

Professor Tamara Walsh

Director, UQ Pro Bono Centre
TC Beirne School of Law
The University of Queensland
Brisbane Qld 4072 Australia

T +61 7 3365 6192

E t.walsh@uq.edu.au W www.law.uq.edu.au/tamara-walsh



CREATE CHANGE

LIVED EXPERIENCES OF THE CRIMINALISATION OF HOMELESSNESS AND POVERTY IN AUSTRALIA

Tamara Walsh and Marnie Ball*

I. INTRODUCTION

This submission to the Special Rapporteurs draws upon data collected from the Australian Criminalisation of Poverty and Homelessness Project, funded by the Australian Research Council (ARC) Linkage Scheme. This was a collaborative research project involving four universities and 10 community legal centres. The Project investigated the impacts of criminalisation on people experiencing poverty and homelessness in all Australian states and territories.

The Project involved interviews of key stakeholders across 10 different locations in Australia. The locations were: Adelaide, Brisbane, Townsville, Darwin, Canberra Hobart, Melbourne, Perth, Sydney and Wollongong. The four stakeholder groups were: people experiencing homelessness, judicial officers, law enforcement officers and community lawyers.

We cannot claim that the findings presented in this submission are representative of all the views of all affected individuals. However, our participants offered useful insights into the workings of the criminal law system and its impacts on vulnerable people in Australia. It is crucial that the stories of those with lived experience, and those who work within the system, are heard if effective reforms are to be implemented.

II. CRIMINAL CHARGES ASSOCIATED WITH HOMELESSNESS

'[T]hey're doing something that they normally wouldn't do, like crime or whatever, just to get by.'

People experiencing homelessness reported repeated charges for public nuisance and survival-based offending across all interview locations. These reports are supported by

* Tamara Walsh is a Professor of Law at the University of Queensland, Australia. Marnie Ball is a Research Assistant in the Law School at the University of Queensland. This research was funded under the Australian Research Council (ARC) Linkage Scheme. The other academic partners on this grant are: Prof Thalia Anthony, Prof Luke McNamara and Prof Julia Quilter.

existing Australian research, which has found that people who are homeless often steal to provide themselves with the necessities of life.¹ Indeed, the most common item stolen by people who are homeless in Australia is food.²

A. Crimes of Survival

‘Doing things to survive and eat’, ‘just get by’, were commonly described by homeless participants in our research. Often this took the form of stealing or shoplifting, with a participant in Darwin saying: ‘we had to go to Coles and steal meat’. Several participants said that they only started committing crime ‘because of living on the street’. In Hobart, a participant said: ‘I stole one drink and a pizza pocket and they charged me for that.’

People experiencing homelessness in Australia are often charged with trespass for sleeping in public places, squatting in abandoned buildings,³ or evading public transport fares for seeking shelter on trains.⁴ Many participants admitted committing these offences, but they said this was ‘because there’s just nowhere for homeless people to go.’ One participant in Hobart said: ‘you might trespass on a property to drink out of a tap because you’re thirsty.’ Another said: ‘you do what you have to do to get through the day. And it’s not always right what you do.’

B. Public Nuisance

People experiencing homelessness reported receiving charges for public nuisance-type offences in most locations. In Townsville, one participant said people experiencing homelessness were charged with public nuisance when they were ‘only sleeping in the park.’ Many participants were frustrated at the frequency with which they received these charges: ‘It’s the same thing over and over - public nuisance. Seventy-five dollar fine, seventy-five dollar fine. And we’re getting picked up for, like every day, for it... They just keep giving us tickets.’ Another participant said: ‘Sleeping in the park, getting picked up and taken to watchhouses... they’re sleeping. What are they going to do? What are you up for? Public nuisance – while they’re still asleep?’ Judicial officers agreed; one said that public nuisance charges, ‘where there is no physical harm or threat’, should ‘be kept out of the system’.

¹ Jessica A Heerde and Sheryl A Hemphill, ‘Stealing and being stolen from: Perpetration of property offences and property victimisation among homeless youth – A systematic review’ (2016) 48(2) *Youth and Society* 265-300; Emily Chew and Beth Midgley, ‘Justice for the homeless’ (2004) 17(9) *Parity* 17.

