ACCESS TO JUSTICE AND LEGAL NEEDS

NO HOME, NO JUSTICE?

THE LEGAL NEEDS OF HOMELESS PEOPLE IN NSW

July 2005

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

No Home, No Justice?

THE LEGAL NEEDS OF HOMELESS PEOPLE IN NSW

ACCESS TO JUSTICE AND
LEGAL NEEDS
Volume 2

Suzie Forell, Emily McCarron and Louis Schetzer

July 2005

LAW AND JUSTICE FOUNDATION OF NEW SOUTH WALES

ISSN 1832-2670

This report is part of the Access to Justice and Legal Needs monograph series published by the Law and Justice Foundation of New South Wales. The Foundation seeks to advance the fairness and equity of the justice system, and to improve access to justice, especially for socially and economically disadvantaged people.

The series is aimed at researchers, policy-makers, government, the legal community and others interested in legal need and access to law and justice. It is a scholarly, refereed series. Monographs are refereed by at least two appropriate external referees who are independent of the Foundation and any other organisations/authors involved in the publication.

Managing Editor: Geoff Mulherin

© Law and Justice Foundation of New South Wales, July 2005

This publication is copyright. It may be reproduced in part or in whole for educational purposes as long as proper credit is given to the Foundation.

Any opinions expressed in this publication are those of the authors and do not necessarily reflect the views of the Foundation's Board of Governors.

National Library of Australia Cataloguing-in-Publication data:

Forell, Suzie.
No home, no justice? : the legal needs of homeless people in NSW.
ISBN 0 909136 88 2.

1. Homeless persons - Services for - New South Wales. 2. Homelessness - Law and legislation - New South Wales. 3. Homelessness - New South Wales. I. McCarron, Emily. II. Schetzer, Louis. III. Law and Justice Foundation of New South Wales. IV. Title. (Series : Access to justice and legal needs ; vol. 2).

305.569209944

Law and Justice Foundation of New South Wales
Level 14, 130 Pitt Street
Sydney NSW 2000
GPO Box 4264, Sydney NSW 2001
Phone: +61 2 8227 3200
Fax: +61 2 9221 6280
Email: publications@lawfoundation.net.au
<http://www.lawfoundation.net.au>

Cover photos: courtesy of Tony Miller, Over the Horizon Publications.

Foreword

The objects of the Law and Justice Foundation of New South Wales (the Foundation) are to contribute to the development of a fair and equitable justice system which addresses the legal needs of the community, and to improve access to justice by the community (in particular, by economically and socially disadvantaged people).[1]

In 2002 the Foundation commenced the Access to Justice and Legal Needs research program, which aims to examine the ability of disadvantaged people to:

- obtain legal assistance
- participate effectively in the legal system
- obtain assistance from non-legal advocacy and support
- participate effectively in law reform processes.

The main purpose of the program is to provide a rigorous and sustained assessment of the legal and access to justice needs of the community, especially disadvantaged people, which would provide evidence to assist government, community and other organisations develop policy and plan service delivery. The research is a challenging program involving an interconnected set of projects employing a range of qualitative and quantitative methodologies.

An important feature of the program is the examination of the particular access to justice and legal needs of selected disadvantaged demographic groups. This report is a qualitative study examining the legal needs of homeless people. Other groups examined or to be examined as part of the program include older people, prison inmates and ex-prisoners and people

[1] *Law and Justice Foundation Act 2000* (NSW), s. 5(1).

experiencing a mental illness. These groups have been chosen principally because less is available in the literature concerning their legal needs, but also because less comprehensive data concerning their needs is likely to be obtained through the other components of the research program.

Homeless people are arguably the most disadvantaged in our society. Apart from the obvious health and safety issues, homelessness inevitably involves the lack of a regular address or reliable means of contact, which in turn usually results in homeless people being excluded from the information and services that most Australians take for granted. For homeless people, the circumstances—some of them legal—that have led to and/or maintain their homelessness are usually many and complex. Yet homeless people, faced with this overwhelming complexity of issues and lacking a safe, regular place to live and place of contact, are poorly placed to deal with the complex legal system when they confront it. This report illuminates these complexities and considers alternatives for service delivery that may help to improve the responsiveness of the justice system to homeless people.

This report into the legal needs of homeless people is based on a review of existing literature and consultations with legal and non-legal service providers and homeless people themselves. It seeks to canvass many of the particular issues relevant to homeless people—and those at risk of homelessness—in NSW. While the report 'stands on its own', it is also important to consider this report in the context of the relevant data on the legal needs of and barriers facing homeless people that are contained in other quantitative and qualitative components of the Access to Justice and Legal Needs program. The following reports in particular should be considered:

- *Stage 1: Public Consultations* (August 2003)
- *Stage 2: Quantitative Legal Needs Survey, Bega Valley (Pilot)* (November 2003)
- *Data Digest* (February 2004)

- *The Legal Needs of Older People in NSW* (December 2004)
- "Legal Needs Survey 2003" (to be published 2005)
- *The Legal Needs of People with a Mental Illness* (to be published early 2006).

