



Queensland Public Interest Law Clearing House Incorporated

Homeless Persons' Legal Clinic Discussion Paper

**Responding to homelessness and disadvantage
in the fines enforcement process in Queensland**

July 2013

Prepared by the Queensland Public Interest Law Clearing House Incorporated's Homeless Persons' Legal Clinic

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SUMMARY

This discussion paper confirms that over 60% of chronically homeless people are likely to have a debt with the State Penalties Enforcement Registry (**SPER**), with an average amount of \$4800 owed per person.

The Homeless Persons' Legal Clinic (**HPLC**) seeks a more effective scheme to recognise fine debtors in need of special consideration from SPER and an increase in access to Fine Option Orders (**FOOs**), which allow disadvantaged debtors to obtain credit through appropriate volunteering.

Responding appropriately to individual disadvantage in the fines enforcement process is the responsibility of government and requires significant resources, but this is also one consequence of a system which fails to adequately consider these issues earlier in the justice continuum.

However, responding appropriately to people experiencing disadvantage also supports their sustainable compliance with fine debt and may generate outcomes which benefit the productivity of that individual and the community as a whole.

This paper was prepared by Sue Garlick, HPLC Senior Lawyer, with assistance from the HPLC Student Clinic.¹ It was prepared to complement and update the HPLC's 2011 Discussion Paper, *The fines enforcement regime in Queensland for people experiencing homelessness: Options for Change (2011 Discussion Paper)*.²

¹ The HPLC Student Clinic operates each semester in partnership with the T.C. Beirne School of Law at the University of Queensland. The students who assisted with this report were: Alicia Brischetto, Fleur Hopkins, Sian Littledale, Carin Mattar and Lisa Palmer.

² QPILCH Homeless Persons' Legal Clinic, 'The fines enforcement regime in Queensland for people experiencing homelessness: Options for Change' (2011) available from: http://www.qpilch.org.au/_dbase_upl/SPER_Report.pdf, accessed 20 June 2013 (**2011 Discussion Paper**).

RECOMMENDATIONS

Recommendation 1: SPER to invest in and resource a larger Community Engagement Team (CET).

Recommendation 2: SPER to consult with homeless community services and government agencies to develop guidelines and mechanisms which recognise debtor's disadvantage.

Recommendation 3: SPER to invest in and develop improved and continuous training for SPER officers and better alignment with CET processes.

Recommendation 4: SPER to provide transparent guidelines for the criteria and calculation of disadvantage.

Recommendation 5: SPER to undertake thorough file assessment of disadvantage and associated cost-benefit prior to expending public resources on private debt collection agencies.

Recommendation 6: SPER to explore strategies to collaborate with Centrelink, in order to recognise and refer disadvantaged debtors.

Recommendation 7: The appropriateness and value of Fine Option Orders (FOOs) for both the community and the individual be confirmed and that FOOs be offered as the compliance preference for homeless clients, in close collaboration with relevant support agencies.

Recommendation 8: SPER and Probation and Parole to collaborate with the HPLC to promote FOOs and facilitate more homeless agencies becoming active FOO supervision sites, along with the implementation of clear guidelines across Queensland.

Recommendation 9: SPER to resource adequate and ongoing promotion of the processes and benefits of the FOO scheme to homelessness service providers.

Recommendation 10: SPER to adopt the Working and Development Order scheme and advocate the associated reforms in Queensland for all SPER debtors meeting criteria of disadvantage, subject to appropriate consultation with the community sector.

DEFINITIONS

Homeless Persons' Legal Clinic (HPLC) is a service of the Queensland Public Interest Law Clearing House Incorporated (QPILCH). More than 350 pro bono lawyers from 23 firms provide outreach legal services and representation to people experiencing homelessness at 14 locations in Queensland. All HPLCs are located where clients are accessing essential services, such as accommodation and food. The HPLC has assisted over 4000 clients with multiple legal problems, and harnesses more than \$2.6m of pro bono legal services annually.

State Penalties Enforcement Registry (SPER) was created under the *State Penalties Enforcement Act 1999 (the Act)* to provide the Queensland government with an efficient, largely automated fine collection scheme, for any fines levied by courts or other government instrumentalities, such as the Department of Transport and Main Roads or a local council. SPER currently has \$149.6 million of fines under active enforcement.³

Fine Option Order (FOO) is an enforcement option described in sections 41 – 50 of the Act, which allows SPER to convert a fine to community service. A FOO is only available where the debtor has a demonstrated incapacity to pay the fine debt.

The **Community Engagement Team (CET)** at SPER is a team of four staff members, providing personalised consideration and sustainable compliance options for fine debtors who meet the following criteria:

- are homeless;
- have impaired decision-making capacity (**IDMC**);
- live in a remote Aboriginal or Torres Strait Islander community;
- are undergoing rehabilitation;
- have a disability;
- are experiencing financial difficulty or are unable to work due to illness or injury; or
- are in custody or have been recently released from custody.

Probation and Parole is a division of the Department of Corrective Services, which administers and supervises all work related orders in the Queensland justice system, including FOOs. Once SPER accepts the debtor's application for a FOO it is referred to the Department of Corrective Services, which assesses the suitability of the applicant to perform community service and where that service will be performed, and advises SPER accordingly. SPER then makes the FOO (sections 47-50 of the Act) and its implementation is supervised by Probation and Parole.

