, the Government of Western Australia ceased jailing people for unpaid fines.

Rowe v Kemper

The *Rowe v Kemper [10*] case highlights the difficulty police officers often face in determining if, when, and how to exercise their "move-on" power under the *Police Powers and Responsibilities Act [11]* 2000 (Qld) ("the Act") in respect of members of the public behaving in a non-conforming manner and, discrimination against homeless individuals in public spaces.

Rowe, a 65-year-old homeless man was washing his clothes in a public toilet block in the Queens Street Mall, Brisbane when a Council cleaner Mr Demane, approached Mr Rowe and asked him to leave so that he could clean the facility. Mr Rowe attempted to negotiate with

9 *Inquest into the Death of Ms Dhu, Coroners Court of Western Australia.*

10 *Rowe v Kemper* (2008) QCA 175

11 *Police Powers and Responsibilities Act* (2000) (Qld)

Mr Demane about staying longer however, there began an argument, and the Police were called.

Four Police officers arrived and told Mr Rowe he would need to leave however, Mr Rowe became defiant and told the Police he was not doing anything wrong and did not have to leave, so Police issued him with a formal direction to leave before arresting him and charging him with failure to follow a Police direction and Assault/Obstruct Police in the performance of their duties.

Mr Rowe was originally found guilty of an offence against s 445(2) of the *Act [*12*]* (contravening a police direction given under the Act) and of an offence against s 444(1) of the *Act [*13*]* (obstructing the respondent, Constable Kemper, in the performance of his duties) however, Rowe was acquitted of both offences on appeal with the Court determining the arrest unlawful.

Interestingly, Police were of the opinion Mr Rowe was going to assault them, informing their decision to arrest him without giving him the opportunity to comply with the direction [14]. The Police told the Court they formed the view Mr Rowe would assault them as he was being verbally defiant, but the Court held that any reasonable suspicion he was going to assault them, could only be based on past and present actions, not those in the future and Mr Rowe had not yet shown any signs of aggression.

The Court also held that a move-on direction was unnecessary and that if it was necessary for Mr Demane to clean the toilets without Mr Rowe being present, that it was only necessary to prevent Mr Rowe from entering whilst cleaning was being conducted and not the full 8 hours as per the direction.

Justice Holmes found that Mr Rowe did not contravene the direction of Police because he was only warned he could be arrested, and not that failure to comply constituted an offence whilst Justice McKenzie also found, that they did not give him a reason to comply and that, as a 65-year-old man, he needed time to comply and:

> *"Police officers whose lot is to maintain good order and public safety in public places face a multitude of situations which often develop suddenly and have potentially unpredictable outcomes. Officers are required to make assessments, in real time, of the nature of the behaviour and how to respond to it so that good order is restored by means appropriate in the circumstances. Not infrequently, as in this case, the person whose conduct attracts attention will be disposed to be unco-operative when common-sense would suggest that a degree of give and take would avoid an escalated confrontation". [15]*

Justice McMurdo P held that:

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12 *Police Powers and Responsibilities Act* (2000) (Qld) s445 (2)

13 *Police Powers and Responsibilities Act* (2000) (Qld) s444 (1)

14 *Police Powers and Responsibilities Act* (2000) (Qld) s633

15 *Rowe v Kemper* (2008) QCA 175 at 84 Per Mackenzie AJA

> *"Constable Kemper reacted disproportionately to Mr Rowe's argumentative, non-conforming behaviour in giving him the direction in unreasonably broad terms. His direction to Mr Rowe under section 39 [16], was not reasonable in the circumstances and was not a "direction under this Act" in terms of s 445(1) [17]. He also acted unreasonably in the circumstances in not complying with, at least, s 391(3) [18] (giving a reasonable opportunity to comply with the direction when it was practicable to do so) before purporting to arrest Mr Rowe under s 445(2) [19]. It was unreasonable for Constable Kemper to have suspected that Mr Rowe had committed any offence against s 445(2) [20] for contravening his direction so soon after he had given it."* [21]

This case not only highlights the importance of Police responsibilities when issuing move-on orders to individuals but also, making other directions as well. If the Police issue a direction, it must be done so within their powers given to them under the *Act [22]*.

