

19 October 2011



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Dear Madam

Response to the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2011*

Thank you for the copy of the Hansard transcript of evidence I gave to the Committee on October 4, 2011, a copy of which is attached.

I would like to make two clarifications.

The first is in reference to my response to the question of the Acting Chair on page 18 of the transcript. I respond **Yes** to the Acting Chair, which was not so much an assent to the propositions raised by him, but was my starting comment to the point raised by him, and I intended to continue with a response. However, before I could make that response, the Acting Chair continued with his chain of thought.

I would like now to make the response I intended, which was to let the Committee know that police do in fact have a wide repertoire of responses they can make to public space offences. Would you mind passing this on to the committee for its consideration?

The Acting Chair suggested that police cannot *"take the bottle off them and say... 'Forget it. Go away.'"* However, police can do precisely this, and they exercise this discretion often.

On page 17, I submitted that they exercise this discretion to arrest or charge homeless people who are 'just sitting there', when it would be preferable to use their discretion to de-escalate or divert.

We echo Recommendation 4 of the CMC review I cited, which suggests police should not give a (move-on) direction *"unless it is reasonably necessary to maintain community safety and public order"* and that *"directions must be proportional to the conduct which gave rise to the direction"*.

If the police were required to use their discretion to assess whether the matter is one of actual public harm, this would answer the question of the chair *"How do you ameliorate the kinds of interactions between police and citizens at the lower end of offending behaviour?"*

The second response is to the suggestion by the Committee (p19) to *"include in their report the prediction"* of an increase in "obstruct police" charges that may be occasioned by the proposed search powers. I referred to this matter in both my written and oral submissions and cited useful references about this matter. However, I want to clarify that typical add-on charges include the following: obstruct or assault


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police, resist arrest, and failure to follow a police direction.

Thankyou for the opportunity to respond to the proposed changes and to make these clarifications.

A handwritten signature in cursive script, appearing to read "Sue Garlick".

Sue Garlick

Policy

Homeless Persons' Legal Clinic

22 September 2011

LAPCSESC
Police Powers
Submission 009



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Dear Sir/Madam

Response to the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2011*

(07) 3846 6317

Thank you for the opportunity to respond to the proposed widening of the powers of Queensland Police officers set out in the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2011* (the **Bill**).

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The Homeless Persons' Legal Clinic (**HPLC**) was established by the Queensland Public Interest Law Clearing House to provide free legal advice and assistance to people at real risk of or experiencing homelessness. Since its establishment in 2002 the HPLC has assisted over 2600 people and, by partnering with private law firms, provided an estimated \$8.7 million in legal services. The HPLC has 13 clinics that run throughout Brisbane, Townsville and Toowoomba in locations where homeless people are accessing other essential services. The HPLC also engages in law and policy reform.

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The HPLC would like to comment on the proposed section 52A of the Bill: *Power to conduct pat-down search for ss50-52*. It is intended to apply to ss50-52 of the current *Police Powers and Responsibilities Act 2000* (the **PPRA**) which are related to the prevention of breaches of the peace, riots and offences generally.

The HPLC is concerned about the impact of this proposed section on the homeless community and notes the following points, which are explained in more detail below:

1. There has been inadequate consultation with those who are homeless or proper consideration of how s52A will impact on the homeless.
2. The exercise of the powers in the proposed s52A will have a detrimental impact on those experiencing homelessness and compound the issues which prevent them from achieving social inclusion.
3. Section 52A will increase police interaction with, and result in additional charges for, homeless people. This, in turn, will increase State costs in relation to the prosecution of offences and place stress on not-for-profit and community organisations that already struggle to provide legal and other services to this group in the absence of adequate government programs and assistance.
4. Queensland Police officers are not currently trained in a manner which alleviates the above concerns.

The proposed s52A is, therefore, likely to lead to adverse outcomes for the homeless community and as such should be amended or removed.

1. Inadequate consultation

The HPLC is not aware of any level of consultation with members of the community experiencing homelessness, or homelessness service agencies, during the development of the Bill, even though they are likely to be impacted adversely and

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disproportionately by the proposed powers. It is vital that the view of the homeless be canvassed adequately before any of these powers are enacted.

2. Detrimental impact on homeless people

People who are homeless have had disproportionate exposure to traumatic events, and in particular violence. 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”.¹ This finding has also been substantiated in other major studies on the topic.² 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.