Homelessness has been understood since 2006 by many government and non-government agencies according to a cultural definition that delineates three aspects of homelessness, from "sleeping rough," to the use of emergency accommodation and "couch-surfing," and insecure accommodation including boarding houses. In 2011, the Australian Bureau of Statistics (**ABS**) developed a new definition of "homelessness." The ABS provided that when a person does not have suitable accommodation alternatives, they are considered "homeless" if their current living arrangement:

- is in a dwelling that is inadequate;
- has no tenure, or if their initial tenure is short and not extendable; or
- does not allow them to have control of and access to space for social relations.

³ State Penalties Enforcement Registry (**SPER**), 'Debts registered with SPER as at 28 February 2013' (2013) available from: <https://www.sper.qld.gov.au/about-us/statistics/statistics-1302.php>, accessed 9 April 2013.

According to this definition, 19,845 people in Queensland are considered homeless, including 1,943 people in inner-city Brisbane.⁴

Although lack of affordable housing is endemic to the experience, homelessness is not simply “house-lessness.”⁵ The biography of homelessness represents the complex interplay of many individual, environmental and systemic factors and is a state of enormous and often entrenched disadvantage and disconnection.

This paper often uses the term “homeless people” for readability; the HPLC recognises that homelessness is just one of the experiences of these individuals and is not a measure or descriptor of their identity.

⁴ Queensland Audit Office, ‘Implementing the National Partnership Agreement on Homelessness in Queensland: Report to Parliament’ (2013) at 39.

⁵ For example: based on the HPLC’s research, the majority of people experiencing homelessness are women (44%) often escaping domestic violence and young people or children (27%) leaving unstable homes or institutions.

INTRODUCTION

The HPLC actively addresses the impact of fines enforcement on our client-base and aims to increase the capacity of homelessness service providers to support their clients with SPER issues.

The HPLC regularly assists clients on an individual basis with their SPER debts, typically by corresponding with the CET to achieve the following outcomes:

- Establish the amount of the SPER debt;
- Identify the client as eligible for the personalised services of the CET, based on their personal and financial circumstances;
- Ensure that the client is placed on a sustainable instalment plan;
- Explore the possibility of a FOO being approved; and
- Clarify the client's eligibility for any debt waivers, for example, on the basis of impaired decision-making capacity.

It is important to locate the SPER issues of homeless people in three broader contexts. First is the co-existence with homelessness of compounding difficulties such as trauma, mental illness, institutionalisation, lack of affordable housing, poverty, disability and depleted skills and resources.⁶ This level of profound and chronic disadvantage has significant implications for service delivery in the homelessness sector. Effective services are personalised, assertive, collaborative and holistic.

The second context is the prevalence of legal issues facing those who are homeless. Recent Australian research confirms that 50% of people experiencing homelessness have three or more legal problems.⁷ HPLC clients typically have multiple legal issues, including fines, commercial debts, housing disputes, criminal and family law matters. Each of these issues reflects a barrier to sustaining housing.

The third context is that fines enforcement is at the latter end of a criminal justice continuum that begins with community expectations and flows through to legislative processes, policing, courts and penalties. Disproportionate impacts on people experiencing homelessness are evident at each phase of this spectrum, from the laws which penalise people who live on the street as their home (and are thus more likely to consume alcohol, urinate, swear or sleep in public), to questions of fairness when a flat fine rate can be an insignificant impost for a household with assets and wages but a major burden for a family in poverty.

This paper will address specific aspects of the SPER enforcement process, particularly:

- The extent of SPER debt for HPLC clients;
- The need for a better scheme to identify all fine-debtors in need of special consideration;
- The alignment of FOOs with best practice in the homelessness sector;

⁶ The Queensland Audit Office recently noted the correlation of homelessness with factors such as disability, being a victim of violence, living in a disadvantaged neighbourhood and being unemployed; see: Queensland Audit Office, 'Implementing the National Partnership Agreement on Homelessness in Queensland: Report to Parliament' (2013) at 9.

⁷ Coumarelos C and People J, 'Home is where the heart is: a working paper on homelessness, disadvantaged housing and the experience of legal problems' (2013) 23 Updating Justice, Law and Justice Foundation of New South Wales.

- Strategies to increase access to FOOs for homeless clients; and
- The adoption of most aspects of the WDO scheme as it operates in New South Wales, subject to appropriate consultation.

Other SPER issues which significantly impact HPLC clients and require further exploration but are not considered in this paper, include:

- Greater consideration of SPER debt waivers in circumstances of chronic disadvantage;
- The disproportionate impact of SPER administrative fees on disadvantaged debtors;⁸
- The impact of the offender levy⁹ and available enforcement options for disadvantaged debtors; and
- The disproportionate exposure to warrants for imprisonment for disadvantaged debtors, the management of those warrants and the management of the debts of those who are imprisoned on this ground.

Many of the recommendations in this paper are applicable to SPER debtors experiencing other types of disadvantage, such as disability or recent release from custody.

⁸ A Registration fee of \$56.90 is imposed when an infringement notice is lodged with SPER by the issuing agency and an enforcement fee of \$95.20 is applied to each fine when enforcement action is taken.