Geoff Mulherin
Director
Law and Justice Foundation of NSW
June 2005

Contents

Foreword iii
Acknowledgements ix
Shortened Forms xi
Access to Justice and Legal Needs Program: Terms of Reference xiii
Program aim xiii
Objectives xiii
Program components xiv
Executive Summary xv
Legal needs of homeless people (Chapters 1 and 2) xv
Homelessness in NSW (Chapter 3) xvii
Legal issues facing homeless people (Chapter 4) xviii
Barriers to accessing legal assistance (Chapter 5) xx
Legal assistance for homeless people (Chapter 6) xxi
Non-legal assistance in legal processes (Chapter 7) xxiii
Participation in the legal system (Chapter 8) xxv
Conclusion (Chapter 9) xxvi
1. Introduction 1
Aim of this project 1
What is 'homelessness'? 2
Homelessness and the law 9
Structure of this report 19
2. Methodology 21
Data collection 21
Data analysis 29
3. Homelessness in NSW 31
Numbers of homeless people in NSW 31
Where do homeless people live in NSW? 34
Who is homeless in NSW? 38
Complex needs and histories of homeless people 50
'Causes' of homelessness 55
Pathways to homelessness 58
Summary 63
4. Legal issues facing homeless people in NSW 65
Family law 67
Care and protection 69

Domestic violence 71
Victim of crime 75
Housing 78
Caravan parks and villages 89
Discrimination 91
Debt 95
Social security 98
Crime 104
Conclusion 111

5. Barriers to accessing legal assistance 113
The barriers to homeless people seeking legal assistance 114
Conclusion 135

6. Legal assistance services in NSW 137
What is legal assistance? 137
Legal assistance in NSW 139
Features of accessible legal assistance services 169
Summary 177

7. Assistance by non-legal agencies 181
Non-legal services accessed by homeless people 182
Legal assistance provided by non-legal services 201
Supporting non-legal workers to assist homeless clients in legal processes 216
Bringing legal and non-legal service delivery together 221
Conclusion 226

8. Barriers to participating in the legal system 229
Barriers to participation in the legal process 230
Features of existing legal processes which increase participation of homeless people 253
Summary 264

9. Conclusion 267
Homelessness in NSW 268
Legal issues facing homeless people in NSW 269
Barriers to homeless people accessing legal assistance 272
Legal assistance for homeless people in NSW 273
Non-legal assistance in legal processes 276
Participation in the legal system 277
Homelessness and the law: bridging disparate worlds 279

Appendix 1 281
Appendix 2 283
Appendix 3 287
Appendix 4 289
Appendix 5 291
References 301

Acknowledgements

The authors of this report are Suzie Forell, Emily McCarron and Louis Schetzer of the Law and Justice Foundation of New South Wales (the Foundation).

The authors acknowledge the assistance of the staff of the Foundation in the production of this report: David Green for his assistance in compiling the report; Katrina Wong for her assistance in reviewing the literature, arranging and conducting consultations; Joanna Mullins for her assistance in conducting consultations; Sarah Ellison for her assistance in organising the roundtable consultations; Angelique Leondis for her general assistance; Geoff Mulherin, Maria Karras, Anne Grunseit and Sue Scott for input into the final text; and Simon Miller for the production of this report.

The Foundation is also grateful to Chris Chamberlain and Louise Blazejowska for reviewing this report pre-publication and to Angela Damis for editing the report.

Finally, the authors especially wish to thank all the people and agencies who contributed their time and insights to the current study. Each has made a significant contribution to this report. We particularly appreciate the willingness of the 30 people who were homeless or had experienced homelessness, who spoke with us about their legal issues and experiences of the legal system.

Shortened Forms

ABS	Australian Bureau of Statistics
ADVO	Apprehended Domestic Violence Order
AFHO	Australian Federation of Homelessness Organisations
AIHW	Australian Institute of Health and Welfare
AVO	Apprehended Violence Order
BDW	Blake Dawson Waldron
BLAG	Boarders and Lodgers Action Group
City of Sydney	City of Sydney Council
CLC	Community legal centre
CCLC	Consumer Credit Legal Centre
CCLC	NSW Combined Community Legal Centres Group (NSW)
CRC	Community Restorative Centre
CTTT	Consumer, Trader and Tenancy Tribunal
DoCS	NSW Department of Community Services
DOH	NSW Department of Housing
FaCS	Commonwealth Department of Family and Community Services
FHPP	Commonwealth Family Homelessness Prevention Pilot
HAC	Housing Appeals Committee
HPIC	Homeless Person's Information Centre
HPLC	Homeless Persons' Legal Clinic (Victoria)
HPLS	Homeless Person's Legal Service (NSW)

