



**Queensland Public Interest Law Clearing House
Incorporated**

**HOMELESS PERSONS'
LEGAL CLINIC**

**Submission in response to the Australian
Government's Green Paper on Homelessness**

June 2008

Prepared by the Queensland Public Interest Law Clearing House Incorporated

**GPO Box 1543
BRISBANE QLD 4001**

T: 07 3012 9773

F: 07 3012 9774

E: contact@qpilch.org.au

W: www.qpilch.org.au

Acknowledgements

We thank McCullough Robertson Lawyers and Minter Ellison Lawyers for their assistance in preparing this submission.

About QPILCH

QPILCH is an independent, not-for-profit incorporated association bringing together private law firms, barristers, community legal centres, law schools, legal professional associations, corporate legal units and government legal units to provide free and low cost legal services to people who cannot afford private legal assistance or obtain legal aid. QPILCH coordinates referrals to members for pro bono legal services in public interest matters and provides direct services – advice, assistance and representation support - through targeted projects, including the Homeless Persons' Legal Clinic, the Administrative Law Clinic, the Consumer Law Advice Clinic and the Self-Representation Civil Law Service.

QPILCH was established in June 2001 as an initiative of the legal profession and commenced services in January 2002.

QPILCH is a member of the Queensland Association of Independent Legal Services, affiliated with the National Association of Community Legal Centres, and is a member of the PILCH network.

Submission endorsements:

This submission is endorsed by the following:

PILCH Homeless Persons' Legal Clinic, Victoria
Homeless Persons' Legal Service NSW, Public Interest Advocacy Centre
Welfare Rights Centre Housing Legal Clinic, South Australia
Queensland Youth Housing Coalition
Caxton Legal Centre
Queensland Shelter

The QPILCH HPLC endorses the following submissions:

PILCH Homeless Persons' Legal Clinic, Victoria
Homeless Persons' Legal Service NSW, Public Interest Advocacy Centre
Queensland Youth Housing Coalition
Queensland Shelter

Introduction

The Queensland Public Interest Law Clearing House (**QPILCH**) Homeless Persons' Legal Clinic (**HPLC**) welcomes the opportunity to respond to the Australian Government's Green Paper on Homelessness, '*Which Way Home? A New Approach to Homelessness*' (the **Green Paper**).

The HPLC began as a project of QPILCH¹ in December 2002 and since inception has assisted over 1400 people experiencing or at risk of homelessness through the provision of pro bono legal and advocacy services. The HPLC currently operates 13 outreach legal clinics in Brisbane, Toowoomba and Townsville which are attended by lawyers from private firms and community legal centres.

This submission focuses on those issues which the HPLC is in a unique position to comment on. Our recommendations relating to these issues support the Green Paper's key principles for change and are as follows:

General Recommendations

1. Support and advance, on a national level, early intervention and prevention models which are working and introduce mechanisms to promote the effectiveness of these;
2. Undertake a comprehensive review of Commonwealth and State legislation to identify laws which exacerbate the exclusionary effects of homelessness and implement a mechanism to allow for their amendment;
3. Facilitate a nation-wide collaborative and coordinated approach to the provision of specialist services by the private and philanthropic sectors, not-for-profit organisations and relevant government departments.

¹ See www.qpilch.org.au.

1. Intervention, prevention and responses to homelessness

1.1 Effective intervention and prevention models

The Green Paper recognises early intervention and prevention as important elements in a new national approach to homelessness. In the experience of the HPLC there are certain intervention and prevention models in Queensland which are working, but which need further support to continue to work at a sustainable and effective level. Examples of these models are as follows:

Homeless Court Connect is a peer mentor project focused on providing training and support for people who have experienced or are experiencing homelessness to assist in breaking the cycle of homelessness related crime. Run out of HART 4000 (an inner-city “homeless hub”), participants of the project created connections between members of the homeless community, the courts, and homelessness service providers.

Participants received training over a 12 month period in public speaking, resume writing, team-building skills and relevant points of law, such as debt and minor crime. Much of this training was delivered by HPLC staff and volunteer lawyers. In one aspect of the project, participants used their public speaking training to prepare short videos which were then presented at HPLC lawyer induction evenings.

Homeless Court Connect was funded as a one-off project by the Brisbane City Council through the Community Grants Program. It does not have the benefit of ongoing funding and from 30 June 2008 will run on a purely volunteer basis. The project is consistent with the Green Paper’s nominated principles for change and has the potential to be established across Australia.

