

10 July 2014



Research Director
Legal Affairs, Police, Corrective Services and Emergency Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: lacsc@parliament.qld.gov.au

Dear Sir/Madam

Submission to the *Inquiry on strategies to prevent and reduce criminal activity in Queensland*

Thank you for the opportunity to contribute to the *Inquiry on strategies to prevent and reduce criminal activity in Queensland (the Inquiry)*.

Background

The Homeless Persons' Legal Clinic (**HPLC**) was established in 2002 by the Queensland Public Interest Law Clearing House Incorporated (**QPILCH**) to provide free legal advice and representation to people at real risk of or experiencing homelessness. The HPLC has assisted over 4500 people and by partnering with private law firms, provides an estimated \$2.6 million worth of legal services each year. The HPLC has 19 outreach legal clinics at locations in Brisbane, Townsville, Cairns and Toowoomba where homeless people are accessing other essential services.

The HPLC participates in a range of collaborative initiatives to address the circumstances of our clients. Relevant collaborations include our participation in Queensland Courts Referral (an initiative of the Department of Justice and Attorney General) and the 500 Lives campaign of Micah Projects (funded by the Department of Housing and Public Works). We will comment on the applicability of these initiatives at a later point in this submission.

Criminal charges faced by homeless people

HPLC clients are often sleeping rough or accessing emergency accommodation. They must therefore spend the majority of their time on the streets – socialising, drinking, urinating, swearing and occasionally fighting. These are all activities which most of us can do in the privacy and security of our own homes, without fear of attracting police attention, but done in public, they become criminal offences.

Accordingly, the HPLC assisted with a minimum of 131 criminal charges in 2013/14, which accounts for approximately 15% of all HPLC casework. These charges are typically for public nuisance offences. For the majority of these matters, the HPLC assisted clients by providing a brief to the Duty Lawyer at the appropriate Magistrates Court. We also liaised with local police and prosecutions around the charges and the hearing, and have in the past, coordinated pro bono lawyers to successfully defend charges or have them withdrawn on behalf of clients.

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incorporating the Homeless Persons' Legal Clinic, Self-Representation Service, Refugee Civil Law Clinic, Administrative Law Clinic, QLS Pro Bono Service, Bar Pro Bono Service, Mental Health Law Practice, and the Magistrates Court Service.

The HPLC urges the Inquiry to respond to the evidence presented through criminal law statistics and research regarding rough sleepers and people in emergency accommodation (as both victims and offenders).

Homeless people as victims of crime

In data recently collected from over one thousand homeless participants in the Brisbane region, as part of the 500 Lives campaign,¹ 55.3% of rough sleepers reported being victims of violence and 57.4% had experienced trauma. 20% of survey participants in supportive housing reported being victims of violence. In the experience of the HPLC, few of these victims will seek appropriate redress for these offences.

The Queensland Audit Office² cited statistics from the Australian Bureau of Statistics that people who experience homelessness are nearly three times as likely to report being a victim of violence in the past 12 months.

It is well established that people who are homeless have had disproportionate exposure to traumatic events, particularly violence. This exposure is both prior to and part of the experience of homelessness. Ms Catherine Robinson explains that people experiencing homelessness report a “horrendous and disproportionate level of victimisation, including repeated experiences of childhood abuse, domestic and family violence, rape, physical and sexual assault”.³ This finding is echoed in other major studies on the topic.⁴ Ms Robinson’s research documents lifelong biographies of violence in the homeless subjects and suggests that a specific outcome of these biographies is disconnection and isolation from the very services that might assist them. The HPLC considers that this suggests service-delivery to this cohort must be tailored and personalised in order to be effective.

Homeless people as offenders

49.5% of rough sleepers in the 500 Lives campaign reported having been in prison and 42% of all homeless participants reported a prison history.

According to a recent cost analysis of homelessness support services in Brisbane,⁵ the average annual frequency of court appearances for homeless participants was three per year. This frequency changed to one per year after participants were housed and supported for over a year.

The former Special Circumstances Court in Brisbane was established based on studies which indicated the disproportionate number of homeless and vulnerable defendants appearing in the Magistrates Court. Some of the reasons for this over-representation include:

¹ See for more information: <http://www.500lives500homes.org.au/>.

² Queensland Audit Office, *Implementing the National Partnership on Homelessness in Queensland* (2013) The State of Queensland.

³ Robinson C, *Rough Living: Surviving violence and homelessness* (UTS Shopfront Monograph Series No 6, 2010) 1.

⁴ Johnson G, Parkinson S, Tseng YP and Kuehnle D, *Long-Term Homelessness: Understanding the challenge* (The University of Melbourne, RMIT University and Sacred Heart Mission, 2011); Mission Australia, *Increasing our understanding of homeless men: The Michael Project* (Mission Australia, Transform, Murdoch University, NDARC, 2011); *The Trauma and Homelessness Initiative*, (2014) Australian Centre for Posttraumatic Mental Health.