⁹ The offender levy is additional to and does not form part of any sentence imposed, and the judicial officer has no discretion whether or not to apply it. It is payable whether or not a conviction is recorded. The amount currently payable in the Magistrates Court is \$100.00.

1. The extent of SPER debt for HPLC clients and other homeless people

There is no existing data to determine the amount of SPER debt borne by people for experiencing homelessness. In various forums, the CET confirm they have managed individual debts of \$50,000-\$100,000 and anecdotal accounts exist in the homelessness sector of individuals with debts of \$20,000, \$50,000 and more. The HPLC has assisted individuals with SPER debts of over \$50,000.

The HPLC was a member of a Queensland Homelessness Intersectoral Forum working group on SPER issues in 2011,¹⁰ which attempted a data analysis of SPER clients experiencing homelessness without success, as the data collated by SPER is linked only to postcode, offences and amount owing, not to individual circumstances.

However, SPER maintains comprehensive data on individual debtors, including the following documents:

- A *Fine History Report*, which details all fines imposed on an individual and all enforcement measures applied, including all payments made; and
- A *Debt Statement*, which details any outstanding debts at a point in time, noting the original debt, SPER fees applied and the overdue amount for each infringement.

In 2011, the HPLC attempted to scope the amount of SPER debt for people experiencing homelessness. HPLC Student Clinic participants attended homelessness events or services and invited participants to consent to the HPLC accessing their SPER documents. Despite the limitations of this strategy, we obtained data from 35 participants, which indicated an average individual fine debt of \$5462, with the highest debt being over \$22,000.

This paper presents data from an audit of casework files from one of the HPLC's 14 locations – Roma House.¹¹ This audit has indicated average SPER debt levels of \$4842.25. HPLC volunteer lawyers at Roma House assess individual legal need using a diagnostic tool, the *Legal Health Check*. Roma House staff actively encourage residents to access the HPLC and consequently, 81% of residents meet with HPLC volunteer lawyers.¹² The comprehensive approach of the HPLC at Roma House, in both diagnosing issues and in the proportion of residents which use the service, enable some broader conclusions to be drawn about the legal needs of all people experiencing homelessness.

¹⁰ The QHIF Working Group consisted of representatives from the Queensland Department of Communities, SPER and non-government agencies.

¹¹ Roma House is a 39-bed inner-city emergency accommodation service operated by Mission Australia. Residents stay for as long as is useful to address multiple complex issues underlying their homelessness, with an average stay of 3 months. HPLC volunteer lawyers visit Roma House weekly for two hours to meet with new clients and then complete filework at their law firm, under QPILCH's supervision.

¹² See for further discussion: Encompass Family and Community Pty Ltd, 'Evaluation of Queensland Public Interest Law Clearing House Incorporated (QPILCH) Homeless Persons' Legal Clinic (HPLC) and Refugee Civil Law Clinic (RCLC)' (2011) available from: http://www.qpilch.org.au/_dbase_upl/QPILCH%20HPLC%20RCLC%20evaln%20report%202011.pdf, accessed 20 June 2013.

The audit relied on the best available data for each client, in the following order of preference: Fine History Report, Debt Statement or the clients' estimate.¹³ The audit revealed that:

- In 2010-11, 63% of Roma House HPLC clients indicated that they had a SPER debt. The average SPER debt was \$4,238.13;
- In 2011-12, 58% of Roma House HPLC clients indicated that they had a SPER debt. The average SPER debt was \$5656.51;
- Across the two financial years audited, the average individual SPER debt was \$4842.25;
- No HPLC clients were offered a FOO as an enforcement option in the two financial years audited. To date in 2012-13, over 20% of Roma House HPLC clients with SPER debt have been placed on FOOs; and
- The highest instalment payment plan for a client, prior to negotiation with the CET, was \$72 per fortnight.

Table One: Roma House HPLC clients with SPER debt 2010-2011

Data Type – Clients with:	Number of Clients	Mean (\$)	Highest (\$)	Lowest (\$)
Fine History Report	18	4,770.35	14,023.75	702.50
Debt Statement	6	3,673.80	7,843.50	409.79
Anecdotal data	7	3,353.29	10,000.00	400.00
No data¹⁴	6			
TOTAL clients with SPER debt	37	Average SPER debt per client = \$ 4,238.13		
TOTAL HPLC clients	59	Percentage of HPLC clients with SPER debt is 63%		

Table Two: Roma House HPLC clients with SPER debt 2011-2012

Data Type – Clients with:	Number of Clients	Total Amount (\$)	Mean (\$)	Highest (\$)	Lowest (\$)
Fine History Report	13	99,871.44	7,682.42	13,331.50	1,796.90
Debt Statement	2	9,178.30	4,589.15	9,023.30	155.00
Anecdotal data	8	21,050.00	2,631.25	7,500.00	200.00
No data¹⁵	16				
TOTAL clients with SPER debt	39	Average SPER debt per client = \$ 5,656.51			
TOTAL HPLC clients	67	Percentage of HPLC clients with SPER debt is 58%			

¹³ Where clients estimated their debt levels and SPER data was later available, the client estimates were demonstrated to be typically accurate or under-estimates. For this reason, where no other data is available, client estimates have been included as reliable data for the purposes of this paper.

