

COMMUNITY LEGAL CENTRES TASMANIA

14 June 2024

Members of the House of Assembly
Parliament House
Tasmania 7000

To all members of the House of Assembly,

Re: Support for Police Offences Amendment (Begging Repeal) Bill 2024

It is almost five years to the day that the Tasmanian Government announced that it would repeal the offence of begging.¹ A Government Bill to repeal the offence of begging was passed by the House of Assembly and the Legislative Council but lapsed when the Tasmanian Parliament was prorogued ahead of the State Election in May 2021.

In the 2019 debate of the Bill, the then Minister for Police, Fire and Emergency Management, Hon Mark Shelton MP acknowledged that:²

begging often stems from homelessness, chronic poverty and disadvantage. In these situations, it is usually a last resort to meet immediate needs, and the criminal law is not the appropriate response.

As well, the then Human Services Minister, Hon Roger Jaensch MP, noted:³

Over recent years we have seen more evidence of people in our streets sleeping rough and seeking help and support from their fellow Tasmanians. I do not like the term 'begging'. That is not what they do; they are simply asking for help.

More recently in November 2023, the Minister for Police, Fire and Emergency Management, the Hon Felix Ellis MP observed:⁴

The Tasmanian Government recognises and appreciates that begging is often a manifestation of homelessness, chronic poverty and disadvantage. Begging can be a last resort activity to supplement income for people in a time of need. People in these circumstances need strong wrap-around social supports. Having a criminal law approach can be highly discriminatory and not the appropriate way to deal with a complex issue. I note that the West Australian, New South Wales

¹ Michael Ferguson, Minister for Police, Fire and Emergency Management, 'Removing the offence of begging', Media Release 27 June 2019.

² Mark Shelton, Minister for Police, Fire and Emergency Management, *Hansard*, Second Reading Speech, House of Assembly, 12 November 2019.

³ Roger Jaensch, Minister for Human Services, *Hansard*, House of Assembly, 13 November 2019.

⁴ Felix Ellis, Minister for Police, Fire and Emergency Management, *Hansard*, House of Assembly, 15 November 2023.

and ACT jurisdictions no longer have the offence for begging. Other jurisdictions have made amendments to their legislation, including Victoria.

Criminalising begging is criminalising poverty. By abolishing the criminalisation of begging, we pave the way for a more compassionate societal approach, safeguarding the rights of individuals to seek assistance without fear of legal repercussion.

The *Police Offences Amendment (Begging Repeal) Bill 2024* ('the Bill') to be debated next week will provide members of the House of Assembly with an opportunity to recognise that people begging need help and that poverty cannot be addressed through a criminal justice response.

Police Offences Act 1935 (Tas)

Currently, section 8 of the *Police Offences Act 1935* (Tas) ('the Act') makes it an offence to beg, relevantly providing:

8. Begging, imposition, &c.

(1) A person shall not –

(a) in a public place beg or expose wounds or deformities, or place himself or herself or otherwise act so as to induce, or attempt to induce, the giving of money or other financial advantage, or instigate or incite another person to do any of those things;

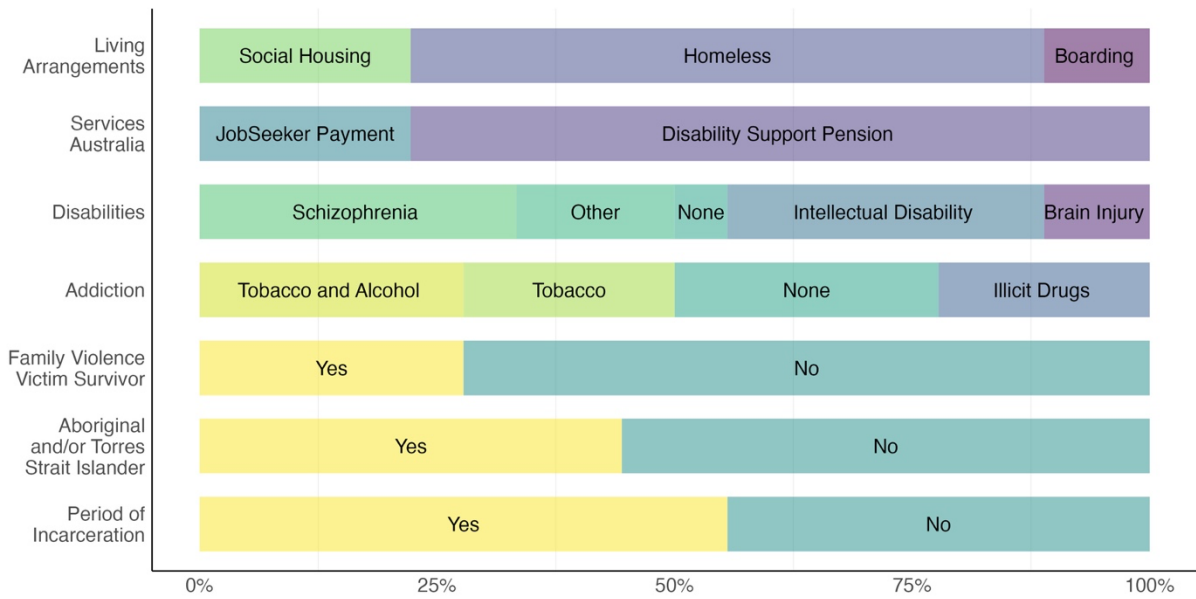
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The penalty for begging is a fine up to \$975.00 or imprisonment for a term not exceeding 6 months.⁵