² Sue Booth, Andrea Begley, Brice Mackintosh, Deborah Ann Kerr, Joine Jancey, Martin Caraher, Jill Whelan and Christina Mary Pollard, ‘Gratitude, resignation and the desire for dignity: Lived experience of food charity recipients and their recommendations for improvement, Perth, Western Australia’ (2018) 21(15) *Public Health Nutrition* 2831-2841.

³ See also *Crimes Act 1900* (ACT) ss 151, 154; *Inclosed Lands Protection Act 1901* (NSW) ss 4-6; *Trespass Act 1987* (NT) ss4, 6, 7; *Summary Offences Act 1923* (NT) s 46A; *Summary Offences Act 2005* (Qld) s 11; *Summary Offences Act 1953* (SA) ss 17, 17A; *Police Offences Act 1935* (Tas) s 14B; *Summary Offences Act 1966* (Vic) s 9(1)(d), (e); *Criminal Code* (WA) s 70A.

⁴ See also Paula Hughes and Kurt Maroske, ‘Fare evasion in Queensland: Compounding inequity and the need to improve social inclusion on public transport’ (2019) 32(2) *Parity* 18-19.

C. Alcohol-related Offending

People experiencing homelessness reported being charged for behaviours that are only unlawful when conducted by people on the streets. In some Australian states and territories, there are separate offences for drinking alcohol or being intoxicated in public, although two states repealed their public intoxication offences in 2023.⁵ The constant policing of people experiencing homelessness for alcohol was a striking feature of the Townsville and Darwin interviews. In some areas, alcohol can be seized and disposed of, and this was experienced as humiliating and demeaning by the homeless people we interviewed. One said: ‘if police find something in people's bag they tip it out, or move them on, or they've got to go face the judge...It's not an easy life, it's not easy.’

D. Begging

Begging remains an offence in some Australian jurisdictions, although the states of Queensland and Victoria repealed their begging offences in 2023.⁶ Importantly, a charge of begging does not require a person to have acted violently or aggressively – the very fact that an individual is destitute and has asked for money or goods is sufficient basis for the charge.⁷

III. POLICING HOMELESSNESS

[T]hey look at you like a lesser human being so they treat you differently'

Across Australia, police have broad powers to approach, interfere with and issue move on directions to people in public places.⁸ Our interviews confirmed that the visibility of people experiencing homelessness lead to regular – often daily – interactions with police officers.

A. Reports of Harassment and Discrimination

Participants across most locations agreed that people experiencing homelessness are disproportionately targeted by police. Participants reported that police ‘harass’ and ‘pick on’ people experiencing homelessness ‘nonstop’. In fact, in Townsville, many of the homeless people we interviewed said they encountered police ‘every day’ or ‘all the time’. Those who lived in public spaces, particularly parks, reported feeling ‘harassed’, ‘nagged’ and ‘followed’

⁵ Public intoxication offences were repealed in Queensland and Victoria, however, see *Summary Offences Act 1923* (NT) s 45D. See further Peter D'Abbs, ‘Controlling “rivers of grog”: the challenge of alcohol problems in Australian Indigenous communities’ (2010) 37(3) *Contemporary Drug Problems* 499.

⁶ See, e.g., *Summary Offences Act 1923* (NT) s 56(1)(c); *Summary Offences Act 1953* (SA) s 12(1); *Police Offences Act 1935* (Tas) s 8(1)(a).

⁷ *Begg v Daire* (1986) 40 SASR 375, 388.

⁸ Joanna JJ Wang and Don Weatherburn, ‘The effect of police searches and move-on directions on property and violent crime in New South Wales’ (2021) 54(3) *Journal of Criminology* 383; Julian Murphy, ‘Homelessness and public space offences in Australia – A human rights oriented case for narrow interpretation’ (2019) 7(1) *Griffith Journal of Law and Human Dignity* 103-127.

by police. Some participants said that police seemed to have a ‘radar’ for people experiencing homelessness and that they were ‘looking for crime’ amongst them. One participant in Wollongong used the word ‘hunting’ to describe how police targeted people experiencing homelessness. A participant in Melbourne commented: ‘they’ll hassle and hassle and hassle until they exhaust you to the point where you just can’t be effed anymore with them. You’ve got to give up’. Another said he was tired of police ‘just coming up to you, searching your bag and harassing you. You don’t see them do that to anybody else sitting down having a cigarette’. A participant in Brisbane stated that police ‘walk around the city with their iPads, checking all the homeless people on the street ... checking if they have any warrants out’. They said police do this to ‘the same people day after day’.