¹⁴ A client may indicate that a SPER debt exists, but no data is available on the HPLC file about the amount of the SPER debt, usually because the client chose not to instruct the HPLC volunteer lawyers to adjust the current arrangements for payment.

¹⁵ Ibid.

The proportion of Roma House residents with a SPER debt is likely to be higher than indicated by the audit, for the following reasons:

- Roma House is visited regularly by CET staff and some residents have their SPER issues resolved by the CET directly;
- Not all HPLC clients ask or are asked about their SPER debt, despite HPLC volunteer lawyers being encouraged to raise this issue with clients; and
- Not all residents at Roma House access the HPLC.

The audit confirms that SPER debts are a consistent and significant legal issue for approximately 60% of residents at Roma House and is indicative of an average fine burden of \$4842.25 on individuals experiencing homelessness.

2. Identifying fine debtors in need of CET services

In 2010, SPER advised the HPLC that approximately 100 homeless clients were assisted through the CET, many of which had been referred by the HPLC.¹⁶ No HPLC clients were placed on FOOs as they were deemed to have a “capacity to pay” their SPER debt. However, in 2013, subsequent to a range of new practices¹⁷ the CET advise¹⁸ that they currently assist over 1000 debtors to complete FOOs. Not everyone on a FOO is homeless but all meet criteria of disadvantage. The CET assist an even greater number of disadvantaged debtors to be placed on sustainable payment plans, which accurately reflect their circumstances but the CET do not record these client numbers.

Unless a homeless person is assisted by the CET there is a high likelihood that they will be exposed to further distress and hardship by the mainstream SPER process, for the following reasons:

- Homeless people are by definition transient, frequently changing addresses and contact details, or having no postal address. Accordingly, enforcement measures may be taken which the debtor is unaware of. If a debtor is then deemed uncompliant, they are exposed to a range of compliance strategies, including garnishing wages, driver’s license suspensions, vehicle clamping and warrants for imprisonment;
- Few homeless people earn wages or own vehicles, so the likelihood of a homeless SPER debtor proceeding to imprisonment for non-compliance is a disproportional risk; and
- Homeless people who do not access CET services may be placed on unsustainable payment plans, which have no regard to their circumstances and incapacity to pay.¹⁹

With 19,845 people experiencing homelessness in Queensland, including 1,943 in inner-city Brisbane alone,²⁰ it is evident that the current CET (comprised of 4 staff) will not be able to identify, divert and provide personalised services to the entire demographic of homeless people.

Debtors are identified as being eligible for CET services by the below mechanisms.

2.1 External referral from the HPLC or other community support agencies

The CET engages with community agencies supporting a homeless debtor, conditional on the consent of the debtor. This enables the CET to verify claims of disadvantage and to maximize the engagement of the debtor with SPER processes. The HPLC actively facilitates opportunities for community workers in the homeless sector to understand the SPER process and to receive training from CET officers. However, there are still many community agencies throughout Queensland with no or limited knowledge of SPER provisions for debtors experiencing homelessness or disadvantage.

¹⁶ Interview with Erin Byrne, SPER Community Liaison Officer at South Brisbane (24 August 2010).

¹⁷ For details of new practices see Section 4 of this paper.

¹⁸ Interview with Kristy Nielson, SPER Community Engagement Team at South Brisbane (9 April 2013).

¹⁹ For information on the average income levels and expenses of people experiencing homelessness, see 2011 Discussion Paper.

²⁰ See above at note 1.

2.2 CET outreach services

Since 2006, the CET has operated outreach services on an occasional basis at a number of homeless service providers and homeless community events. However, most of these locations are in inner-city Brisbane, given the limitations of CET staff resources. The HPLC operates as an outreach service at many of the same locations and observes that many HPLC clients have not engaged with the SPER outreach service. The CET occasionally visits remote Indigenous communities in North Queensland to engage with SPER debtors.

2.3 SPER outreach services

SPER officers are located at some Courts and may consider the individual circumstances of the debtor at that time, with the benefit of face-to-face engagement, although a person's disadvantage may not be readily apparent.

2.4 Internal referral from the automated SPER system

SPER makes a largely automated assessment of the debt to determine a repayment schedule. No consideration of a debtor's capacity to pay is made initially. The debt is deemed non-compliant until the debtor confirms the plan or contacts SPER to discuss a different payment arrangement. Since late 2012, a new assessment process at SPER has gone some way to providing broader internal recognition of homeless debtors. SPER officers are now authorised to consider the personal circumstances of the debtor and apply a disadvantaged repayment scale or refer the debtor to the CET at an earlier stage. The HPLC understands that assessment now functions according to the process indicated in the below Table 3.

Table 3: Internal SPER referral to CET – May 2013

Decision-Making Framework Hierarchy		Decision Maker	Likely Outcomes
Preferred Instalment	Proportional to total SPER debt.	SPER officer or automated system.	Dependent on total amount. HPLC clients face \$150 per week or more with large debt.
Negotiated Instalment	Proportional to SPER debt, with limited variation.	SPER officer	As above.
Disadvantaged Scale	Personal circumstances considered: eg Centrelink or ill-health	SPER officer	Application form for Individual Consideration. Regulations allow instalment of \$30/fortnight. ²¹
Community Engagement Team	If debtor meets criteria of chronic disadvantage or non-compliant under Disadvantaged Scale.	Community Engagement Team	\$10 per fortnight instalments, access to FOO and GBO.