⁵ Mason C and Grimbeek P, *A Housing First approach to homelessness in Brisbane: sustaining tenancies and the cost effectiveness of support services* (2013) Micah Projects.

- People experiencing homelessness spend a disproportionate amount of their time in public and they are therefore more likely to receive negative attention from police. Dr Tamara Walsh found that people experiencing poverty and homelessness experience an increased level of police attention.⁶

The increased rate of mental illness, cognitive impairment, high levels of stress and trauma faced by those experiencing homelessness⁷ make it more likely people that this group will respond negatively when confronted by police and experience those interactions as traumatic and a “threat”. This is likely to lead to add-on charges (such as ‘contravene a direction’) being laid.⁸ In July 2004, 25% of public nuisance charges brought before the Brisbane Magistrates Court were accompanied by an obstruct and/or assault police charge.

- Lack of awareness and training of Queensland Police Service (QPS) officers about the issues facing people experiencing homelessness. Senior Sergeant Allen suggests that “every interaction with a police officer is an opportunity to turn the tide [of lack of connection and diversion for homeless and vulnerable young people]”.⁹ The HPLC agrees, and extends this notion to all people experiencing homelessness. Until the QPS leverages its ‘front-line’, ‘first to know’ status to positively connect homeless people to appropriate community services, police interactions will continue to be problematic.
- The Crime and Misconduct Commission’s 2010 review of police move-on powers found that there continues to be a lack of emphasis on arrest as a last resort, de-escalation, diversion and the appropriate use of discretion in the training, policy and procedures, supervision and monitoring, recording practices and culture of the QPS.¹⁰

Appropriate and cost-effective responses to homeless people

The HPLC submits that the following approaches to the over-representation of homeless people in the criminal justice system have proven effective and should be included in any plan to prevent and reduce criminal activity among this cohort.

1. Collaborative early interventions (eg. housing and health)

The Brisbane Housing First study demonstrated that providing housing and support

⁶ Walsh T, *No Vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland* (University of Queensland, 2007) 7.

⁷ Queensland Audit Office, *Implementing the National Partnership on Homelessness in Queensland* (2013) The State of Queensland 9; see also Catherine Robinson, *Understanding Iterative Homelessness: The case of people with mental disorders* (Australian Housing and Urban Research Institute, 2003).

⁸ Walsh T, *No Offence: The enforcement of offensive language and offensive behaviour offences in Queensland* (University of Queensland, 2006) 14.

⁹ Allen CM, *To identify and improve methods of engaging, diverting and responding to youth who are homeless or sleeping rough in urban environments – UK, Ireland, USA and New Zealand* (The Winston Churchill Memorial Trust of Australia, 2011) 4.

¹⁰ Crime and Misconduct Commission, *Police Move-on Powers: A CMC review of their use* (2010) xiv.

to homeless clients lowered the overall cost to the justice system (the cost of policing, courts and associated services) from \$8,719 per person per annum to \$2,172.¹¹ The cost effectiveness of housing and health based responses to homelessness is also indicated in recent Australian and international studies.¹²

These approaches prioritise service-based outcomes to public nuisance offences, because they deliver better outcomes to people experiencing homelessness and give law-enforcement bodies a cheaper alternative to court and jail-based responses. These approaches also reward police officers for appropriate diversions rather than relying on arrests as an indicator of effective policing. Service-based responses offer holistic, collaborative support for issues such as housing, substance abuse and mental health.

2. Appropriate court diversion

The HPLC participates in Queensland Courts Referral (**QCR**), a diversion process which now operates at several Queensland Magistrates Courts. The intent of QCR was to provide diversion for vulnerable defendants to community support that was voluntary, coordinated and valued. However, the operation of QCR has been fundamentally impacted by amendments to the *Bail Act 1980* (Qld), which provide for diversion to become a condition of bail and thus, a further offence if not complied with.

A recent account of HPLC concerns was tabled to the QCR Implementations Group in September 2013 and was subsequently approved for public distribution by that group. The public memorandum is **attached** to this submission. The practice of some prosecutors to have particular community service providers named on the bail conditions, without those services being informed or resourced, increases the risk of further offences being incurred and is counter-productive for this vulnerable client group.

Unless courts and police support voluntary diversion to fully resourced, coordinated and valued community support for homeless clients with public nuisance offending histories, these clients will continue to churn through the courts – expensively for the individuals, the community and the State.

3. Police training

Willingness to engage effectively with the community service sector, and develop protocols that are not compliance-based, is essential to effective collaboration in addressing public nuisance offences in the homelessness cohort.