The **Homeless Persons’ Court Diversion Program (HPCDP)**, commenced as a pilot project in May 2006. QPILCH was a part of the multi-agency reference group set up to support the program. The primary objectives of the HPCDP are:

- to support homeless people charged with public order offences through the court process;
- to divert homeless people from the criminal justice system and instead enable them to access other services which will address accommodation, health and other needs which may contribute to their offending behaviour;
- to break the cycle of homelessness, offending and punishment;
- to reduce the number of fines being issued against people who have little or no capacity to pay fines;
- to reduce the risk of imprisonment for homeless people through fine default and ongoing offending; and
- to collect data on: the numbers of homeless people coming before the Magistrates Court; the representation and service needs of defendants; the nature of matters and their resolution.

Homeless defendants have a choice whether or not to participate in the program and may be referred by police, welfare agencies, duty lawyers, the Mental Health Court Liaison Officer, Homeless Persons’ Legal Clinics, ATSILS, Legal Aid, Department of Public Prosecutions and Magistrates.

A key figure in the HPCDP is the Homeless Persons Court Liaison Officer, who:

- liaises between the court and the homeless defendant to ensure that consideration is given to the defendant's personal circumstances and that the court's discretion is exercised appropriately;
- assists homeless defendants to understand the court requirements and to access appropriate services including crisis accommodation, mental health services, homelessness services and welfare agencies; and
- acts as a point of contact for the court, the defendant's legal representatives, Police Prosecutions and Community Corrections to facilitate suitable alternative sentencing options for homeless people.

At the time the HPCDP was established, a Special Circumstances List (**SCL**) was introduced to divert defendants who are homeless and who have impaired capacity as a result of mental health issues, intellectual disability or cognitive impairment. The SCL is modelled on the successful Melbourne project of the same name.

From 1 May 2006 to 28 March 2008, the HPCDP made 207 referrals to accommodation, health and other agencies. By facilitating access to justice and to mainstream and specialised services, and by focussing on addressing the multi-faceted causes of homelessness and creating pathways out of homelessness, the HPCDP is consistent with the Green Paper's principles for change.

The HPCDP is currently funded by the Queensland Department of Justice and Attorney-General until 30 June 2009. We understand other states are exploring establishing similar programs. Recurrent and increased funding is required to allow for the continuation of this effective and innovative model on a national level.

QPILCH is grateful for the recognition of the HPLCs in Queensland, Victoria, NSW and South Australia in the Green Paper as an example of an innovative and effective model. Accessible and free legal services are an important element of an early intervention strategy, as well as a necessary support to encourage a return to community living. The success of the HPLC relies on its services being relevant, accessible and integrated:

- Our legal services are *relevant* to all stages of the 'homelessness journey'²;
- The outreach nature of our service, its location at places where people experiencing homelessness are accessing essential services, ensures our service is *accessible*.
- Locating our service at homelessness 'host agencies'³ ensures genuine collaboration and flexible partnerships within the sector. We are able to collaborate by supplying

² The HPLC assists those who are experiencing primary, secondary and tertiary homelessness.

³ HPLC Host agencies include: The Brisbane Homelessness Service Centre, Anglican Women's' Hostel, Hart 4000, Red Cross Youth Night Café, Salvation Army Pindari Men's Hostel, Salvation Army Pindari Women's Hostel, Mission Australia Care One, West End Community House 4AAA Kiosk, Kyabra Community Centre, Toowoomba City Care 'The Basement', Townsville Women's Centre, Queensland Youth Service and the South Townsville Drop in Centre.

joined-up, *integrated* services to individual clients who attend the host-agency, and are cross-referred to the HPLC for legal support.

More information in relation to the HPLC will be provided in section 3 of this submission.

1.2 Ineffective interventions and responses to homelessness

When an effective early intervention response is *not* delivered, especially by ‘first-to-know’ agencies, it not only wastes a crucial opportunity, but can often compound difficulties and frustrate the attempts of other agencies to provide support.

There are a number of intervention strategies or responses to homelessness in Queensland which are ineffective and fall into this category. These responses are generally punitive in nature and fail to consider the underlying causes of a person’s homelessness. Two clear examples are:

- Move-on powers; and
- Public nuisance offence.

Move-on powers in the *Police Powers and Responsibilities Act 2000* (Qld) allow police officers to direct a person to leave any public space for up to 24 hours when their behaviour or their presence is:

- making people anxious who are coming or going from the place;
- interfering with business by obstructing others from coming/going from the place;
- disrupting an event, entertainment or gathering at the place; or
- offending or threatening people coming or going from the place.