A judicial officer in Brisbane said: ‘those who are impoverished ... homeless ... mentally ill ... have drug addiction, and a whole other suite of disadvantages’ experience high levels of interaction with police. They said that policing ‘makes the problem infinitely worse by attacking any kind of opportunity that they have to ameliorate their circumstances’, as well as creating a ‘massive trajectory into imprisonment’. One judicial officer said this was an ‘easy way for police work to look effective, when in fact these people really don’t pose any significant threat’.

Participants often said they felt discriminated against by police, and that police attention was commonly associated with the physical appearance of homelessness and stereotyping. A participant in Darwin said: ‘You don’t see police walking up and harassing well-dressed people in the park and all that shit’. Similarly, a participant in Sydney said of police: ‘they look at you like a lesser human being so they treat you differently’. Some participants in Perth said that police responded differently depending on who they were dealing with. One participant said: ‘I’m educated. I’m articulate. I know how to communicate’ but ‘people who don’t have those social skills that I do and vocabulary skills and communication, people who don’t have that, it can get quite brutal’.

People in several locations, particularly Darwin, Brisbane and Townsville, reported police attention being particularly focused on Aboriginal people: ‘Aboriginals seem to get harassed more than the white people’ and ‘Aboriginals, they’re the ones that are mainly picked on’.

B. Move-on Powers

Police in all Australian jurisdictions have the power to issue ‘move-on’ directions to people who are reasonably suspected of causing anxiety to others, interfering with trade or acting in an offensive or disorderly manner.⁹ A move-on order can last for between four and 24 hours – the time period varies between different states. Existing research suggests that rough

⁹ *Crimes Act 1900* (ACT) s 175; *Law Enforcement (Powers and Responsibilities) 2002* (NSW) s 197; *Summary Offences Act 1923* (NT) ss 47A-47B; *Police Powers and Responsibilities Act 2000* (Qld) ss 46-48; *Summary Offences Act 1953* (SA) s 18; *Police Offences Act 1935* (Tas) s 15B; *Summary Offences Act 1966* (Vic) s 6; *Criminal Investigation Act 2006* (WA) s 27.

sleepers are amongst those most likely to be moved-on.¹⁰

Move-on orders were identified as a major problem by people experiencing homelessness we interviewed. In Hobart, there was a sense amongst participants that police are ‘just constantly asking people to move on’ even though they are ‘not disturbing anyone.’ Participants agreed that the main problem with this was ‘where are they going to go?’.

Similarly, participants in Darwin were frustrated with being moved on from public parks. In Townsville, participants described being moved on while sleeping at night: ‘In and around the city buildings, they wake you up. “You’re not allowed to sleep here, move on”.’ A participant in Brisbane said: ‘I don’t understand how they can actually say that ... people have to exist. You can’t just fucking vanish’. Several participants reported being moved on and banned from Fortitude Valley and discussed the practical difficulties this created. One said: ‘that’s how I’d get my food and everything because there’s lots of homeless services in Fortitude Valley ... I can’t even walk through’. Similarly, a participant in Perth commented that move-on orders often had the effect of ‘pushing’ people into the suburbs, where support services were not available.

Participants and criminal justice practitioners spoke about how move on orders can escalate situations, leading to fines or charges. A person experiencing homelessness in Sydney said: ‘this particular night, I refused to move on. I wasn’t doing anything... I came back later, was up to an hour later, and that’s when they hit me with this \$1,100 fine’.