Well-balanced collaboration relies on training for police officers which incorporates the voices of people experiencing homelessness and the workers who support them.

¹¹ Mason C and Grimbeek P, *A Housing First approach to homelessness in Brisbane: sustaining tenancies and the cost effectiveness of support services* (2013) Micah Projects. See also *Fact Sheet: housing Vulnerable Rough Sleepers*: http://www.micahprojects.org.au/resource_files/micah/IR_125_HOUSING-VULNERABLE-ROUGH-SLEEPERS.pdf.

¹² For further discussion and information, see: Mason C and Grimbeek P, *A Housing First approach to homelessness in Brisbane: sustaining tenancies and the cost effectiveness of support services* (2013) Micah Projects. See also: Adams L, *In the Public Eye* (2013) The Winston Churchill Memorial Trust of Australia, available at: http://www.churchilltrust.com.au/media/fellows/Negative_impact_of_laws_regulating_public_space_on_homeless_people_Adams_Lucy_2013.pdf.

The HPLC continues to be available to the QPS to coordinate and provide training in this area.

Appropriate consultation with homeless people

The HPLC is not aware of any meaningful consultation about the scope of the Inquiry with people experiencing homelessness, or homelessness service agencies, even though they are impacted adversely and disproportionately by criminal justice system.

The HPLC is willing to assist the Inquiry to undertake this consultation process, to ensure our clients' views are adequately represented.

Contacting us

If you would like further details about any matter raised in this submission, please contact HPLC Senior Lawyer, Sue Garlick, on (07) 3846 6317 or by email to hplcresearch@qpilch.org.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Woodyatt', with a stylized flourish at the end.

Tony Woodyatt
Director



Queensland Public Interest Law Clearing House Incorporated
Homeless Persons' Legal Clinic

MEMORANDUM

To: Queensland Courts Referral (QCR) Implementation Group and other appropriate stakeholders

From: QPILCH Homeless Persons' Legal Clinic

Date: 6 March 2014

Subject: Concerns about QCR process for community service providers

Purpose

The purpose of this memorandum is to outline our concerns in relation to the impact on the QCR program by amendments to *the Bail Act 1980* (Qld) (**Bail Act**), and to propose a solution.

Background

1. In 2011-12, the HPLC was a member of a Working Group under the Brisbane Homelessness Community Action Plan (**HCAP**) with the agenda to: "*engage with the Department of Justice and Attorney General through the Magistrates Courts to prevent exits into homelessness from the Court system in the inner city, south west and outer north areas*". The initial focus of the group was to connect more community agencies and the Department of Communities' homelessness strategies to the operation of the Special Circumstances Court. The group included staff from the Courts Innovation program of the Department of Justice and Attorney-General (**DJAG**).
2. With the closure of the Special Circumstances Court in September 2012, the HCAP Working Group suggested to DJAG that the support of the community sector could be channelled into developing a new collaborative diversion scheme at the Brisbane Magistrates Court. Discussions ensued which developed into the QCR.
3. The over-representation of defendants in the criminal justice system who are experiencing homelessness, disadvantage and mental illness is well documented and the need for diversion options to social supports was recognised by stakeholders in the Magistrates Court. These diversions enable underlying issues such as housing, substance abuse and unresolved trauma to be addressed. The types of offences considered appropriate for diversion of this kind are offences with a clear connection to the persons' disadvantage, including public nuisance and minor drug offences.
4. The HPLC observed that the following criteria were considered fundamental to the initial development of QCR:

4.1 Voluntary: All participating community partners agreed that a compliance-based regime would undermine the therapeutic relationship, which is vital for productive engagement with disadvantaged clients. The diversion is not part of a sentence, so participation of the defendant must be voluntary and not subject the defendant to further risk of criminal charges. It was agreed that the referral from the Magistrate would be to "QCR", not to a specific agency and that any referral or bail condition would be in these terms.

4.2 Coordinated: A referral to QCR would allow a group of experienced, cross-sector community agencies to coordinate the management of referrals to QCR and consider which agency is the most appropriate to connect with the defendant. This would maximize appropriate placements and prioritise realistic outcomes for defendants, which are key components of successful diversion.

4.3 Valued: All Magistrates would be offered a clear understanding of the intent and limitations of a QCR referral, and the potential outcomes of a successful engagement with the QCR process.

It was this scheme which we understand was accepted by the Chief Magistrate and the Attorney-General and became known as QCR. The scheme was broadened to all defendants with summary offences; however, criteria of disadvantage were embedded in the assessment process.