The evidence of HPLC clients is that the current street policing practices in Queensland, enabled by state-wide move-on powers are about “minimising the bother”,⁴ rather than using the opportunity to provide useful linkages for the client.

Rather than addressing the structural reasons for someone’s homelessness, providing assistance or respecting their circumstances, move on powers exacerbate the exclusion experienced by homeless people, jeopardise their sense of safety and security in public places, reduce a person’s ability to access the support services that are made available in a particular area, and shift the problem of homelessness from one geographical location to another.

In a Queensland Court of Appeal judgment handed down on 27 June 2008, Justice McMurdo stated that “...police officers have the sometimes difficult task, for which they are extensively trained, of exercising tolerance and patience so that an individual’s liberty is only curtailed when plainly necessary and lawful”.⁵ Hopefully this judgment will reinforce the HPLC

⁴ Tamara Walsh, *No Vagrancy: An examination of the impact of the criminal justice system on people living in poverty in Queensland* (June 2007), T.C. Beirne School of Law, University of Queensland

⁵ *Rowe v Kemper* [2008] QCA 175 at paragraph 30. Mr Rowe was represented by HPLC lawyers and pro bono barristers at each stage of the court process. Mr Rowe’s convictions for contravening a direction (in relation to a move-on direction) and for obstructing a police officer were quashed by this decision.

assertion that at the very least, move-on powers should not be exercised without due consideration of alternatives.

The **Public Nuisance offence**, in its current form, was introduced in 2004 and is contained in the *Summary Offences Act 2005* (Qld). A person commits a public nuisance offence if they behave in a disorderly, offensive, threatening or violent way and their behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

Following the introduction of this offence, the Crime and Misconduct Commission (CMC) conducted a review of the impact, use and efficiency of the offence.⁶ The CMC made five recommendations:

- changes to the legislation so that the use of the public nuisance offence for offensive language can be monitored in accordance with the recommendations from the Royal Commission into Aboriginal Deaths in Custody;
- a separate offence for public urination;
- the QPS reinforcing the message that de-escalation and prevention are guiding principles when dealing with public nuisance offences;
- introducing 'ticketing' as another option available to police rather than proceeding through the courts; and
- the need for government, community and business partnerships along with the police to address underlying causes of public nuisance offending.

Whilst the HPLC welcomes some of these recommendations, the HPLC has noted a steady increase in charges for public nuisance since the introduction of the *Summary Offences Act* and is concerned about the disproportionate affect these laws have on the homeless who, by necessity, spend more of their time in public spaces.⁷

Particular concerns include the lack of an adequate defence, such as 'reasonable excuse' (by which community standards, rather than police discretion, could be brought to bear), and the use of the public nuisance offence as a 'catch all', which allows for a lack of police accountability and responsibility to consider the individual situation.

The CMC recommendation that ticketing be introduced typifies an inappropriate intervention. Ticketing means that a homeless person charged with public nuisance would receive an on-the-spot fine, which would convert to unpayable debt. There would be no attempt to address underlying issues, no investigation of police discretion and no pathway to services such as the Homeless Persons' Court Diversion Program. Such an intervention is certainly not in line with the Green Paper's nominated principles for change.

For further consideration of laws contained within the *Summary Offences Act 2005* (Qld) and the *Police Powers and Responsibilities Act 2000* (Qld) please see section 2 of this submission.

⁶ Crime and Misconduct Commission, '*Policing Public Order: A Review of the Public Nuisance Offence*' (May 2008). See <http://www.cmc.qld.gov.au>.

⁷ QPILCH Homeless Persons' Legal Clinic, *Submission in response to the Crime and Misconduct Commission's issues paper on the offence of public nuisance*, July 2006. See http://www.qpilch.org.au/dbase_upl/cmcs submission.pdf.

1.3 Recommendations

The HPLC recommends that effective early intervention and prevention models currently in place be supported and advanced. More specifically, the HPLC recommends the following additional mechanisms be applied to further intervention and prevention strategies in line with the Green Paper's principles for change:

- i) Develop a national protocol to be adhered to by all agencies, especially first-to-know agencies, for first and subsequent responses to situations involving people experiencing homelessness. The Brisbane City Council has developed a public space protocol however the HPLC experience is that this protocol is not consistently or effectively applied. In New South Wales, the *Protocol for Homeless People in Public Spaces*, introduced in 2000, has brought about a cultural shift in agency interactions.

