

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

Submission No: 27
Submitted by: TASC National Limited
Publication:
Attachments:
Submitter Comments:
Submitter Recommendations:



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19 August 2022

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About TASC National Limited

TASC Legal and Social Justice Services is a not-for-profit organisation that serves over 3000 people per year across more than 400,000 square kilometers of Ipswich and South West Queensland. Now in our 40th year, TASC has developed from a small community legal center to a committed provider of high quality legal advice, social justice and advocacy services. TASC is one of the largest regional community legal and advocacy services in Queensland, where the community and staff work together in partnership to continue to enable justice and change lives.

We are focused on social justice and support, and advocate for our clients, who are culturally and linguistically diverse, and come from the most vulnerable and marginalized sectors of our community. They include First Nation people, refugees and those with disabilities, mental illness and financial disadvantage. We do our best to support the community we work with to promote, protect and preserve their legal and human rights.

TASC welcomes the opportunity to provide submissions to the Inquiry into the Decriminalisation of Certain Public Offences, and Health and Welfare Responses. We outline our response, to key areas of the review, based on the available information and evidence, with a strong focus on the impacts, rights and outcomes for our clients.

The International Bill of Human Rights and associated covenants are instruments of a standard by which we can measure inequity and fairness, and recognises our values, creating legal and moral guidelines to protect and promote them. TASC understands and

respects the importance of these guidelines and is committed to raising awareness of human rights for the betterment of all.

Begging in a Public Place

The definition of a just society is “one in which each person is socially and economically secure, and the state is politically, legally and administratively inclusive and fair”.¹ On that basis, Queensland, where it is an offence to be poor and homeless, is far from a just society. In August 2021, The United Nations Human Rights Office of the High Commission called for input into the Decriminalisation of homelessness and extreme poverty, and the response, demonstrated evidence that offences such as begging were not about committing crimes, but about social, financial poverty and homelessness.² The Guidelines for the Implementation of the Right to Adequate Housing, identifies, that homelessness is an assault on dignity and not only a violation of a right to life, but a basic human right to life without discrimination.³

Queensland laws currently provide for a person found begging in a public place to be charged under section 8(1) of the *Summary Offences Act 2005* (Qld), an offence which when convicted, carries a maximum of 10 penalty units or six months imprisonment.⁴ Although a strict liability offence, the police have other options to deal with begging offenders that include, issuing, either an infringement notice (\$143 fine), “move on” direction or caution.⁵ Originating from dated vagrancy laws, research and analysis proves begging is performed as a last resort to supplement an inadequate income,⁶ in part due to a failure of public and social policy.⁷

Begging is the soliciting of a voluntary unilateral gift such as money, and can be performed passively by sitting or standing in one place, with a container in which money is sought to be placed, with or without the presence of an explanatory sign. Active begging involves the offender approaching and asking people in a public place for money or gifts, and much rarer,

¹ “Just Society”, Wikipedia (<https://en.wikipedia.org>).

² Justice Connect, ‘Submissions to the United Nations on the decriminalization of homelessness’ (November 2021).

³ United Nations General Assembly, ‘Guidelines form the Implementation of the Right to Adequate Housing’ (Feb-march 2020) 32-33.

⁴ *Summary Offences Act 2005* (Qld) s8(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.

⁵ Queensland Police, “Operational Procedures Manual”(Issue 89, 5 August 2022)

⁶ Tamara Walsh, “Defending Begging Offenders” (QUT Law Journal, Vol 4, No1, 2004) 1.

⁷ Philip Lynch, ‘Understanding and Responding to Begging’ (Melbourne Law Review, Vol 16, 2005) 518.

aggressive begging, is following the person, repeatedly or aggressively seeking donation.⁸ Although having identical means to an end, street busking and charity or club fundraising, seems to be distinguished and more palatable, to a misconceived public uncomfortable with visual poverty.⁹

Reasoning for making begging an offence are internationally and domestically criticised, for lacking basis in fact or evidence, and is not supported by social agencies. Laws against begging, imposed originally as crime prevention, were based on the “Broken Window Theory”, an assumption that begging and crime go hand in hand.¹⁰ However, the reality is, there is no more likelihood that a homeless person will perpetrate crimes, any more than any other member of the public will.¹¹