HREOC	Human Rights and Equal Opportunity Commission
ICLC	Inner City Legal Centre
IDRS	Intellectual Disability Rights Service
IPB	Infringements Processing Bureau
LCRC	Legal Counselling and Referral Centre
Legal Aid	Legal Aid Commission of NSW
Legal Aid NSW	Legal Aid Commission of NSW
LIAC	Legal Information Access Centre
NACLC	National Association of Community Legal Centres
NHHIN	Newcastle Hunter Homeless Interagency Network
NSW	New South Wales
PAVS	Parks and Village Service
PIAC	Public Interest Advocacy Centre
PILCH	Public Interest Law Clearing House
QPILCH	Public Interest Law Clearing House, Queensland
RTD	Residential tenancy database
SAAP	Supported Accommodation Assistance Program
SDRO	State Debt Recovery Office
Shopfront	Shopfront Youth Legal Centre
Tenants Union	Tenants Union of NSW
VPILCH	Public Interest Law Clearing House, Victoria
VPS	Violence Prevention Service
WALS	Western Aboriginal Legal Service
WDVCAS	Women's Domestic Violence Court Assistance Scheme
WLS	Women's Legal Service

Access to Justice and Legal Needs Program: Terms of Reference

Program aim

To identify the particular legal and access to justice needs of economically and socially disadvantaged people in New South Wales.

Objectives

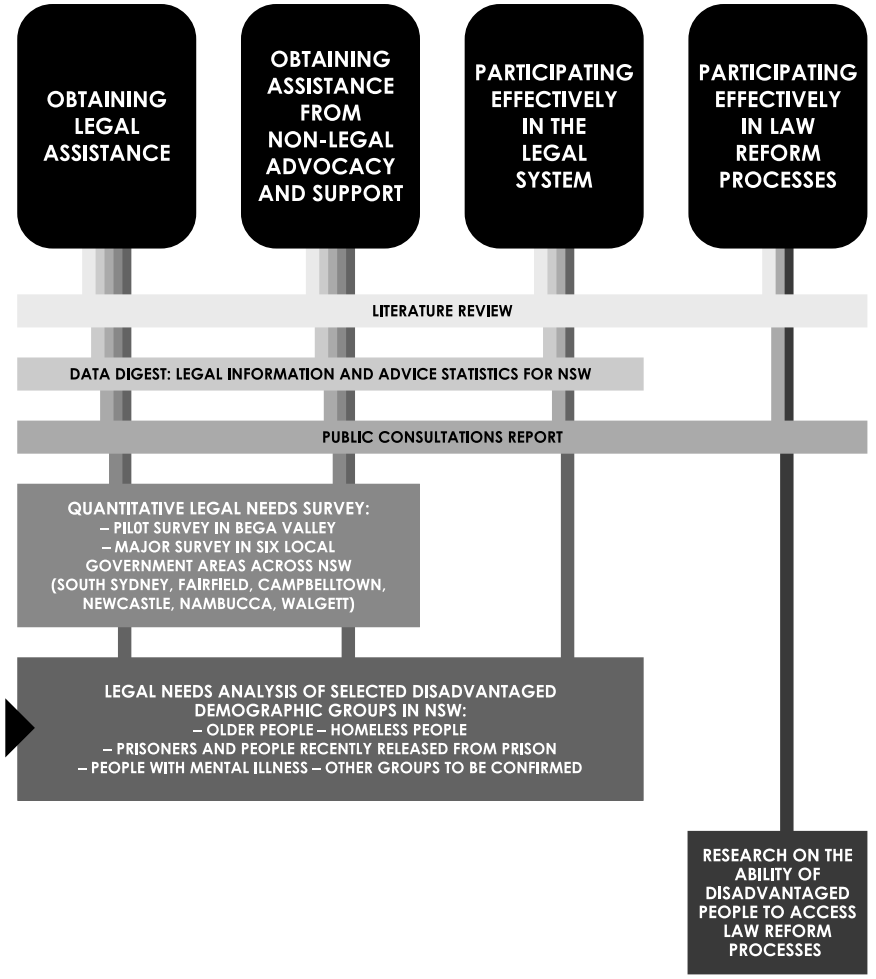
The program will examine the ability of disadvantaged people to:

- **obtain legal assistance** (including legal information, basic legal advice, initial legal assistance and legal representation)
- **participate effectively in the legal system** (including access to courts, tribunals, and formal alternative dispute resolution mechanisms)
- **obtain assistance from non-legal advocacy and support** (including non-legal early intervention and preventative mechanisms, non-legal forms of redress, and community based justice)
- **participate effectively in law reform processes.**

This will involve both qualitative and quantitative investigations into:

- legal problems encountered by disadvantaged people
- services and processes to deal with these problems
- barriers that obstruct access
- useful services and processes not provided by the legal system.