To encourage compliance with such protocols, a national protocol could include linked-funding, and reviews by a body such as a Social Inclusion Board. A national protocol could also be the fore-runner of a Homelessness Act, which would be enforceable at law.⁸

- ii) Develop a notifications process, whereby certain events 'trigger' a notification to all relevant departments and service providers accessed by the client, so that these agencies are kept informed of the client's at-risk circumstances and are able to collaborate where necessary to provide a better long-term outcome. A notifications process would lessen the incidence of clients becoming 'lost' or falling through the gaps on the 'referral roundabout' – a condition often experienced by those who are homeless.

We acknowledge this process may be perceived as paternalistic, and accordingly recommend a comprehensive consultation process take place with members of the homeless community prior to its introduction. We also acknowledge the difficulties privacy laws present to data sharing. These are already being explored by careful, client-focussed collaborations at two Brisbane homeless hubs, and by collaborative case management currently practised by the inter-agency Case Coordination group in Townsville.

1.4 Case study – effective interventions vs a lack of effective interventions

To make our above points more 'real' we have outlined, very basically, the possible outcomes for a representative HPLC client in two different scenarios. In the first, the client benefits from effective, early intervention strategies which assist the client through their time of crisis and result in a sustainable return to community living. In the second, an absence of effective interventions leads to a downward spiral for the client into chronic illness, unemployment and ultimately, homelessness.

Consideration should be made not only to the differences in client outcomes, but also cost efficiencies of interventions and benefits to society as a whole.

⁸See Section 2 of our submission for further discussion of legislative reform.

Joe Smith

Joe Smith recently moved to Queensland and is currently living in private rental accommodation. Joe is receiving a Centrelink NewStart allowance, while he looks for work as a qualified carpenter. Joe suffers from mental illness and his recent separation from his wife and relocation has exacerbated his symptoms.

Effective Interventions	Lack of effective interventions
<p>Joe suffers from an 'episode' of his illness in the Queen St Mall and is causing a disturbance to shoppers.</p> <p>A police officer meets with Joe, and in accordance with a national 'homelessness protocol' takes Joe to a nearby service provider where a qualified social worker makes contact with a mental health agency and Centrelink on Joe's behalf.</p> <p>Joe receives appropriate ongoing follow up treatment through the mental health agency and also maintains his NewStart appointments. A 'notifications process', keeps agencies alerted as to Joe's circumstances.</p> <p>Joe eventually secures work with a building company.</p>	<p>Joe suffers from an 'episode' of his illness in the Queen St Mall and is causing a disturbance to shoppers.</p> <p>A police officer meets with Joe, and after rigorous questioning, asks Joe to 'move on' as his behaviour is inappropriate in the Mall.</p> <p>Joe does not 'move on' and is charged with contravening a direction. Joe becomes agitated by the confrontation with the police officer and is arrested.</p> <p>Joe becomes more ill as a result of the stress caused by his charge and arrest and fails to maintain his NewStart requirements. Joe's payments are suspended, he falls behind in his rent, and is evicted. Joe ends up sleeping rough as he could not find an available bed in hostel accommodation.</p>

2. Promotion of social inclusion through legislative reform

The need for legislative reform is clear. There are a large number of laws, both federal and state, which exacerbate the exclusionary effect of homelessness. Social inclusion cannot occur on any real level without review of such laws, and the implementation of a mechanism to allow for their amendment. This mechanism would also ensure future laws *include*, rather than *exclude*, people experiencing homelessness.

Examples of laws which do not support the social inclusion of homeless Queenslanders include voting laws (see for example, s 64(1)(b) of the *Electoral Act 1992* (Qld)) and public space laws (see for example, s 8 *Summary Offences Act 2005* (Qld)). The HPLC has reported extensively on Queensland's public space laws which disproportionately impact on homeless people who live more of their private lives out in public. There can be no clearer example of the exclusionary effect of these laws than the move on powers found within the *Police Powers and Responsibilities Act 2000* (Qld), which send a message to members of the homeless community that they are 'not welcome here'.⁹

A comprehensive audit of state and federal legislation should be undertaken to identify laws which impact on, and limit a person's exit from, homelessness. This audit could be undertaken by:

- the recently established Federal Social Inclusion Board;
- state social inclusion boards could be created to report back to the Federal Social Inclusion Board; or
- HREOC.