Alternatives and Discretion

Where Police have discretion, it should be exercised and where there are alternatives they should be explored. As with other summary offences, the Police can use their discretion when deciding whether to issue an infringement, court attendance notice or perform an arrest.

What decriminalising these offences will do however, is reduce the number of individuals in custody and therefor reduce the unnecessary risks associated with stays in the watchhouse. I think it is important for the Police to be held accountable and that in some circumstances, individuals need to be taken into custody.

Urinating in a Public Place

Section 7 of the Summary Offences Act 2005[23], provides for 'Urinating in a public place'.

> (1)A person must not urinate in a public place.
>
> Maximum penalty—
>
> (a)if the person urinates within licensed premises, or in the vicinity of licensed premises—4 penalty units; or

16 *Police Powers and Responsibilities Act* (2000) (Qld) s39

17 *Police Powers and Responsibilities Act* (2000) (Qld) s445 (1)

18 *Police Powers and Responsibilities Act* (2000) (Qld) s391 (3)

19 *Police Powers and Responsibilities Act* (2000) (Qld) s445 (2)

20 *Police Powers and Responsibilities Act* (2000) (Qld) s445 (2)

21 *Rowe v Kemper* (2008) QCA 175 at 31

22 *Police Powers and Responsibilities Act* (2000) (Qld)

23 *Summary Offences Act 2005* (Qld) s7

(b)otherwise—2 penalty units.

(2) In a proceeding for an offence against subsection (1), evidence that liquid was seen to be discharged from the vicinity of a person's pelvic area is enough evidence that the person was urinating.

(3) In this section—
public place does not include a facility in a public place that is designed for use as a toilet.

Again, a business owner, with businesses located in the CBD here in Cairns, I share some of the same opinions of other business owners and members of the public in that, it is certainly undesirable to have individuals urinating outside of any business and I can share my frustrations regarding public urination and in particular, the smell.

For the most part however, public urination does not bother me when it occurs, I do not see it. It largely occurs during the night when most businesses are closed, of those businesses that are open, people avoid urinating in those places because there is either security present or other people around and out of courtesy for others, people choose to find more private, dark, and secluded places to urinate. The real issue is the unwelcoming smell present the next day, and I have suggested to my local Council that additional public facilities should be provided and/or when the Council performs its nightly CBD street cleans, that known hotspots or 'smelly' spots should also get a pressure clean.

I must also admit although I am ashamed to say it that, on occasion I have been forced to urinate in public and I have taken great care to minimise any damage caused, also making sure to use gardens or trees wherever possible as discreetly as possible. The thing is that nature calls and when in public after consuming alcohol, it calls more frequently. Usually when inside a venue this is not an issue as venues provide toilets, it becomes an issue when leaving venues, waiting for transport or during transit to another location.

What About Homeless and Other Disadvantaged Individuals That Have No Choice?

Again, if there is no public spaces and toilets available, people will do what they must. At the end of the day, it is my view that providing a fine or being pursued criminally, does not act as a deterrent, and does nothing to prevent this from occurring.

I have witnessed an indigenous man defecating on the sidewalk outside of a club which I found particularly disgusting however, it is clear to me that this individual may have been suffering from some mental health issues, could have been severely intoxicated and could have been unaware of what he was doing. The Police in situations like this, do have other options available to them as it occurred in front of many people, no doubt causing anxiety in some and offending others, Police could have arrested this man for exposing himself and other public nuisance offences. Taking away the offence of public urination does not take away the ability of police to prosecute in more extreme cases, but it will minimise the indirect discrimination of homeless and indigenous individuals.

It is my submission that the offence does not act as a deterrent, nor does it adequately address the issues of the individual or the community. The costs associated with prosecuting this

offence would be better utilised providing additional access to restroom facilities in these areas.