Program components



Executive Summary

Legal needs of homeless people (Chapters 1 and 2)

The Law and Justice Foundation of NSW (the Foundation) has undertaken a study on the legal needs of homeless people in New South Wales (NSW) as part of its Access to Justice and Legal Needs research program.[1] This report on the study explores the capacity of homeless people in NSW to:

- obtain legal assistance (including legal information, legal advice, initial legal assistance and legal representation)
- participate effectively in the legal system (including courts and tribunals)
- obtain assistance in legal processes from non-legal advocacy and support agencies.

This study also examines the role of non-legal support workers and agencies in assisting homeless people to identify and address their legal issues.

'Homelessness' defined

While there is considerable debate about how 'homelessness' should be defined, this study uses a definition articulated by Chamberlain and Mackenzie and used by the Australian Bureau of Statistics (ABS).[2] It describes three categories of homelessness:

---

1 The Access to Justice and Legal Needs research program is described in the Foreword of this report.

2 C Chamberlain and D MacKenzie, *Counting the Homeless 2001*, Australian Census Analytic Program, cat. no. 2050.0, ABS, Canberra, 2003, (*Counting the Homeless 2001*), pp. 1–2.

- primary homelessness — people without conventional accommodation, such as those living on the streets, sleeping in parks, sheds or humpies, squatting in derelict buildings, or using cars or railway carriages for temporary shelter
- Secondary homelessness — people who move frequently from one form of temporary shelter to another, including people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own) and those using boarding houses on an occasional or intermittent basis
- Tertiary homelessness — people who live in boarding houses on a medium- to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; and they do not have security of tenure provided by a lease.

One group of people not enumerated as 'homeless' by the ABS, but who are covered by this report, are those described by Chamberlain and Mackenzie as 'marginal residents of caravan parks'. These are "people who were renting their caravan, but no one at the dwelling had full-time employment and all persons were at their 'usual address'".[3] We include marginal residents of caravan parks as part of the homeless population because caravan parks are used as alternatives to boarding houses outside capital cities (see Chapter 1 for more detail). Regional and rural service providers may also send people to caravan parks when there is no emergency accommodation in their area.

[3] Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 49.

Methodology

Because this study is exploratory in nature, qualitative methods of data collection have been employed. Focus groups and semi-structured face-to-face and telephone interviews were used to gather the insights of more than 100 service providers and other stakeholders. Semi-structured face-to-face interviews were also used to gather the insights of 30 homeless people. Information was also drawn from recent and relevant literature, policy documents and statistical data on homelessness and service provision to homeless people (i.e. Supported Accommodation Assistance Program (SAAP[4] and Census data)). Case studies were also taken from the literature and provided by service providers and stakeholders. The sources of information presented in this summary may be found in the relevant chapters of the report.

Homelessness in NSW (Chapter 3)

Census data indicate that, in August 2001, there were an estimated 33 557 homeless people in NSW. These people included men, women, teenagers and younger children living temporarily with family and friends, in boarding houses, in caravan parks, in SAAP accommodation and on the street. Approximately half of these people were living in the Greater Sydney area. While the 'city core' of Sydney (the ABS statistical subdivision of Inner Sydney[5]) had one of the highest *rates* of homelessness in NSW, only 14% of the homeless in NSW were living in this area. A further 13% were living in the 'inner city ring' (which includes the ABS statistical subdivisions of Lower Northern Sydney, Eastern Suburbs, Inner Western Sydney and Central Western Sydney). There were also pockets of very high rates of homelessness in coastal NSW, particularly in the north of the State. Census data further indicated:

- Excluding marginal caravan park residents, an estimated 43% of homeless people in NSW are under the age of 25. Young people tend

[4] See Appendix 1 for definitions related to SAAP.

[5] The statistical subdivision of Inner Sydney comprises the City of Sydney, South Sydney, Leichhardt, Marrickville and Botany Bay local government areas.

to be fairly transient, moving between refuges, transitional housing and friends and families.

- Forty per cent of the homeless in NSW are female, with the proportion of women highest in the younger age groups. Data also suggest there are increasing numbers of families experiencing homelessness. Homeless women and families tend to be situated with family and friends, but are also found living in caravan parks, SAAP services, boarding houses and on the street.

Consultations undertaken for this study, together with studies into homelessness in Australia, also indicate:

- Indigenous people, people recently released from prison, people leaving state care and transgender people are disproportionately represented in the homeless population.
- Mental illness, abuse of alcohol and other drugs and histories of trauma and abuse are common in some sectors of the homeless population, particularly street-based homeless people.
- Overwhelmingly, homeless people are very poor, unemployed and struggle to maintain social security benefits or other income.

It is difficult to separate legal issues from these complex needs and issues.