In 2003, lawyers of the HPLC conducted a survey of homeless people to assess whether homeless people believe they benefit from the same citizenship rights as the rest of the population. Results of that survey showed that 58% of respondents did not feel that they enjoyed the same rights as everyone else in society.¹⁰

Mechanisms to allow for amendment and ongoing rights protection should be implemented. Possible mechanisms include:

- enactment of a Homelessness Act or Charter of Rights to enshrine civil, political and social rights, the 'citizenship rights';¹¹
- amendment of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) to include social status as a protected ground; and
- incorporation of 'homelessness considerations' in other state and commonwealth legislation, regulations and codes, such as the hardship provisions which already exist in the Consumer Credit Codes.

⁹ QPILCH and the T.C.Beirne School of Law, University of Queensland, '*Nowhere to Go: The impact of Police Move On Powers on Homeless People in Queensland*', 2006. Available online at:

http://www.qpilch.org.au/01_cms/details.asp?ID=23

¹⁰ See: Carla Klease and Tamara Walsh, *Down and out? Homelessness and citizenship*, Australian Journal of Human Rights (2004).

¹¹ Ibid.

The HPLC refers to and supports the submissions of our counterparts in Victoria and New South Wales that give more detailed consideration to legislative reform as a means to advance the Government's agenda of social inclusion for all members of Australian society.

3. Collaboration as a means to provide coordinated and specialised services

One of the strengths of the HPLC model is that it creates an effective link between the private sector, non-profit community providers and homeless clients in order to provide a service that is relevant, integrated and accessible.

A small investment of government funding leverages the extensive resources of the private sector. HPLC annual funding of \$121,000.00 facilitates over \$1 million annually of free, targeted legal services. Our experience is that the private sector are interested in participating in *well-resourced, targeted, tangible and effective* solutions, but can neither create or maintain these opportunities without an independent body, such as QPILCH, being funded to facilitate and manage the project:

- *Well-resourced*: QPILCH provides all training, on-line forms, precedents and file management tools, supervision, insurance and procedural support, as well as facilitating inter-agency connections.
- *Targeted*: Provides a service not met by any other agency, as Legal Aid does not provide funding for the type of minor credit and criminal charge matters which are common concerns for homeless people, and the rest of the CLC sector does not have capacity to provide outreach services at these agencies.
- *Tangible and effective*: Legal advocacy and assistance creates real change for clients who are freed from unfair and unmanageable debt, housing complications and other impediments to sustainable community living. The work of financial counsellors, tenancy advocates and case managers is advanced by the involvement of lawyers, to whom corporations and agencies tend to respond more readily.

Engaging the private sector has broader benefits for the homeless sector and the community as a whole. The HPLC is "breeding" a generation of private lawyers who have developed a genuine experience and understanding of the issue of homelessness, and how that issue presents in their immediate community. Through the HPLC, law firms also make connections with community providers that can lead to other types of resource sharing and support.

In the Green Paper, questions 6 and 7 respectively ask how the business sector and broader community can be involved in reducing homelessness. Replicating the HPLC outreach model to provide services other than legal services, such as dental, health, and financial, would be a means of enabling this level of involvement.

In Queensland we have demonstrated that the HPLC model is also possible in regional Australia. Clinics are now established in Toowoomba, Townsville and developing on the Gold Coast. Each of these centres services a broader rural region. The HPLC at Townsville's Queensland Youth Service has "bussed in" youth from Ingham to access the service and is arranging a similar service to the Burdekin and Hinchinbrook regions.

The benefit to the community and the cost efficiencies for government of funding this type of model is evident. Yet, due to the restricted criteria for SAAP funding, our funding provided by the Department of Communities in Queensland is only year to year, does not cover administrative support, and has not increased despite the HPLC doubling the number of clinics, tripling the number of law firms participating, and sustaining an annual increase in client numbers of 25% since June 2005.

One obvious solution, given that an HPLC equivalent now operates in multiple states, is to commit federal funding to 'boost' limited state funding to allow for the continuation and expansion of this successful model.

Conclusion

The HPLC commends the Government's long overdue attention to some of the most marginalised and vulnerable members of our society, the homeless.

Through the Government's Green and White Paper process, the HPLC hopes that significant inroads can be made into reducing and preventing homelessness so that *all* Australians may experience the benefits and opportunities afforded by stable, active and inclusive community living.

The HPLC is pleased to participate in this first step of the Government's process towards reducing homelessness and looks forward to making an ongoing contribution.