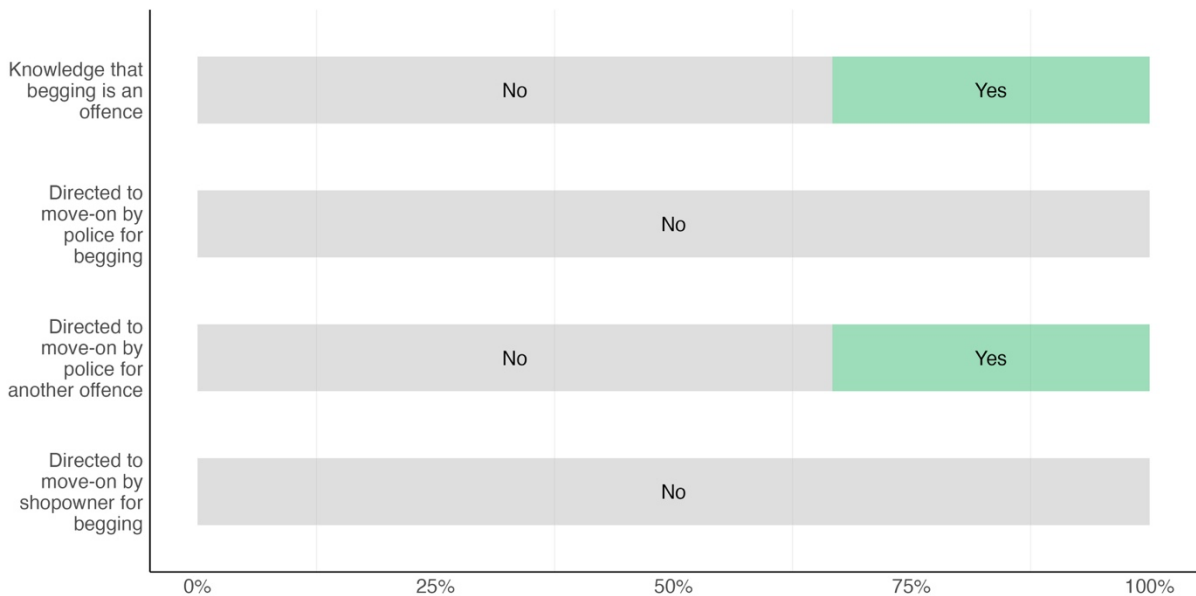
Begging in Tasmania

Earlier this year Community Legal Centres Tasmania interviewed 18 people who beg in Hobart and Launceston to better understand their predicament. The research found that people who beg in Tasmania experience complex forms of disadvantage with most participants homeless (73%) and more than half having spent time in prison (55%). People who identify as Aboriginal (44%) and those who have a diagnosed disability (77%) were also disproportionately represented. Of the persons who had a disability (noting that some may have multiple disabilities), a significant 44% had schizophrenia, 44% had an intellectual disability and 21% had other mental health issues such as depression.

⁵ Section 8(1AA) of the *Police Offences Act 1935* (Tas) provides for a penalty not exceeding five penalty units or to imprisonment not exceeding a term of six months. Currently, the value of a 'penalty unit' in the *Penalty Units and Other Penalties Act 1987* (Tas) is \$195.00.