Legal issues facing homeless people (Chapter 4)

Homeless people tend to have a range of legal issues that, when unaddressed, can prolong homelessness. The types of legal issues faced vary within the homeless population, as well as for individuals as they move through homelessness. As people become homeless common legal issues are family law and domestic violence, together with general debt- and housing-related legal issues. Housing issues include eviction and debt arising from rent arrears and damage to property. Discrimination in

housing and employment were also identified in this study as problems for homeless people, particularly Aboriginal people and transgender people.

Once people have become entrenched in homelessness and are more visible to law enforcement agencies, crime and fines become more prominent issues. People living at primary levels of homelessness are also particularly vulnerable to being victims of crime. Together with people who are transient, this group also has difficulties complying with social security requirements because of chaotic lives and lack of a permanent address.

Laws, policies and legal processes that directly impact on homeless people in NSW include:

- The use and structure of residential tenancy databases (RTDs). Landlords or real estate agents can place people on RTDs and essentially 'blacklist' them, whereby other landlords will not rent out properties to listed tenants. Unregulated until recently, numerous stakeholders noted the impact of RTDs on homeless people trying to re-access the rental market. New regulations in NSW allow some protection against any arbitrary and unfair use by landlords and real estate agents.
- The lack of tenancy protection for boarders and lodgers and limited protection to marginal residents of caravan parks under the *Residential Tenancies Act 1987* (NSW), leaving these groups vulnerable to arbitrary eviction and unsanitary and dangerous living conditions. This is exacerbated by the lack of alternative housing options when people lose their accommodation. People are reported to not complain about substandard accommodation, because they have nowhere else to live if they are evicted as a result of the complaint.
- The recent introduction of renewable tenancy agreements and acceptable behaviour agreements, which enable the Department of Housing to target people exhibiting 'anti-social' behaviour. The potential impact of this legislation on public housing tenants with complex needs (e.g. people with a mental illness or families with children with behavioural or other disabilities) must be monitored.

- The fine processing system. Due to their public visibility, many homeless people, particularly young homeless people, may receive multiple fines for offences such as travelling without a valid rail ticket and offensive behaviour. People have difficulty negotiating the multi-agency process (including the Infringement Processing Bureau and the State Debt Recovery Office) to pay these fines. People can then accrue significant debts, which impacts on their ability to exit homelessness. The link between non-traffic related fines (e.g. littering, transport fines) and the suspension of drivers' licences and/or the cancellation of car registration can also lead to further offending.
- At present, exclusion orders are not commonly used by the local courts as part of apprehended domestic violence orders. Exclusion orders would enable women and children in need of protection to remain in their home.

Barriers to accessing legal assistance (Chapter 5)

On a day to day basis, homeless people have many immediate needs: finding accommodation, getting food or money, caring for family. These needs tend to take precedence over their legal issues. In addition, legal issues can remain unaddressed because people have limited resources, feelings of despair or hopelessness, mental health or addiction issues, poor literacy or minimal education and a fear of disclosing this, a lack of knowledge of legal options, and a feeling that the law would never work in their interests. Services report that when homeless people finally do contact a legal service (if at all), the issue has usually already reached crisis point: the eviction is imminent; their benefits have been cut off; the court case is tomorrow. In some cases it may be too late to resolve the issue (e.g. the limitation period may have expired) or the issue has become more complex and difficult to address.

The multiple, urgent and interrelated legal problems of homeless people, together with the barriers they face in addressing these issues, have significant implications for the nature and type of legal service delivery that is appropriate for homeless people in NSW.

Legal assistance for homeless people (Chapter 6)

Legal assistance includes the provision of plain language legal information, legal advice, initial legal assistance by a lawyer, and legal representation. The primary legal assistance services for disadvantaged people in NSW, including homeless people, are the Legal Aid Commission of NSW (Legal Aid NSW), community legal centres and Aboriginal and Torres Strait Islander Legal Services. It is argued in this report that, given the diversity within the homeless population, the NSW telephone advice and referral service, LawAccess, also has a significant role to play in providing legal information and advice and connecting homeless people with face-to-face legal assistance services.

In addition to these general legal services are several specialist legal services and clinics for homeless people, all of which are pro-bono or volunteer services. These include the Shopfront Youth Legal Centre, the Legal Counselling Referral Centre, the legal clinics at Exodus and Lou's Place and the NSW Public Interest Advocacy Centre/Public Interest Law Clearing House Homeless Person's Legal Service. All of these services are located in metropolitan Sydney, mostly in inner-city areas.