Pat-down searches for people with these biographies can be framed as further examples of intrusion and violence, compounding their experiences and increasing the difficulty for them to exit homelessness. Homeless people interviewed by Walsh reported a high level of intrusive searching taking place under powers already afforded to Queensland Police officers, and recounted their experiences as ones of trauma.³ The HPLC does not support the introduction of the proposed s52A in circumstances where its application will result in increasingly detrimental outcomes for our clients.

3. Increased police interaction with homeless people

A recent study by Dr Tamara Walsh found that people experiencing poverty and homelessness already experience an increased level of police attention.⁴ The introduction of a more intrusive search power, such as the proposed s52A, is likely to result in further charges being laid when the power is exercised in respect of the homeless.

The increased rate of mental illness and cognitive impairment and the high levels of stress and trauma faced by those experiencing homelessness make it more likely people in this group will respond negatively when dealing with and confronted by police. Indeed, we note from Walsh “that offences such as public nuisance often act as ‘gateway’ offences, that is, as a result of the interaction between police and ‘offenders’ arising out of the precipitating ‘nuisance’ behaviour, further charges are ultimately laid.”⁵ That report showed that in July 2004, 25% of public nuisance charges brought before the Brisbane Magistrates Court were accompanied by an obstruct and/or assault police charge, a figure that increased to 25% in July 2005.

We further note the submission of the Youth Advocacy Centre Inc, which is supported by the HPLC, that explains how issues of bodily integrity and the anxiety caused by intrusive police actions are likely to lead to the commission of further offences involving resist arrest or obstruct police.⁶ The increased perception of threat experienced by young people can also be applied to those with a mental illness or

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

² Guy Johnson, Sharon Parkinson, Yi-Ping Tseng and Daniel Kuehnle, *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).

³ Walsh, above n 1, 35-36.

⁴ Tamara Walsh, *No Vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland* (University of Queensland, 2007) 7.

⁵ Tamara Walsh, *No Offence: The enforcement of offensive language and offensive behaviour offences in Queensland* (University of Queensland, 2006) 14.

⁶ Youth Advocacy Centre Inc, Submission to the Legal Affairs, Police, Corrective Services and Emergency Services Committee, May 2011, 4.

cognitive impairment or those already suffering from high levels of stress and residual trauma.⁷

4. Inadequate police training

The Crime and Misconduct Commission's 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 Queensland Police.⁸

Until this failure of training and policies is addressed, there is every reason to believe that adding to police powers in street interactions with vulnerable persons will be detrimental to the outcomes for HPLC clients.

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 takes seriously its "front-line", "first to know" status for this demographic and leverages it to divert people to appropriate services, intrusive police powers of any kind will fail to be constructive for our community.

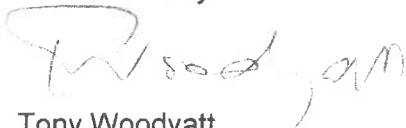
The HPLC continues to be available to the Queensland Police Service to provide training in this area, however, we suggest that, based on the continued numbers of HPLC clients who have been adversely impacted by police interactions, efforts so far have been insufficient to stem the tide of negative interactions with police. Until appropriate training is embedded in police practice the issue will be exacerbated, and the introduction of a more intrusive police power will be adverse to the homeless community.

Conclusion

The HPLC again urges the Committee to consult meaningfully with those people experiencing homelessness, and their service agencies, to better comprehend the likely impact of the Bill. A consultation process would enable the government to consider how to best address concerns about the safety of police officers under the PPRA whilst also ensuring such measures do not have a detrimental effect on already vulnerable people.

The HPLC would like to assist the Committee in the development of this consultation process, and play an active role in the amendment and finalisation of s52A of the Bill, to ensure our clients are not adversely affected by its implementation.

Yours faithfully



Tony Woodyatt

Director

Queensland Public Interest Law Clearing House Inc.

⁷ For research confirming the strong correlation between mental illness and homelessness see Catherine Robinson, *Understanding Iterative Homelessness: The case of people with mental disorders* (Australian Housing and Urban Research Institute, 2003).

⁸ Crime and Misconduct Commission, *Police Move-on Powers: A CMC review of their use* (2010) xiv.

⁹ Corey Mathew Allen, *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.