While the increased sensitivity of SPER processes to the circumstances of debtors is welcome, there are still limitations to the internal referral process, which would be substantially addressed by a resourcing a larger CET and developing better guidelines and training for all SPER officers.

2.4.1 Limitations to internal referral

Unrealistic expectations

The system still depends on a person who is homeless or disadvantaged:

- Initiating contact with SPER;
- Recognising that homelessness is a criteria of disadvantage given special consideration by SPER;
- Identifying themselves as homeless;
- Having the advocacy skills to engage positively with the SPER officer and navigate the formal processes; and
- Having the financial literacy to accurately assess their income and relevant outgoings.

²¹ Schedule 2 of the Act defines “minimum instalment” as: the amount prescribed under a regulation as the minimum amount. Section 28 of the SPER Regulations (2000) (Qld) (**the Regulation**) stipulates this to be: (a) \$60 for the first instalment; (b) for each subsequent instalment, (i) \$30 per fortnight, or (ii) the amount remaining if it is less than \$30. Therefore the minimum payable is \$30 per fortnight. However, the Registrar has power under section 42(5) of the Act, if special circumstances exist, to allow the amount to be paid in instalments less than the stipulated minimum instalment of \$30 per fortnight.

These expectations are not realistic and reflect a lack of understanding of the lived experience of homelessness. Most people experiencing homelessness have been technically homeless for a number of years before they begin to access services targeted at homelessness or identify themselves as homeless.²² People in severe disadvantage often have depleted organisational and self-advocacy skills, due to a range of factors including stress levels, repeated experiences of system failure and a history of institutionalisation.²³ Appropriate consultation with the community sector and related government agencies would be valuable to maximise the identification of individuals entitled to special consideration.

Inconsistent identification and referral

The internal referral process is not effective in consistently identifying and referring homeless debtors to the CET. This concern is illustrated through the following two de-identified examples from HPLC files in 2012-13:

Jensen had a long history of sleeping rough and was currently in supported accommodation. He had accumulated almost \$2,000 of SPER debt, arising out of a criminal incident which immediately preceded his admission to a Mental Health Unit. The HPLC wrote to SPER on Jensen's behalf, advised them of his personal circumstances and sought referral to the CET but received no response. After two weeks, the HPLC phoned SPER and were told that the fine had been referred to a private debt recovery business. The HPLC were also advised by the SPER officer that CET had "rejected" the debt as Jensen was not considered homeless.

When the HPLC contacted the CET directly, they advised that they had not been approached about the file. The CET subsequently obtained the file and waived the debt conditional on a Good Behaviour Order.



Maureen was in transitional accommodation and owed approximately \$300 to SPER. The HPLC asked for the debt to be managed by the CET. No response was received and in a follow-up call by the HPLC a month later, the SPER officer advised that the HPLC was not recognised as having authority to act on Maureen's behalf, despite the HPLC including a Client Authority in the initial correspondence. A request at that time for the matter to be

²² See for example: Fitzpatrick S, Bramley G and Johnsen S, 'Multiple Exclusion Homelessness in the UK' (2012) Briefing Paper No.1 Institute for Housing, Urban & Real Estate Research, Heriot-Watt University at 7; and Parsell C, 'Homeless identities: enacted and ascribed' (2011) Institute for Social Science Research, University of Queensland.

²³ In a legal context, disadvantaged groups are more vulnerable to experiencing multiple legal problems, less likely to take action to resolve these problems, less capable of handling their problems alone and more likely to suffer a variety of adverse consequences that may further entrench their social exclusion. See for further discussion: Coumarelos C, Macourt D, People J et al, *Legal Australia-Wide Survey: Legal need in Australia* (2012) Law and Justice Foundation of New South Wales; Pleasance P, 'The Need for Collaboration: an Evidence Base' (2013) Law Week Presentation at Brisbane; Forell S, McCarron E and Schetzer L, *No home, no justice? The legal needs of homeless people in NSW* (2005) Law and Justice Foundation of New South Wales (**Legal Needs Survey**); Coumarelos C, Wei Z and Zhou A, *Justice made to measure: NSW legal needs survey in disadvantaged areas* (2006) Law and Justice Foundation of New South Wales; and Clarke S and Forell S, 'Pathways to justice: the role of non-legal services' (2007) Justice Issues Paper 1, Law and Justice Foundation of New South Wales.

referred to the CET was rejected. The HPLC contacted the CET directly and they agreed to consider Maureen's circumstances.

Apparent failure of guidelines to determine "homelessness"

The lack or apparent failure of guidelines to determine the "homelessness" of a SPER debtor reflects a failure of the principles of natural justice and procedural fairness, which are intended to ensure that government decision making is accountable and transparent. Whether or how a debtor's disadvantage is recognised and taken into account by SPER remains unclear. The lack of guidelines has also led to inappropriate use of public resources. This is well illustrated by the HPLC casework example provided of a private debt collector being engaged by SPER to pursue the debt of a homeless man with mental health concerns.

Restricted access

Only the CET can offer a repayment schedule of under \$30 per fortnight, a FOO, a waiver or a Good Behaviour Order. It is essential for all homeless debtors to have access to these options.