Discrimination

The issue of discrimination arises in each of the above offences. There is much literature highlighting the discrimination these types of public space offences cause among our homeless, mentally ill, and indigenous Australians despite Our State and Federal Governments attempts to ensure equality through the enactment of legislation such as, the *Racial Discrimination Act 1975* (Cth) [24] and the *Anti-Discrimination Act 1991* (Qld) [25].

Due to increased visibility in public spaces, homeless people naturally attract greater Police attention and Queensland has the highest rate of homelessness than any other Australian State [26]. Of those individuals that are experiencing homelessness, Indigenous Australians are overrepresented. A 2005 study conducted by the Institute of Health and Welfare (AIHW) found that the rate for Indigenous Homelessness was approx. 18 per 1000 compared with just 6 for non-indigenous Australians [27].

Tamara Walsh of the University of Queensland suggests, in relation to the public space offence of 'failure to comply with a move-along direction that, 'whilst the powers may not be intended to target the young, Indigenous, the mentally ill and homeless, such is their practical effect, as it is these groups who are the most regular users of public spaces.' [28]

An aboriginal man, subjected to a move-on direction in Queensland stated, 'I was told by Police, that I was not allowed to sleep in the park. But I was born outside in a windbreak in the Eastern Tanami Desert They can't move us, I like sleepin out'. [29]

Another Indigenous man was quoted as saying the Police 'target black people' and 'when they have nothing else to do, they come up to us and say if we are there next times, they will lock us.' [30] A personal account reflected in the statistics and study of Paul Spooner. The

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24 *Racial Discrimination Act* 1975 (Cth)

25 *Anti-Discrimination Act* 1991 (Qld)

26 Mission Australia, 'Homelessness: New Understanding, new responses' (2004) Macquarie Bank Snapshot

27 Australian Institute of Health and Welfare, 'Indigenous Housing Needs 2005, a Multi-measure Needs Model' (2005) *Australian Government*, 1-65, 44

28 Tamara Walsh & Monica Taylor, 'Nowhere to go: The Impact of Police Move on Powers on Homeless People in Queensland' (2006) *T.C. Beirne School of Law, University of Queensland in conjunction with the Queensland Public Interest Law Clearing House.*

29 Ibid, 79

30 Tamara Walsh, 'Research shows homeless have justice issues' *UQ News Online*, 28 February 2006

study found that although indigenous people represent just 4% of the population, 37% of individuals issues a move-along direction by Queensland Police were indigenous. [31]

It is true that, Indigenous Australians have a well-recognised cultural and social connection to the land and that, any offence which results in disadvantaging or discouraging that use is discriminatory. The use of public spaces, especially in regional Queensland, is more prevalent than other groups.

The way these move-on powers and other public space offences are prosecuted, is a matter entirely for the Queensland Police Service as the *Police Powers and Responsibilities Act* [32] allows for 'subjective judgements and the exercising of discretion. The legislation that provides for these offences is not directly discriminative however, it is the application by the Queensland Police that ultimately produces indirectly discriminative outcomes. In 2000, the Honourable Curtis Pitt, Member for Mulgrave and Speaker of the Legislative Assembly commenting on the introduction of move-on powers that,

> *'By and large, the success of this legislation will depend on the way in which our Police Service actually implements it.'* [33]

Indigenous Access to Legal Representation and Human Rights

Many Indigenous Australians are unable to read or write and are not provided with the support they need to attend Court. When they do attend Court, Indigenous and other disadvantaged individuals are not provided with adequate support such as mental health assessments, drug and alcohol referrals or anything of that nature for summary offences as they are seen as the Courts as less serious and unlikely to result in incarceration. Article 14(3) of the ICCPR [34] states that everyone has the right to legal representation where the interests of justice so require yet again, because most of these offences are dealt with by way of fine, many individuals attend Court unrepresented and may be disadvantaged further for failing to attend Court, where warrants are issued, and additional charges are made.