Features of legal assistance services that increase the capacity of the services to support homeless clients include:

- being located in or accessible from places where homeless people go. This may include a clinic in a welfare agency or legal outreach to a community health facility or a rural town

- having staff who are skilled in communicating with people with special needs and who appreciate the complex issues their clients face
- allowing for longer appointment times
- having the capacity to provide the same lawyer for the duration of the matter
- providing timely legal assistance
- having the capacity to address or coordinate a response to a range of legal issues
- having the capacity to coordinate legal support with the provision of non-legal services (e.g. caseworker support, housing and accommodation services, alcohol and other drug treatment)
- assisting and empowering clients to address their legal rights.

Homeless people also benefit when legal assistance is provided as soon as possible after the legal issue has arisen, before it has reached crisis point and affected other areas of their lives.

To varying degrees, the homeless person's legal services share many of the above characteristics. However, while they offer a very valuable model of legal service delivery, they should not be considered as the main source of legal assistance to homeless people living throughout NSW. First, each of these services support a fairly defined client group (e.g. users of a particular service, young people). Second, pro bono services such as these can only operate where there is the private sector capacity in the geographical areas where there is need. Thus, these services tend not to reach homeless people living in rural and regional areas. Third, nearly all are pro bono part-time or sessional services.[6] Finally, the level of assistance that can be offered by any one service tends to be limited by its resources or the type of law that it has expertise in (e.g. civil law).

[6] Shopfront Youth Legal Centre is a full-time legal service for people under the age of 25 years.

A structural feature of legal service delivery in NSW that presents difficulties for homeless and other disadvantaged people is that different legal issues tend to be separately dealt with by different legal services or practitioners. For instance, a duty lawyer may assist in a criminal matter, a grant of legal aid may be provided for a family law issue, a community legal centre may assist with a debt matter and the Chamber Magistrate, the police or the Women's Domestic Violence Court Assistance Scheme may assist with an apprehended violence order. This separation of legal service delivery is in contrast to the multiple and interrelated nature of the legal and other issues faced by homeless clients. Not only must a homeless person potentially access a number of different legal assistance services, but the legal services provided are not likely to be coordinated to address the complex situations they are facing. Thus, a system that offers discrete legal services for different issues, and lacks coordination between these services, presents a number of barriers for homeless people trying to effectively address their legal needs.

In addition, legal services traditionally work outside the networks of other human services such as community services, housing and welfare agencies. As stated above, the legal and social issues of homeless people are usually intertwined. The separation of legal services from other human services, and the partitioning of legal matters within the legal aid sector, makes it difficult to take a holistic 'case management' approach to clients. A 'case management' approach involves addressing a client's many complex needs as a package. To facilitate this, closer links need to be made within and between different legal services providers and with other human services in local areas throughout NSW.

Non-legal assistance in legal processes (Chapter 7)

A few of the homeless participants in this study said that if they had a legal problem, they would go directly to Legal Aid or to another legal service with which they were familiar. However, many homeless people have

indicated in this and other studies that they turn to non-legal services or workers as a first point of contact when they have a legal problem.

Homeless person's services, particularly SAAP services, are a key link between people experiencing homelessness and legal assistance. As well as providing food, shelter and medical attention, some of these agencies provide advocacy, legal information, advice and referral services. The data collected for this report suggests that caseworkers and social service providers play a vital role in assisting homeless clients to identify their legal issues, obtain legal assistance, engage in legal processes and manage their legal outcomes.

However, some homeless people are isolated from these services. In recognition of this, this report covers:

- the range of other networks accessed by people at different stages of homelessness: when they first become homeless (e.g. family, schools, health services) and as later they become entrenched in homelessness (e.g. Centrelink, police, alcohol and other drug treatment services), and
- the level of legal assistance or referral that could be realistically provided at these points. The value of widely distributing the LawAccess telephone number, as a single contact and referral point for legal services, is also considered in this context.

To adequately support homeless clients with legal problems, non-legal service providers and caseworkers need access to timely legal information, legal advice and relevant legal 'education'. The aim is not to equip caseworkers to 'advise' clients, but to support clients into and through legal processes. Workers also stressed the significant benefits of interagency collaboration for legal service providers, non-legal service providers and, most importantly, their homeless clients. While there are significant resource implications, this is consistent with directions highlighted in current policy and research.

Participation in the legal system (Chapter 8)

Homeless people face many barriers that prevent them from initiating and participating effectively in the legal process. Stakeholders and interviewees reported that even when homeless people are compelled to participate in a legal process (such as in a criminal matter), there are obstacles preventing them from making it to court and achieving the best possible outcome. These barriers and the reasons that homeless people find them an obstacle include:

- a fear and lack of confidence in the legal system: people lack faith that the legal system can deliver favourable outcomes to people in their situation
- a lack of awareness of their legal rights, options for legal redress and which legal process to follow. This extends to people not being aware of the right or process to appeal decisions made by government departments such as Centrelink and the Department of Housing. This can be exacerbated for people with a mental illness or other cognitive impairment
- no stable address or contact details at which to receive notification of court dates. This is a particular issue in relation to criminal matters. Not having a stable address can also reduce the prospect of a person being granted bail
- the complexity of legal processes, which can be multi-tiered, involve several agencies and be lengthy (e.g. the fine enforcement system and the social security review process). Such processes are difficult for homeless people to negotiate and to see through to their conclusion
- the formality of legal proceedings, which homeless people report finding intimidating
- the reliance in legal processes on complex written documentation and applications. This is particularly problematic for the homeless population, which includes people with limited education, poor literacy and comprehension

- the cost and limited availability of legal representation for homeless people, who have few financial resources.