SPER and Centrelink alignment

An alternative access point for disadvantaged debtors to be recognised in the SPER system is to align with Centrelink processes, which provide services to these same clients. SPER has advised that there was previously a protocol which enabled Centrelink officers to sign clients up to SPER instalment plans. This protocol no longer exists and SPER now hope to connect to debtors who are also Centrelink recipients by conducting a pilot programme of occasional outreach at some Centrelink locations. The Centrepay practices utilised in New South Wales for fines debtors who are also Centrelink customers should be considered.²⁴

Exploring effective strategies to collaborate with Centrelink and refer mutual clients will be an efficient use of Queensland resources.

Recommendation 1: SPER to invest in and resource a larger Community Engagement Team.

Recommendation 2: SPER to consult with homeless community services and government agencies to develop guidelines and mechanisms which recognise debtor's disadvantage.

Recommendation 3: SPER to invest in and develop improved and continuous training for SPER officers and better alignment with CET processes.

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Recommendation 6: SPER to explore strategies to collaborate with Centrelink, in order to recognise and refer disadvantaged debtors.

²⁴ These practices are discussed in section 5 of this paper.

3. Alignment of Fine Option Orders with best practice in the homelessness sector

The HPLC advocates for more homeless debtors to be offered FOOs, primarily due to their capacity to leverage holistic outcomes for clients. FOOs align with many outcomes considered valuable by clients and community workers in the homelessness sector. This can be demonstrated by the below case studies from two homelessness services in Brisbane.

3.1 Case Study One – 139 Club

139 Club²⁵ has provided drop-in services to homeless people in the Fortitude Valley area since 1975. The CET visits regularly and 139 Club staff are proactive about addressing SPER debts of their clients. Even clients who access 139 Club for emergency supplies such as food and toiletries are asked about their SPER debt and then referred to the visiting CET. 139 Club has been registered as a site for FOOs for a number of years and two staff members are currently registered with Probation and Parole as FOO supervisors.

The Property and Services Manager coordinates the activities of all volunteers at 139 Club, tracking what tasks need addressing, recruiting volunteers and supervising their work. 139 Club encourages clients to volunteer and where appropriate they will also raise the possibility of a FOO with the client. “I may have a conversation to ‘plant the seed’ with 20 people but it may suit just one. If people have serious drug issues or are struggling with mental health that will be more important.” The Services Manager liaises with SPER and Probation and Parole to have clients’ volunteering converted to FOOs, where it is considered appropriate by all stakeholders. In determining appropriateness, the following considerations are relevant:

- Client – do they want to address their SPER debt in this way? Can they attend regularly to volunteer at a stipulated time, and are they likely to succeed given their current circumstances and priorities?
- 139 Club – are there sufficient appropriate volunteer tasks available and will the client be reliable?
- SPER – is a FOO an available and appropriate enforcement action?
- Probation and Parole – is the client likely to succeed and are they able to be appropriately supervised doing eligible work?

139 Club has supervised seven volunteers on FOOs in the last 10 months and shared the following two client stories²⁶ with the HPLC:

Three years ago **Joe** was a client of 139 Club, with behavioural and anger issues. He began volunteering in the gardens at 139 Club. The CET asked Joe if he was interested in doing a FOO. Joe agreed and completed over 2000 hours of FOO-eligible volunteering, credited to his SPER debt at \$22.50 per hour. He continued to volunteer at 139 Club, even

²⁵ All quotes in section 3.1 are sourced from: Discussion with Terraze Andersen, 139 Club Property and Services Manager at Fortitude Valley (28 May 2013).

²⁶ These stories have been shared with permission from the involved clients, whose names have been changed for the purpose of this report.

after his SPER debt was fully repaid and proved so reliable and useful that 139 Club offered him paid employment, which he still holds.

His supervisor notes that Joe's personal and professional growth is "amazing. He manages himself, controls his anger, asks our advice and follows it. He had the knowledge before but now he can practically put all his skills into place. We wouldn't survive without him."

Joe has gone on to acquire a Certificate IV in Horticulture and runs the Community Garden programme at 139 Club, as well as fulfilling duties as the Services Assistant, Cleaner and onsite Caretaker.



Bill has been a regular client at 139 Club for around two years. Bill had a long work career but suffered an injury and has alcohol dependency. After a near-death experience, Bill identified that he wanted more responsibility and was challenged to volunteer regularly at 139 Club, on the condition that he turn up on time and not under the influence. Bill agreed and it was then discovered that he had \$8000 of SPER debt. An application was sent to SPER and Probation and Parole and two weeks later Bill was signed up. In two months, Bill has completed 115.5 hours (even though a FOO only requires a minimum 8 hours per week of work). Bill has only had to be sent home once. His weekday drinking has declined. Bill feels a part of the team at 139 Club, is housed and manages to prioritise his rent and bills.

His supervisor says: "I always acknowledge what he does and thank him. He now responds to that and smiles. He shares stories from his life with me. I consider him as one of our many volunteers who are helping the Club and can be relied on".

139 Club says that only one of the FOOs has not worked out, but was able to be completed by the debtor in another location. 139 Club is structured as a community, with volunteers becoming members of that "family" and gaining real value from this inclusion.