Research indicates that those who perform begging do so out of desperation and necessity, as their needs are not being met, often compounded by “inaccessible or inadequate” welfare services.¹² Further, there is a strong connection between the practice of begging and high levels of hardship, that often include, homelessness, long-term unemployment, mental illness, substance dependency and family violence.¹³ Harassment, violence and discrimination are typically experienced by those who are homeless or live in informal housing,¹⁴ and makeshift shelters, sometimes shared with many other homeless persons, in places such as sidewalks and door fronts, denies them access to basic sanitation, water and electricity.¹⁵

Imposing charges or infringement notices creates further hardship for those already disadvantaged, in addition to wasting valuable court resources imposing fines and debt against persons who have no means by which to pay.¹⁶ Of the offenders charged with begging, Queensland Police statistics reveal there is a disproportionate representation of Aboriginal and Torres Strait Islander peoples,¹⁷ indicating that a persistence with criminalisation will continue to fail to identify or rectify systemic issues.¹⁸

⁸ Philip Lynch, ‘Understanding and Responding to Begging’ (Melbourne Law Review, Vol 16, 2005) 518.

⁹ Walsh, *ibid* 5.

¹⁰ Paula Hughes, “The Crime of Begging: Punishing poverty in Australia” (Parity, Vol 30, Issue 5, July 2017)32-33.

¹¹ Walsh, *ibid* 5.

¹² Hughes, *ibid* 9.

¹³ Paula Hughes, “The Crime of Begging: Punishing poverty in Australia” (Parity, Vol 30, Issue 5, July 2017)33.

¹⁴ United Nations General Assembly, ‘Guidelines form the Implementation of the Right to Adequate Housing’ (Feb-march 2020) 32-33.

¹⁵ *Ibid*.

¹⁶ Hughes, *ibid* 13.

¹⁷ Queensland Police Service, “Briefing to the Community Support and Services Committee: Inquiry into the Decriminalisation of Certain Public Offences and Health and Welfare Responses.

¹⁸ Paula Hughes, “The Crime of Begging: Punishing poverty in Australia” (Parity, Vol 30, Issue 5, July 2017)33.

Those who resort to begging, report feeling ashamed, humiliated, demeaned and belittled, and dislike asking others for money, whilst avoiding alternatives such as theft and prostitution.¹⁹ A transient lifestyle makes court appearances difficult which leads to further penalties,²⁰ and limited resources, to access representation, with the inability to present defenses, means conviction generally results in a fine, further exacerbating hardship.²¹ The Committee on Economic, Social, Cultural and Human Rights, states that domestic laws must prohibit discrimination on the basis of homelessness.²² Additionally, states must implement plans to provide access to safe, secure, short-term emergency accommodation, followed by adequate permanent housing.²³

Arguments for continuing the illegality of begging, include an increase in incidence of offending, however statistics have shown no increase or decline, with a static number of convictions/ fines over the last 4 years.²⁴ Repealing all laws that criminalize or penalize behavior associated with homelessness, such as begging, breaks the cycle of criminalization and incarceration for those who are already disadvantaged.²⁵

TASC supports the views of the Human Rights Council, and recommends the Decriminalisation of the Summary Offence, ‘Begging in a Public Place’.²⁶

Public Intoxication

The Human Rights Council’s implementation measure thirty-three, outlines the need for states to provide access to safe and dignified accommodation, without discrimination on any grounds, including for those dependent on alcohol or drugs.²⁷ Additionally, there are

¹⁹ Tamara Walsh, “Defending Begging Offenders” (QUT Law Journal, Vol 4, No1, 2004)1.

^{20 20} Justice Connect, ‘Submissions to the United Nations on the decriminalization of homelessness’ (November 2021).

²¹ Hughes, *ibid* 15.

²² United Nations General Assembly, ‘Guidelines form the Implementation of the Right to Adequate Housing’ (Feb-march 2020) 32-33.

²³ *Ibid*.

²⁴ Queensland Police Service, “Briefing to the Community Support and Services Committee: Inquiry into the Decriminalisation of Certain Public Offences and Health and Welfare Responses.

²⁵ *Ibid*.