The research also found that Tasmania Police use existing ‘move on’ powers for nuisance behaviour and offences such as drinking alcohol in a public place or smoking in a prohibited area (33%). None of those interviewed reported being charged with begging despite many of the participants begging regularly. Importantly, none of those interviewed reported being asked to move on by shopkeepers although some said that shopkeepers had asked them to move their suitcases away from signage or to ensure easier access to their premises.



The Tasmanian data mirrors similar findings of disadvantage from studies carried out in other Australian jurisdictions. In Melbourne, interviews carried out with 30 people who beg or have begged found:⁶

- 77 per cent were experiencing homelessness;
- 87 per cent had a mental illness;
- 80 per cent had been unemployed for 12 months or more;
- 33 per cent had experienced family violence;
- 37 per cent reported childhood trauma or abuse.

More recently, a review by Queensland Police found that Aboriginal and Torres Strait Islander peoples are “disproportionately represented”, with 64 per cent of persons charged with begging in 2020-21 identifying as indigenous.⁷

Finally, a 2019 study of 101 persons who were in receipt of food from charities living in Perth, Western Australia, found that while charitable services were the main source of food in the previous week, a significant proportion also begged for money for food (36 per cent) or begged for food (32 per cent). Interestingly, only 4 in 10 of persons (38 per cent) reported being homeless, highlighting that begging is most often borne of necessity rather than homelessness.⁸ Expressed in another way, the research reinforces the conclusion that begging is usually an action of last resort, meaning that people beg out of necessity rather than resorting to more serious criminal offences such as stealing, drug dealing or prostitution.⁹

- **‘move on’ powers**

An argument often raised for the criminalisation of begging is the need for public safety, namely that some persons that beg engage in intimidation or harassment or prevent access to premises. For example, in November 2023, the Minister for Police, Fire and Emergency Management, the Hon Felix Ellis MP observed:¹⁰

*This Government does not want any Tasmanian to be in a position where they feel they need to beg. If a Tasmanian feels they need to request support from the community, it is important that we reduce the stigmatisation of begging because it is not a criminal issue. **Equally, it is important to be able to address problematic behaviour, such as intimidation and harassment, or where a beggar may prevent members of the community from accessing a small business or important amenities. The public***

⁶ Justice Connect, *Asking for Change - calling for a more effective response to begging in Victoria* (August 2018). Also see Philip Lynch, *Understanding and responding to Begging* (2005) 29(2) *Melbourne University Law Review* 518.

⁷ Queensland Police Service briefing to the Community Support and Services Committee – *Inquiry into the decriminalisation of certain public offences and health and welfare responses* (July 2022) at 2.

⁸ Christina Pollard, Sue Booth, Jonine Jancey, Bruce Mackintosh, Claire Pulker, Janine Wright, Andrea Begley, Sabrah Imtiaz, Claire Silic, Aqif Mukhtar, Martin Caraher, Joel Berg and Deborah Kerr, ‘Long-Term Food Insecurity, Hunger and Risky Food Acquisition Practices: A Cross-Sectional Study of Food Charity Recipients in an Australian Capital City’ (2019) 16(15) *International Journal of Environmental Research and Public Health* at 2749.

⁹ Michael Horn and Michelle Cooke, *A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne* (2001) 9 at 24.

¹⁰ Felix Ellis, Minister for Police, Fire and Emergency Management, *Hansard*, House of Assembly, 15 November 2023.

contacts Tasmania Police to seek their assistance in these instances [emphasis added].

Whilst academic research has found that the incidence of aggressive begging is rare,¹¹ it should be emphasised that the *Police Offences Act 1935* (Tas) ('the Act') already allows Tasmania Police to move people on:

15B. Dispersal of persons

(1) A police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours if the police officer believes on reasonable grounds that the person –

(a) has committed or is likely to commit an offence; or

(b) is obstructing or is likely to obstruct the movement of pedestrians or vehicles; or

(c) is endangering or likely to endanger the safety of any other person; or

(d) has committed or is likely to commit a breach of the peace.

...

Importantly, the *Tasmanian Police Manual* appears to agree with our interpretation that there is already sufficient scope within section 15B of the Act to move people on who are intimidating or harassing others:¹²

2.24.3 DISPERSAL OF PERSONS FROM PUBLIC PLACES ORDER

(1) Police officers who intend to rely upon the provisions of section 15B of the Police Offences Act 1935 (dispersal of persons in a public place) shall, before effecting an arrest:

(a) if in plain clothes identify themselves as police officers, stating their name rank and station; and

(b) direct the person/s to leave the public place; and

(c) on failure or refusal, the directed person/s must again be directed to leave. A failure to comply at this point completes the offence and the person/s are subject to arrest and prosecution.