The amendments to the *Bail Act 1980* (Qld)

5. The value of QCR for vulnerable defendants has been undermined by the introduction of amendments in September 2013 to the Bail Act, which encourages Magistrates to consider treatment and intervention programs and minimise the “red tape” involved in such a direction. Two amendments which impact QCR are:

5.1 Amendment to section 11 of the Bail Act, which allows a Magistrate to impose a condition to bail that a defendant attended a rehabilitation, treatment or other intervention program/course and sets out the factors which the Magistrate is to have regard to when imposing such a condition. These factors include the benefit to the defendant and “public interest” which are low-threshold (easily satisfied by the prosecution) factors.

5.2 Deletion of section 29(2) of the Bail Act. This section previously provided that it was not an offence to break a condition of bail where the condition was that the defendant participates in a prescribed treatment program.

HPLC concerns

6. Our concerns are limited to the operation of the Bail Act as it applies to the types of offenders assisted by the HPLC – those with complicated and comprehensive disadvantage, who have lost housing or experienced mental health issues or trauma, which has significantly impacted on their capacity to comply with mainstream community standards.

6.1 Naming agencies in QCR bail conditions: A referral to QCR (in the jurisdictions where QCR operates) appears to be exactly the kind of low-red-tape condition which the legislation anticipates. However, some Magistrates or police prosecutors may circumvent QCR protocols and seek bail conditions, including the name and address of a specific community agency, and a time for attendance at that agency, often without consultation with the agency named. Circumventing the QCR process means that both the opportunity for a coordinated, targeted referral is lost and that the likelihood of a disengaged vulnerable client not complying with the bail condition is high.

6.2 Breach of bail is an offence: Any breach of an imposed bail condition will now be an offence with a maximum penalty of 40 penalty units or two years imprisonment. Failure to participate in an intervention program could result in defendants facing charges additional to and potentially more serious than the initial charge. The personal circumstances of HPLC clients - the chaotic and traumatic experience of homelessness and its antecedents, the “swings and troughs” of lived mental illness (often inappropriately medicated) and the

challenges for those who exit state care, prison and health systems without housing or personal support, are the very issues that make diversion from the criminal justice system so necessary, but which make compliance with these new bail conditions so challenging.

6.3 Bail not otherwise warranted: The amendments encourage a Magistrate to impose a bail condition as a pathway to diversion, where bail may not previously, or for any other reason, have been warranted.

HPLC support for QCR

7. The HPLC assists many clients with minor criminal charges to connect productively with the criminal justice system. An example of the positive outcomes which are available with targeted and coordinated diversion referrals can be seen in the story of HPLC client "Harry".

Harry was injured at work and became disconnected from family, threatening suicide and struggling with alcohol abuse. He was charged with a drink-driving offence and based on his criminal history, faced further imprisonment. However, the HPLC liaised with a community agency and a psychologist to ensure support for Harry. He was diverted from the criminal justice system, and continued with the community agency which helped Harry secure public housing. Housing was a critical factor in Harry being ultimately granted a non-custodial sentence which further improved his sense of well-being and connections to support. It was this which enabled him to then seek rehabilitation for his alcohol issues and re-connect with his children.

Under the new bail amendments, Harry may have instead been bailed by a Magistrate to an over-subscribed rehabilitation unit, without the foundation of housing or personal support, which were the primary factors in Harry's ultimate success. Failure to attend or complete rehabilitation would then be a further offence which would likely see Harry returned to expensive incarceration.

While QCR cannot prevent Magistrates' imposing bail conditions of this kind, QCR can appropriately ensure that a referral to QCR is a distinctive pathway which avoids these concerns.

8. The HPLC has been an active supporter of QCR from before its inception. We arranged for QCR staff to present training to both HPLC pro bono lawyers and to community agencies in the homelessness sector. As soon as QCR commenced operations, the HPLC amended its precedent brief to Legal Aid Queensland duty lawyers to ensure that our clients' homelessness and eligibility for QCR was recognised by the court.
9. With the commencement of the Bail Act amendments, the HPLC has had no choice but to direct HPLC pro bono lawyers to be very cautious about recommending the scheme to clients. An opportunity for the most vulnerable and disadvantaged Queenslanders to connect productively with community services, albeit via the criminal justice system, appears to have been lost. The HPLC believes the diversion must be coordinated, voluntary and not create the risk of further charges which are disproportional to the initial offence and opposed to the therapeutic intent of the QCR scheme.

HPLC proposal

10. In the absence of further legislative reform, the HPLC recommends the following solutions to our concerns:

10.1 QCR only accept referrals – not bail – to QCR (in jurisdictions where QCR is operational); and

10.2 QCR referrals are always framed as "referral to QCR" not to a named agency.

Although limiting referrals in this way will exclude some vulnerable defendants, it will ensure that all defendants diverted through QCR are not at further risk. This will also ensure that bail will not be wrongly applied, where a more appropriate pathway to support is available.

Contacting us

For further details please contact Sue Garlick or Cameron Lavery of the HPLC on (07) 3846 6317 or at hplc@qpilch.org.au.