²⁶ *Summary Offences Act 2005* (Qld) s8(1)

²⁷ United Nations General Assembly, ‘Guidelines form the Implementation of the Right to Adequate Housing’ (Feb-march 2020) 32-33.

recommendations for police interaction to be in a manner that respects and promotes their dignity.²⁸

As with begging in a public place, public intoxication is an offence under the *Summary Offences Act 2005* (Qld).²⁹ Public intoxication in Queensland is an offence that carries a maximum of two penalty units (\$287 fine), but not punishable by imprisonment, and includes in addition to being drunk, being adversely affected by drugs or another intoxicating substance.³⁰ At present, policing is focused on detaining offenders for their and others safety, with an emphasis on transporting them to a place of safety. The police watchhouse is not the preferred place of safety and offenders are only taken there if there in the absence of a safer alternative.³¹ Alternatives to arresting a person for public intoxication and taking them to a place of safety include, cautioning or taking no action at all. The latter two alternatives leaves the police exposed to breaching a duty of care, should the offenders behavior become a risk to their own or others safety.³²

Forty-seven percent of those charged with public intoxication are Aboriginal and Torres Strait Island people, and despite decriminalization, contact between police and the intoxicated will still occur.³³ Although fines may result, the principle behind section 10 is to allow police to take a person into custody in order to transport them to safety. This is crucial and preferential treatment for someone who is unable to make reasonable and responsible decisions for themselves in that moment. Without the ability to detain the person for transportation under section 10, police are left with two options.

1. Charge the person with other offences, such as Public Nuisance (section 9), resulting in higher penalties.
2. Taking no action, exposing the person to potential danger to themselves or to others safety.

Neither option is optimal for the wellbeing of those who are already disadvantaged and vulnerable.

²⁸ United Nations General Assembly, 'Guidelines form the Implementation of the Right to Adequate Housing' (Feb-march 2020) 32-33.

²⁹ *Summary Offences Act 2005* (Qld) s10: Being drunk in a public place- a person must not be drunk in a public place.

³⁰ Queensland Police Service, "Briefing to the Community Support and Services Committee: Inquiry into the Decriminalisation of Certain Public Offences and Health and Welfare Responses.

³¹ Police Powers and Responsibilities Act 2000 (Qld) s378.

³² Queensland Police, "Operational Procedures Manual" (Issue 89, 5 August 2022).

³³ QPS *ibid* 20.

Alternative approach

Sections 603 to 606 of the *Police Powers and Responsibilities Act 2000* (Qld) (“PPRA”) instill the police with the powers to seize and deal with persons affected by potentially harmful things without an offence nexus.³⁴ Adding alcohol and drugs to the definition of “harmful things” under these provisions provides for the persons safety without creating an offence. Police will continue to be able to detain a person, for transporting them to a place of safety and to ensure that a person in charge of that place of safety, signs an undertaking to care for the intoxicated person.³⁵

Part of the Queensland Police operational policy strategy, is to refer at risk persons to external support services. A well-researched and positive outcome for both the offender and the police drive early and effective interventions, with QPS utilising over 500 service providers.³⁶ Additionally, specifically to address the disproportionate incidence of public intoxication in Aboriginal and Torres Strait Islander people, the Queensland Government has funded Public Intoxication and Diversion Services for those who are at risk of harm or have been taken into custody for public intoxication. These services give appropriate care and support, whilst providing a place of safety at which the police can transport those under the PPRA.³⁷

Whilst it is important to reduce the penalty imposed against those already vulnerable, it is equally important to provide for police to continue to ensure intoxicated persons are transported to that place of safety. Decriminalization will not diminish nor accelerate the incidence of public intoxication, so a system that balances both requirements is essential for the continued well-being for those who need it most.

TASC recommends:

- **Decriminalisation of Summary Offence, “Being Drunk in a Public Place”.**³⁸
- **The addition of “Alcohol and Other Drugs” to the definition of “Harmful Things” in the *Police Powers and Responsibilities Act 2000* (Qld).**³⁹

³⁴ Police Powers and Responsibilities Act 2000 (Qld) s603-608: s603 Power to Seize potentially harmful things, s604 Dealing with Persons affected by potentially harmful things, s605 Duties in relation to person detained under s604 and s606 No compulsion to stay at place of safety.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Department of Communities, Housing and Digital Economy, ‘Briefing for the Community Support and Services Committee: Inquiry into the decriminalisation of certain public offenses and health and welfare responses.

³⁸ *Summary Offences Act 2005* (Qld) s10

³⁹ Police Powers and Responsibilities Act 2000 (Qld) s603-608