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Penalties & Sentences &
Other Legislation
Submission 006



The Research Director
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Dear Sir/Madam

Penalties and Sentences and Other Legislation Amendment Bill 2012: Offender Levy

Thank you for the opportunity to respond to the proposed introduction of an offender levy by the amendment of the *Penalties and Sentences Act 1992* and its regulations.

The Homeless Persons' Legal Clinic (**HPLC**) was established in 2002 by the Queensland Public Interest Law Clearing House Inc to provide free legal advice and assistance to people at risk of or experiencing homelessness. The HPLC coordinates private law firms to assist more than 500 clients annually. The HPLC has 12 clinics in locations where homeless people are accessing other essential services.

The HPLC targets the civil law needs of our clients, but still assists more than 100 clients annually in criminal matters in the Magistrates Court, mostly by a written referral and brief to Legal Aid and the Special Circumstances Court.

The HPLC would like to comment on the proposed introduction of an offender levy on criminal justice matters, where a sentence is imposed. The levy will disproportionately impact people who are homeless, who have an inability to pay, and will exacerbate their homelessness instead of providing a solution.

The HPLC proposes that the offender levy be waived where the defendant is experiencing homelessness, mental illness or has a cognitive or intellectual impairment.

Disproportionate impact

Almost all criminal law offences by HPLC clients arise from public nuisance charges, or street offences. People who are homeless are frequently in public space. The street is their bedroom, bathroom and living space. Sleeping, drinking alcohol and urinating are activities that most of us undertake in the privacy of our homes but they become criminal when done in public.

Moreover, the high incidence of mental illness, trauma and cognitive or intellectual impairments in people who are homeless renders them easily confused and agitated by police directions, leading to charges such as resist arrest and contravene a direction.

Queensland Public Interest Law Clearing House Incorporated

incorporating the Homeless Persons' Legal Clinic, Self-Representation Civil Law Service, Refugee Civil Law Clinic, Administrative Law Clinic, QLS Pro Bono Scheme and Bar Pro Bono Scheme.

A Member of the PILCH Network

Inability to pay

The irony of imposing a fine on people in poverty has been explored in many publications, and the proposed offender levy will increase this burden, adding to the already unsustainable SPER debt of homeless people.

Cost of living data for March 2012, produced by QCOSS, shows a weekly expenditure of \$300 for a 45 year old male in private share-housing and receiving \$285 per week on Newstart. The \$15 weekly deficit is likely to be higher for someone who is homeless, pays high accommodation costs (boarding house room only rates of \$160/week are typical), above average health costs for treatment programs, and has no budgeting skills.

The HPLC estimates that 70% of people experiencing long-term homelessness have a SPER debt, averaging \$4000. According to the Community Engagement Team at SPER, accumulated debts of \$15,000 to \$50,000 are common for homeless people. The HPLC has been working with SPER to enable people who are homeless to access more appropriate community-work options, but the current regime is unable to address these chronic debt levels, and homeless people are being incarcerated for failure to pay. Imposing an offender levy will increase these unsustainable debts.

Exacerbate rather than solve the problem

Chronically homeless people almost all share the same profile – of childhood neglect, poverty, compounding addictions and almost total disconnection from the protective factors which most of us take for granted.

These people need long-term support to connect or reconnect to housing, work and community, not punishment and increased burdens.

The Special Circumstances Court, in the Brisbane Magistrates Court registry successfully diverts people who are homeless, mentally ill or cognitively or intellectually impaired from the churn of the criminal justice system, to address their housing, addiction and mental health needs. This diversion is ultimately cost-effective for our society and reflects the community understanding of justice – that the punishment should fit the crime. The Special Circumstances Court can only be accessed by defendants who plead guilty. This means that under the proposed offender levy, this innovative solution to address issues relating to poverty and avoid inappropriate monetary penalties will only be accessible with a \$100 administrative payment.

Conclusion

Homelessness is a matter for the whole community. It is the embodiment in some individuals of chronic systems, community and family breakdown, not the sole responsibility of the individual involved. It is expensive economically and socially. Thoughtful and sustained cooperation by all arms of government and the community will lead to success in addressing this issue.

The HPLC asks that the proposed offender levy in the Magistrates Court for criminal matters be waived in circumstances where the defendant is homeless, mentally ill and intellectually or cognitively impaired. This waiver could be activated by a variety of mechanisms, such as:

- a) A letter of support from a specialist health or homeless support agency;

- b) Where defendants are diverted to the Special Circumstances Court;
- c) Through consideration by judicial officer of the financial and personal circumstances of a person; or
- d) Where the Court does not impose incarceration or monetary penalty.

The HPLC would welcome the opportunity to discuss any details of this submission further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Woodyatt', written over a horizontal line.

Tony Woodyatt
Director
Queensland Public Interest Clearing House Inc.