C. Search Powers

Police officers in Australia have the power to search people without a warrant if they ‘reasonably suspect’ that the person has committed or is about to commit a criminal offence, has something in their possession that has been or may be associated with criminal activity (such as stolen property, drugs or weapons), or has failed to comply with a direction or requirement.¹¹ People experiencing homelessness often have all their belongings with them, so a police search can result in prohibited items being found, particularly alcohol, drugs and utensils, and knives.¹²

Search powers were identified as overused and problematic in our interviews with people

¹⁰ Tamara Walsh and Monica Taylor, “‘You’re not welcome here’”: Police move-on powers and discrimination law’ (2007) 30(1) UNSWLJ 151, 152; NSW Ombudsman, *Policing Public Safety* (NSW Government 1999) 229, 235-238; Paul Spooner, ‘Moving in the wrong direction: An analysis of police move-on powers in Queensland’ (2001) 20(1) Youth Studies Australia 27; Cassandra Goldie, ‘Indigenous people and public space: The use of move-on powers in Darwin, Northern Territory and associated legal challenges’ (2004) 17(1) Parity 86.

¹¹ *Criminal Code 2002* (ACT) ss 207, 227; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ss 21, 31; *Police Administration Act 1978* (NT) s 119; *Police Powers and Responsibilities Act 2000* (Qld) ss 29-30; *Summary Offences Act 1953* (SA) s 68; *Criminal Investigation Act 2006* (WA) ss 33, 69.

¹² Alison Young and James Petty, ‘On visible homelessness and the micro-aesthetics of public space’ (2019) 52(4) ANZJC 444; Tamara Walsh, *No Vagrancy* (UQ 2007).

experiencing homelessness. Many participants in Townsville described being subjected to constant searches of their bags and belongings. One participant said: ‘I just don’t like what they do with our bag, with our personal things in there. That’s just not right... Every day they go through our things. We’ve got personal things. I’m a lady, I’m a woman, I got things in there that I don’t want men, anybody to see.’

Several participants in Wollongong described being subjected to random and frequent searches, sometimes by officers of the opposite gender. Some said they had been strip searched ‘in the street’. Similarly, a participant in Sydney reported being ‘strip-searched every time they pull me over. I’m harassed on a daily basis when I’m out here, for no reason at all’. Community lawyers agreed that people experiencing homelessness were often searched by the police, and said this was because a person might look a ‘bit scruffy...because they’re not as well dressed or haven’t had a shower’. The lawyers argued that this kind of police interference is discriminatory: ‘we’ve had clients who get stopped at McDonalds and get frisk searched. I go to McDonalds all the time and I’ve never been stopped for a frisk search. Like I’ve never been stopped out the front of our work for a frisk search, and yet we’ve had clients who do’.

In most locations, there were some participants who spoke positively about the police, and said that they are ‘just doing their job’. This was particularly so in Canberra, where people experiencing homelessness tended to agree that police were ‘reasonably good’ – many drew comparisons with police in other States when making this point.

IV. FINING PEOPLE WHO ARE DESTITUTE

‘It’s the same thing over and over, public nuisance. \$75, \$75 fine. And we’re getting picked up for, like every day for it.’

In Australia, infringement notices are typically issued for street offences.¹³ This means that people experiencing homelessness can accumulate thousands of dollars’ worth of fines that will never be repaid, and enforcement action is often taken against to recover the money. Some charges are directly related to individuals’ homelessness. For example, people who are homeless often fail to appear in court because they are unable to keep track of their appointments. People experiencing homelessness are also less likely to receive bail because they lack a fixed address. If they are sentenced, they are less likely to receive community-based orders because of a belief that they were not be able to comply with the conditions.¹⁴ Sometimes, magistrates may sentence a homeless person to a period of imprisonment believing that this is ‘for their own good’.¹⁵ Sadly, some homeless people ask to be put in

¹³ Gaye Landsell, Anna Eriksson, Bernadette Saunders and Meredith Brow, ‘Infringement systems in Australia: A precarious blurring of civil and criminal sanctions?’ (2012) 37(1) *Alternative Law Journal* 41.

¹⁴ Katherine Boyle, ‘“The more things change...”: Bail and the incarceration of homeless young people’ (2009) 21(1) *Current Issues in Criminal Justice* 59; Eileen Baldry, Desmond McDonnell, Peter Maplestone and Manu Peters, ‘Ex-prisoners, homelessness and the state in Australia’ (2006) 39(1) *Australian and New Zealand Journal of Criminology* 20.