(2) These provisions are not to be applied to resolve demonstrations, disputes or processions which are being conducted lawfully and in a peaceful manner.

(3) Section 15B of the Police Offences Act 1935 provides police officers with the power to disperse individuals or groups who are behaving in a threatening or disorderly manner. This type of behaviour can escalate to violence or intimidation requiring strong police intervention [emphasis added].

(4) Section 15B of the Police Offences Act 1935 also provides police officers with the power to require a person or group of persons in a public place to disperse where they interfere with police investigating an offence or incident. This includes motor vehicle

¹¹ *Ibid.* at 15.

¹² Tasmania Police, *Tasmania Police Manual* (8 April 2024). As found at <https://www.police.tas.gov.au/uploads/Tasmania-Police-Manual.pdf> (accessed 14 June 2024).

accidents, disturbances, crime scenes and other incidents where interference may impact on the way an investigation is conducted, or where interference may impact on the safety of victims or other people in the vicinity.

Most of the instances raised by the Minister for Police, Fire and Emergency Management above are already contained in section 15B of the Act. Other problematic behaviour is able to be addressed through other provisions of the Act:

12. Prohibited language and behaviour

(1) A person shall not, in any public place, or within the hearing of any person in that place –

(a) curse or swear;

(b) sing any profane or obscene song;

(c) use any profane, indecent, obscene, offensive, or blasphemous language; or

(d) use any threatening, abusive, or insulting words or behaviour calculated to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

...

13. Public annoyance

(1) A person shall not, in a public place –

(a) behave in a violent, riotous, offensive, or indecent manner;

(b) disturb the public peace;

(c) engage in disorderly conduct;

(d) jostle, insult, or annoy any person;

(e) commit any nuisance; or

(f) throw, let off, or set fire to any firework.

Repealing the offence of begging will ensure that the Tasmanian parliament meets a commitment it first made in 2019 as well as bring Tasmania into line with Western Australia, New South Wales and the Australian Capital Territory where begging is not an offence.¹³

It is also worth noting that other Australian jurisdictions are moving in this direction with a 2022 parliamentary review of public intoxication, begging and public urination offences in Queensland recommending that all offences be decriminalised subject to appropriate community-based health and social welfare responses being in place,¹⁴ whilst in Victoria a 2022 review of the criminal justice system recommended a review of all offences linked to homelessness, including begging.¹⁵ Victoria has also recently abolished the offence of public intoxication, in recognition of the disproportionate impact this offence has had on

¹³ In its submission to the 'Inquiry into the decriminalisation of certain public offences and health and welfare responses' the Queensland Police Service provided a summary of the law in all Australian jurisdictions. As found at Queensland Police Service briefing to the Community Support and Services Committee – *Inquiry into the decriminalisation of certain public offences and health and welfare responses* (July 2022), Annexure 3.

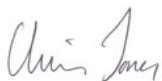
¹⁴ Queensland Parliament, *Towards a healthier, safer, more just and compassionate Queensland: decriminalising the offences affecting those most vulnerable* (Community Support and Services Committee: October 2022) at iii.

¹⁵ Parliament of Victoria, *Inquiry into Victoria's criminal justice system* (Legislative Council, Legal and Social Issues Committee: March 2022) Recommendation 60.

Aboriginal people and following the recommendations from the coronial inquest into the death of Ms Tanya Day.¹⁶

In summary, with the majority of Australian jurisdictions having already passed laws that begging should not be an offence or having recommended decriminalisation there is a clear national trend towards embracing policies that confront socio-economic challenges with evidence-based solutions and compassion.

We urge you to support the Bill and repeal the offence of begging.



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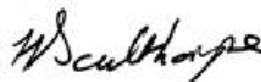
Rowena Macdonald
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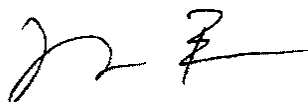
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Prisoner Legal Service



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¹⁶ Coroners Court of Victoria, *Tanya Day - Findings into death with Inquest*. The Coroner recommended that the offence of public drunkenness be decriminalised. As found at <https://www.coronerscourt.vic.gov.au/inquests-findings/findings> (accessed 14 June 2024).