Non-legal workers and advocates, together with the legal assistance services detailed above, all assist homeless people to overcome these barriers. In addition, some legal processes, such as those of the Social Security Appeals Tribunal, the Housing Appeals Committee and the NSW Ombudsman, provide more flexible methods of service delivery, which may increase the accessibility of their processes to homeless people.

In many instances, by the time a homeless person gets to court or a tribunal, they have reached a point of crisis. Strategies based upon notions of therapeutic jurisprudence appear to recognise this, and try to use the law and legal process as a point of intervention to address the social and legal issues which exacerbate homelessness. The Red Hook Community Justice Center (New York), the California Homeless Courts, the NSW Drug Courts and the Magistrates Early Referral into Treatment program are all examples of the therapeutic jurisprudence approach. Another example, which has a more direct focus on homeless people in Australia, is the Special Circumstances List at the Magistrates Court of Victoria. This program links people appearing before the court back to social services, in order to address their legal and social needs at the one time. This is factored into the court outcome for the defendant.

Conclusion (Chapter 9)

Homelessness is often indicative of complex legal and other needs. Things have gone astray, safety nets have failed. People have lost their accommodation or are caught in marginal accommodation; they commonly have debts, are dealing with family law issues, been victims of crime, accumulated fines and/or are facing criminal charges. The legal system does not always work in their favour.

When homeless, people are commonly too preoccupied coping with immediate issues, such as getting accommodation, to deal with their

complex legal problems. Mental health and other disabilities, cynicism about the law, poor literacy and limited resources also contribute to a situation where legal issues are left to compound, spiralling people into or further entrenching them in homelessness. Ideally, legal service provision to homeless people needs to recognise this situation and be accessible to people from the diverse places that they frequent, have the time and skills to assess the total legal needs of the clients, and form part of a coordinated response to those needs.

As legal service delivery is currently structured in NSW, a challenge is to move from single problem focused approaches to more client focused approaches. A second issue is for legal services to be included and coordinated with other human services, such as housing, health and community services, in both the planning and delivery of services to address homelessness in NSW.

1. Introduction

This study on the legal needs of homeless people in New South Wales (NSW) has been undertaken by the Law and Justice Foundation of NSW (the Foundation) as part of its Access to Justice and Legal Needs research program.[1]

Aim of this project

This project aims to explore the capacity of homeless people in NSW to:

- obtain legal assistance (including legal information, basic legal advice, initial legal assistance and legal representation)
- participate effectively in the legal system (including courts and tribunals)
- obtain assistance in legal processes from non-legal advocacy and support agencies (including non-legal early intervention).

It also examines the role of non-legal support workers and agencies in assisting homeless people to identify and address their legal issues. A separate study will examine the capacity of homeless and other disadvantaged groups to participate in law reform processes. Before considering these issues in more detail, it is important to discuss how 'homelessness' has been defined in this study.

[1] The Access to Justice Research Program is described in the Foreword of this report.

What is 'homelessness'?

> *Homelessness may represent a single acute episode in a person's life, or it may be a state entered and exited intermittently.*[2]

Definitions of 'homelessness' are the subject of ongoing debate. While some focus on the standard or nature of a person's accommodation,[3] others focus on issues of safety and security. Different definitions reflect cultural perspectives and experiences of homelessness (e.g. notions of spiritual homelessness experienced by Indigenous Australians). Noting the subjectivity of people's different experiences, Memmott et al refers to homelessness as:

> *a continuum of experience that incorporates the literal state of being 'roofless', as well as those states in which people are 'at risk' of becoming homeless. Central to where a person, group or family may exist along this continuum is the somewhat elusive concept of 'home'.*[4]

Other definitions take into account broader risks than merely being unhoused. For example, the Victorian Council to Homeless Persons describes a homeless person as one whom:

> *is without a conventional home and lacks the economic and social supports that a home normally affords. She/he is often cut off from the support of relatives and friends, she/he has few independent resources and often has no immediate means and, in some cases, little prospect of self-support.*[5]

---

[2] C Neil & R Fopp, *Homelessness in Australia: Causes and Consequences,* Research Monograph 1, Australian Housing and Urban Research Institute, Melbourne, 1994, p. 3. See discussions in C Chamberlain & D MacKenzie, *Counting the Homeless 2001,* Australian Census Analytic Program, cat. no. 2050.0, ABS, Canberra, 2003.