The Services Manager explains that in homelessness services you do not normally get to see such big changes in clients but that the impact of these FOOs, "gives you hope for everyone else. You see the potential in everyone. Most clients feel hopeless about so much, including their SPER debt."

3.2 Case Study Two – Roma House

Roma House²⁷ was registered as a FOO site in 2012, as it recognised the alignment between its volunteer program and the outcomes for clients under FOOs. "Roma House is structured around inclusion – everyone working alongside each other, not an us/them approach." 15 people have now

²⁷ All quotes in section 3.2 are sourced from: Discussion with Kelly Sciacca of Mission Australia and Ken at Roma House, Spring Hill (19 March 2013).

completed FOOs at Roma House. Residents or former residents volunteer in the kitchen, garden or grounds. One former resident, Ken, was able to address \$2000 of SPER fines by continuing to assist with the weekly residents' BBQ and doing minor maintenance tasks. The confidence and skills he regained, after years of chronic homelessness have led him to now register at a job services provider to seek regular employment.

Benefits of completing the FOO identified by clients and caseworkers at Roma House, other than the reduction of the SPER debt, include:

- Motivation – “I got into a rut after about \$700 worth of fines. I thought ‘what’s another one, I’m already on a payment plan that will take forever,’ so there was no incentive to stop offending.”
- Confidence – “The skills I got have given me the confidence to contribute to the community and I still come back and volunteer here. I now encourage other residents to do a FOO. I couldn’t have arranged it with Probation and Parole on my own. I need the back-up of [Roma House].”
- Life Skills – “You can learn skills through volunteering in the kitchen, like how to prepare a good meal, which many people may not have as they have been living on the streets eating takeaway.”
- Work Skills – The skill of having to attend regularly and complete tasks can re-ignite or instil foundations for work readiness. Although Ken had been volunteering regularly prior to the FOO, he credits the completion of the FOO with his interest in seeking regular employment.
- Sense of purpose – “People want to feel valued, especially those who have lost so much in their lives. I think people feel that way when they are involved,” and “it’s better than getting blotto.”

Recommendation 7: *The appropriateness and value of Fine Option Orders (FOOs) for both the community and the individual be confirmed and that FOOs be offered as the compliance preference for homeless clients, in close collaboration with relevant support agencies.*

4. Increased Fine Option Orders for homeless clients

In connection with consultations which the HPLC initiated with SPER and other community and justice stakeholders, SPER adopted the following new practices which developed FOOs as an appropriate option for homeless clients, and generated an increase in their usage:

- A FOO is only available where a debtor has an incapacity to pay the fine, however, the threshold financial eligibility for FOOs has been adjusted to allow consideration of FOOs for most debtors experiencing homelessness, even those debtors complying with existing instalment plans;
- Rather than a FOO being applied for the entire SPER debt, FOOs can now be “parcelled” into 20 hour blocks. Once each block is completed successfully and the hours “banked to credit,” a further 20 or 40 hour block is applied. This approach means that each FOO is manageable and designed to succeed. Complications or potential breaches of the FOO are restricted to the current block and do not impact on the entire debt;
- While a FOO block is being successfully completed, the balance of the SPER debt is put on hold; and
- The CET now manages all FOOs and all communications with the Probation and Parole offices supervising the FOOs. Previously, SPER officers from the large compliance section, with no knowledge of the debtor’s circumstances, would communicate with Probation and Parole on an ad hoc basis, with no context by which to assess compliance with the FOO. The new consistency facilitates a trust environment and builds specialist skills and knowledge, giving decision-making a context, and allows individual and flexible circumstances to be considered. FOOs are accordingly managed by all stakeholders for maximum success.

These changes removed many impediments to FOOs being an appropriate outcome for SPER debtors who are homeless. However, two impediments remain:

- With the increase in FOOs and the number of Probation and Parole offices across the state likely to be actively involved in supervision, clarity will be required and frameworks will need to be transparent, so that there is continuity of process and approach to supervision throughout Queensland; and
- Only a few homeless agencies actively operate as FOO supervision sites. When debtors can complete FOOs in a familiar and supportive environment, the likelihood of successful completion and positive outcomes is maximised.

The HPLC considers that the limited take-up of homeless agencies to be active supervision sites may be due to the following reasons:

- Services are unaware of changes in SPER practices around FOOs, due to lack of promotion;
- Services are concerned about compliance with the supervision requirements, as they may be familiar with stricter regimes involved in other types of work orders;
- Services do not want to be involved in breaching clients and exposing them to consequences for non-compliance;

- Tight budgetary constraints or service agreements mean that some agencies need to prioritise emergency and crisis responses, and have limited on-going relationships with clients;
- High turnover of staff at community agencies means that knowledge and supervision capacity may be lost, as particular staff must be registered as supervisors for that site;
- Programmes at services which met the requirements of FOOs may no longer exist due to funding limitations, for example social enterprises such as catering programmes and gardening clubs;
- Different Probation and Parole offices and officers may apply different criteria to compliance, and accordingly, services may have had negative experiences with supervising FOOs in the past; and
- Some administrative processes may be perceived as onerous, for example, where the client resides in the catchment of one Probation and Parole office but wants to undertake work with a support service in the catchment of another office.