¹⁵ Tamara Walsh, *A Special Court for Special Cases* (UQ 2011) 38.

prison to escape the dangers of the streets.

Many of our participants said they had received fines from quasi-law enforcement authorities for low level infringements. For example, a participant in Melbourne described receiving fines from the council for ‘smoking on a railway platform and no valid ticket’. Participants who were living out of their cars described parking fines as a significant issue, with one person saying: ‘I racked up so many parking tickets, it’s ridiculous... You think, Jesus Christ, another \$100 fine, another one. It’s not like I’m trying to get away from not paying them, it’s like I can’t pay them.’ A community lawyer in Sydney provided an example of a ‘client who had over 180,000 dollars’ worth of fines’ for catching the train to a medically supervised injecting clinic. A person experiencing homelessness in Melbourne reported not knowing about a road toll fine that had increased from \$10 to \$300 because they did not have an address for mail.

Participants also spoke about fines imposed by the courts. In Perth, when it came to sentencing, the community lawyers said that ‘fines aren’t good practice’ and can result in a sentence of imprisonment, but were ‘the stock standard’. People experiencing homelessness in Townsville agreed that courts were ‘just giving you a fine and not looking at the problem’.

Participants in Brisbane spoke of the ‘downhill spiral’ created by accumulating fines. They said this creates an ‘overwhelming’ situation from which they are ‘financially unable to get out’. They explained: ‘you’ve got all these fines and all this money and you can’t get a car or you can’t get a loan...it’s just extremely compounding’. Several people experiencing homelessness in Melbourne described how they had been subject to enforcement action, such as license suspension and imprisonment, when they were unable to pay their fines. One participant said that they had not been making the payments on a fine payment plan, and as a result, the plan ‘has now been changed to a warrant for my arrest.’ Similarly, some participants in Townsville had been detained in the watchhouse to ‘deal with’ their fines. In Wollongong, fines were said to pose a real barrier to rehabilitation by both the lawyers and people experiencing homelessness. If an individual could not pay the fines, or do community service to work them off, they would ‘never be able to get a licence’, for example.

Fines were identified as inappropriate for people experiencing homelessness. A homeless participant in Hobart asked: ‘How do you fine someone that’s got no money? It’s an oxymoron.’ Similarly, criminal justice practitioners from various locations described the imposition of fines upon vulnerable people as ‘pointless’: ‘they’re never going to pay them’. Yet, some judicial officers felt they were left with no choice: ‘there’s no benefit in loading up a person who’s homeless with fines but we don’t have any options...And as I’m sentencing them, I know ironically, one, it’s unlikely to be paid, two, if it were to be paid, it’s often paid in the form of cutting out fines in custodial sentence, which is ridiculous’.

V. SPECIALIST COURTS

‘[T]he Drug court and Homelessness courts, they are designed to look at these aspects ... they’re then not going to give him a sentence that’s going to set him up to fail straightaway.’

Problem-solving courts targeted at people experiencing homelessness have been trialled in some Australian jurisdictions with the goal of applying a therapeutic jurisprudential approach to their offending behaviour. However, these initiatives have been judged by some to be expensive and inefficient, and they have not been universally embraced by people experiencing homelessness or their advocates.¹⁶

Specialist courts, such as the Murri Court, drug courts, mental health courts, and Special Circumstances Court, were discussed across several of the locations in which stakeholders were interviewed, with generally mixed reviews. In Brisbane, people experiencing homelessness considered specialist courts to be better than mainstream courts, because they take into consideration personal circumstances and create sentences that do not set individuals ‘up to fail’. Most participants said courts should be ‘more holistic’ and provide ‘more help’. The judicial officers in Brisbane agreed, saying that specialist courts could better deal ‘with everything...a complete overhaul...of the person’s issues and dysfunction’.