Consider that a large percentage of indigenous Australians, the mentally ill and homeless are living below the poverty line, the payment of a fine has a discriminatory effect given their inability to pay 35 such as I mentioned in the 'begging' example. Further, Magistrates in Queensland do not always consider a defendant's ability to pay a fine before issuing one, often, if a defendant expresses this inability to the Magistrate the Magistrate requests that the

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31 Paul Spooner, 'Moving in the wrong direction: An analysis of Police move on powers in Queensland' (2001) *Youth Studies Australia*, 20(1), 27-31

32 *Police Powers and responsibilities Act 2000* (Qld)

33 Mr Pitt (Australian Labor Party Member for Mulgrave), 'Police Powers and Responsibilities Bill 2000' Queensland Parliament Hansard Transcription Debates, 15 March 2000, 420-501, 440

34 International Covenant on Civil and Political Rights Article 14(3) UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171,

35 Tamara Walsh, 'Won't Pay or Can't Pay: Exploring the Use of Fines as a Sentencing Alternative for Public Nuisance Type Offences in Queensland' (2005) *Current Issues in Criminal Justice,* 17(2), 217-238, 232

fine is referred to SPER so that it can be paid off over a period however, this is still further disadvantaging the individual, likely receiving a government support payment.

Similarly, Article 26 of the ICCPR states that,

> *'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit and discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.' [36]*

The Australian Human Rights Commission defines discrimination as,

> *'Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.' [37]*

Is Racial Discrimination a Breach of the Law?

It is submitted that the indirect discrimination applied in relation to the offences above, violate both the *Racial Discrimination Act 1975* (Cth) [38] and the *Anti-Discrimination Act 1991* (Qld) [39] with this Act prohibiting laws that indirectly or directly discriminate based on race, disability, or age.

Conclusion

It is my submission that all three offences, do not act as deterrents and that 'they are gonna do it anyway'. Further, it is submitted that these offences discriminate based on race, disability, and socio-economic status. Although this discrimination is largely indirect, it is evident when considering the over-representation of Indigenous Australians in the homeless community and considering further, the over-representation of homeless people in public spaces, charged with these public space offences.

Homeless individuals and Indigenous Australians enjoy greater use of public spaces as traditional meeting places and as shelter. Many homeless make their way into the CBD where more services are available. It is ultimately my submission that although the discrimination is

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36 International Covenant on Civil and Political Rights, Article 26 *(Office of the High Commissioner on Human Rights).*

37 International Covenant on the Elimination of all Forms of Racial Discrimination, Article 1 *(Office of the High Commissioner for Human Rights).*

38 *Racial Discrimination Act 1975* (Cth)

39 *Anti-Discrimination Act 1991* (Qld)

not evident in the wording of the legislation, it is the practical application of the legislation that provides for this indirect discrimination and these offences should be decriminalised.

We have come a long way since colonisation, in acknowledging the indigenous peoples of Australia but we must do more, it is not enough to acknowledge country during symbolic events whilst we remove or prosecute individuals for doing what they have done for hundreds of years. I strongly support any organisations and initiatives providing additional support and amenities to all displaced, disabled, homeless, indigenous and those suffering from mental health and/or drug and alcohol issues.

REFERENCES

[1] *Summary Offences Act* 2005 (Qld) s8

[2] *Summary Offences Act 2005* (Qld) s10

[3] *Police Powers and Responsibilities Act 2000* (Qld)

[4] *Commentaries on the Laws of England* (Oxford, 1765), Bk 1, pp 120-121, 130-131

[5] *Trobridge v Hardy* (1955) 94 CLR at 152

[6] *Williams v The Queen* (1986) 161 CLR 278 at 292

[7] *Cleland v The Queen* (1982) 151 CLR at 26

[8] *International Covenant of Civil and Political Rights* Article 9

[9] *Inquest into the Death of Ms Dhu, Coroners Court of Western Australia.*

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[14] *Police Powers and Responsibilities Act* (2000) (Qld) s633

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[16] *Police Powers and Responsibilities Act* (2000) (Qld) s39

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