To encourage more locations to be registered and active in supervising FOOs, the HPLC has hosted CET officers at homelessness sector training events and promoted the scheme in the wider-community sector.

The HPLC is currently preparing a Manual of FAQs for homeless agencies to encourage them to register their sites as supervision locations. The CET and Probation and Parole have agreed to collaborate with the HPLC in this project, and to co-host a forum with homeless agencies. This will provide community agencies with an opportunity for information-sharing, promotion and practical steps to support FOOs to be taken for the benefit of clients.

Recommendation 8: SPER and Probation and Parole collaborate with the HPLC to promote FOOs and facilitate more homeless agencies becoming active FOO supervision sites, along with the implementation of clear guidelines across Queensland.

Recommendation 9: SPER to resource adequate and ongoing promotion of the processes and benefits of the FOO scheme to homelessness service providers.

5. Alternative fine enforcement processes in Australia

The HPLC briefly reviewed fine enforcement processes in Victoria and New South Wales.

5.1 Victoria

The *Infringements Act 2006* (Victoria) provides that a person is entitled to apply to have their fines revoked on the grounds of special circumstances if they have a mental or intellectual disability, a serious addiction to drugs, alcohol or a volatile substance, or are homeless, and rendered unable to understand the seriousness of the offence or its consequences.

This is a desirable outcome, however, in the experience of the Homeless Persons' Legal Clinic in Victoria, the process to achieve this outcome is complicated, time-consuming and inefficient.²⁸ In order for an Infringement Notice to be revoked on the basis of special circumstances, the offender must refrain from paying the fine and wait for an enforcement order. The order is then referred to the Infringements Court on an application for revocation. The Infringements Court has the option to revoke or confirm the Enforcement Order. If they do revoke it, the Enforcement Order is cancelled and the original Infringement notice is sent back to the Issuing Agency for enforcement. The issuing agency has 21 days to consider the Infringement Notice and opt to withdraw it. If nothing is done within that time, the Infringement notice is considered confirmed. The matter is then heard in the Special Circumstances List of the Magistrates Court, where an appearance by the defendant and a guilty plea is required. The matter is usually adjourned, with a Good Behaviour Order and a condition to attend at a specified treatment location.²⁹

5.2 New South Wales

The State Debt Recovery Office in New South Wales introduced Work and Development Orders (**WDO**) in 2008 as the key reform to address the needs of vulnerable persons in community at each stage of the law enforcement process. These reforms were comprehensively and positively evaluated in 2011,³⁰ and this is discussed in more detail below.

WDOs enable people who are homeless, mentally ill, intellectually disabled, cognitively impaired or have acute economic hardship to pay off their fines through:

- Unpaid work with an approved organisation;
- Medical treatment (including mental health) in accordance with a treatment plan developed by a health professional;
- An educational, vocational or life skills course;
- Financial or other counselling;

²⁸ Discussion with James Farrell, former HPLC Coordinator Victoria, March 19, 2013.

²⁹ The Victorian system has recently been critiqued in Saunders B.J., 2013, *An Examination of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System-Towards a Better Practice Model*, Monash University, Melbourne. This report expressed concern that a criminal record is imposed on those who cannot pay the fine upfront; there is a mandatory guilty plea for the special circumstances court; and fixed penalty rates cause disproportionate impact. For these reasons, and others, the report advocates for a more nuanced approach to infringement notices for debtors with special circumstances.

³⁰ State of New South Wales, *A Fairer Fine System for disadvantaged people* (2011) New South Wales Department of Attorney General and Justice.

- Drug and/or alcohol treatment;
- A mentoring program if the person is under 25 years old; or
- Any combination of the above.

When the pilot program was evaluated after two years, over \$2m of fines were being or had been managed through WDOs. 143 organisations and 77 health practitioners were enrolled in the scheme and unanimously supported its continuation. Some of the evaluated benefits of the scheme included:

- reduced reoffending;
- engagement of clients in appropriate treatment;
- reduced stress, anxiety and hopelessness for debtors;
- increased client self-esteem and agency;
- increased client skills;
- incentive to enter or return to workforce; and
- reduced costs to government related to fine enforcement, ongoing offending behaviour, welfare dependency, mental health problems and drug and alcohol addictions.

WDOs provide a meaningful, appropriate and effective response to offending by vulnerable groups.

WDOs were introduced together with reforms which recognise disadvantage at other points on the fines continuum, including:

- Guidelines and training for enforcement officers to encourage the use of cautions where an alleged offender is homeless, has a mental illness or intellectual disability, is under 18 years old or in very poor physical health;
- Issuing agencies to internally review the penalty notice on the basis that the person to whom it was issued is homeless, or has an intellectual disability, mental illness or cognitive impairment, which renders them unable to understand that their conduct constituted an offence or were unable to control such conduct; and
- Centrelink recipients can have court fines and penalty notices referred to the State Debt Recovery Office (**SDRO**) as soon as they are imposed. Enforcement costs are avoided and there is greater flexibility as payment plans are established before the enforcement stage. This process has worked effectively and debt recovery has been more successful to date.

Recommendation 10: *SPER to adopt the Working and Development Order scheme and advocate the associated reforms in Queensland for all SPER debtors meeting criteria of disadvantage, subject to appropriate consultation with the community sector.*