Participants in Hobart spoke about the mental health court, which is a designated magistrates court listing which identifies defendants with significant mental health issues. The community lawyers described the aim of the court as taking a ‘holistic, therapeutic approach’, including by considering the deeper causes of the offending. Access to the mental health court in Hobart depends on whether it is demonstrated that the defendant’s mental health was causally connected to the offending behaviour.

One participant in Brisbane had experienced Murri Court, which is a specialist court for Aboriginal and Torres Strait Islander people in Queensland. That participant said the Murri Court was ‘good’ and keeping them out of prison ‘so I can like do counselling and all that’. They described the judge as ‘awesome’ because she ‘talks to you like a human being’ and ‘tries to work with you’ to set goals. Similarly, the Special Circumstances Court was described in positive terms by participants in Brisbane. This court was able to ‘do things on the spot’, such as providing food vouchers, following up matters with Centrelink (regarding income support payments) and housing, sending medical certificates, and advising the defendant’s probation officer about issues they are experiencing.

On the other hand, specialist courts were the subject of criticism by many people experiencing homelessness and criminal justice practitioners alike. For example, the drug court in one jurisdiction was said to be ‘exceptionally strict’, requiring defendants to go

¹⁶ Tamara Walsh, ‘Defendants’ and criminal justice professionals’ views on the Brisbane Special Circumstances Court’ (2011) 21 JJA 93.

‘pretty much cold turkey from day one’ and sanctions were imposed for failing to comply. Similarly, people experiencing homelessness suggested that the expectations of the diversionary programs in specialist courts were too high, particularly those that mandated ‘no alcohol whatsoever’ and community service. Some lawyers recognised the ‘negative connotations’ of specialist courts, and said that problem-solving courts can be ‘more punitive’ than mainstream ones.

VI. COMMUNITY SERVICES & SOCIAL HOUSING

‘There’s no community housing. There’s no nothing’

Participants across all locations recognised the dire state of social housing availability, and many commented that this contributes to the ongoing criminalisation of vulnerable people. Long waiting lists for accommodation were mentioned across several locations. For example, a participant in Adelaide said: ‘I’ve been on the housing list since 1981 and they eventually give me a place in 2010’. Once housed, participants said they were able to avoid crime. A participant in Brisbane said: ‘since coming to Roma House and being able to be adequately fed, clothed and accommodated, I’ve stopped shoplifting. So when I have these supports around me, I don’t break the law’.

While many social services were praised by participants, there were equally many criticisms, particularly around issues with accessibility. In Adelaide, one participant mentioned being unable to access services because of their stringent eligibility criteria, saying: ‘I wasn’t considered homeless enough... Has to be homeless like basically sleeping on the streets for weeks before they could actually get me anything’. The narrow basis on which some services offer support and limited operating hours were also mentioned. In Perth, a community lawyer said: ‘there’s a lot of hours in the day where people that are homeless or at risk of homelessness have nowhere to go because funding dictates that community centres can only open between the hours of seven and one or eight and three’. The interviews with community lawyers in Sydney revealed particularly chronic gaps in service delivery, with a lack of funding and resources across the whole sector. Structural barriers to accessing social services were also recognised, with the judicial officer in Canberra saying: ‘people who are disadvantaged, either socially because of homelessness or intellectually ... don’t stand a chance.’ Furthermore, government services were generally described as inadequate to meet demand. Income support payments were said to be insufficient: ‘you can’t pay your bills... let alone buy respectful clothes to be able to go to an interview to get a job.’

VII. CONCLUSION

While the crime of vagrancy has been abolished in Australia, people experiencing homelessness are still charged with offences that are intimately connected to their housing status and their poverty.

Submission to the Special Rapporteurs on the Right to Adequate Housing and Extreme Poverty and Human Rights

The operation of the criminal law makes the difficult and chaotic lives of those who are homeless even more challenging. Being moved on or banned from certain areas can compromise their ability to access services or stay safe. Criminal charges can compound when people miss court dates and accumulate fines that they cannot pay.

Criminal law responses do not address the complex reasons behind homeless persons' offending, and innovative court processes cannot ameliorate the adverse impacts of the criminal law on individuals' lives. The consistent message from homeless individuals themselves is that if they had adequate, safe, affordable housing, they would have no reason to 'offend'.