[3] E.g. Neil & Fopp, p. 8; J Evans, "The Work of FEANTSA", *National Conference on Homelessness – Homelessness in the Lucky Country 1996–2000: How Will We Meet the Challenge?,* Melbourne, 1996, p. 34.

[4] P Memmott, S Long & C Chambers, *Positioning Paper: Categories of Indigenous 'Homeless' People and Good Practice Responses to Their Needs,* Australian Housing and Urban Research Institute, Queensland Research Centre, Brisbane, 2003, <http://www.ahuri.edu.au/attachments/20168_pp_categoriesindigenous.pdf> (accessed November 2004), p. 15.

[5] Council to Homeless Persons, *An Overview of Homelessness,* <http://www.chp.org.au/news/> (accessed September 2004), p. 1.

The definition provided in the *Supported Accommodation Assistance Act 1994* (Cth) states: "… a person is homeless if, and only if, he or she has inadequate access to safe and secure housing".[6] 'Inadequate access to safe and secure housing' includes situations that might damage health, threaten safety, marginalise the person from amenities and the economic and social support the home normally offers, or adversely affect the adequacy, safety, security and affordability of housing. People living in accommodation provided under the Supported Accommodation Assistance Program (SAAP) are also considered 'homeless' by this definition.[7]

Before establishing the working definition to be used in this study, we will briefly elaborate on the aspects of homelessness that go beyond the question of merely being housed or not.

Homelessness within the home

Some definitions of homelessness (including that used in SAAP) focus not on the style or standard of accommodation but on the person's level of safety, security and privacy.[8] It may be argued, for example, that significant violence at home can render people 'homeless within their home'.[9] The 'housed homeless' include young people who are victims of abuse or neglect, and partners who are victims of domestic violence.[10] It is difficult to assess the number of people living in such situations in NSW. As Chung et al reported:

> *87% of women who experience violence do not approach a crisis service for assistance; they stay at home or other accommodation (Keys Young, 1998). National SAAP data has shown that of the women who have left*

---

6 *Supported Accommodation Assistance Act 1994* (Cth), s 4.

7 *Supported Accommodation Assistance Act 1994* (Cth), s 4 (3).

8 D Chung, R Kennedy, B O'Brien & S Wendt, *Home Safe Home: The Link Between Domestic and Family Violence and Women's Homelessness,* Social Policy Research Group, University of South Australia, Partnerships Against Domestic Violence, Office of the Status of Women, Canberra, 2000, pp. 15–18.

9 See Chung et al., p. 16.

10 S Hoogland, *The Faces of Homelessness,* undated, <http://www.wesleymission.org.au/publications/homeless/> (accessed November 2004).

> *the family home after experiencing violence, approximately 30% (31.9%) return, and in remote areas, almost 60% (58.5%).*[11]

However, a report on the costs of domestic violence in Australia, drawing on data from the Australian Bureau of Statistics (ABS) Woman's Safety Survey, estimate that a total of 327 500 women in Australia experienced some form of domestic violence in 2002–03. This represented 4.6% of women aged 18 or over.[12]

While clearly very disadvantaged, the 'housed homeless' will not be included within the working definition of homelessness for this project, provided later in this chapter. However, as a group at risk of homelessness, issues relevant to this group are discussed in this report.

Indigenous homelessness

In a study commissioned by the Commonwealth on homelessness in Aboriginal and Torres Strait Islander (ATSI) communities, Keys Young noted "that certain aspects of homelessness may be qualitatively different for ATSI people compared to other Australians who are homeless".[13] Drawing on Keys Young, Memmott et al identify the following five 'working categories' of homelessness experienced by Indigenous people.

- **Living in public places**: Indigenous 'public place dwellers' include people who live in public spaces and consider these places to be their home.[14] For some, this is a relatively permanent arrangement while

---

[11] Chung et al., p. 32. Walgett SAAP services also commented on the frequency with which women left the refuge to return to violent relationships. Consultation, February 2004.

[12] Access Economics, *The Cost of Domestic Violence to the Australian Economy: Part I,* Partnerships Against Domestic Violence, Office of the Status of Women, Canberra, 2004, p. 15.

[13] Keys Young, *Homelessness in the Aboriginal and Torres Strait Islander Context and its Possible Implications for the Supported Accommodation Assistance Program (SAAP),* Commonwealth Department of Family and Community Services (FaCS), Canberra, 1998, <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-newsaap_keys.htm> (accessed November 2004), p. 12.

[14] P Memmott, S Long, C Chambers & F Spring, *Final Report: Categories of Indigenous 'Homeless' People and Good Practice Responses to their Needs,* Australian Housing and Urban Research Institute, Queensland Research Centre, Brisbane, 2003, <http://www.ahuri.edu.au/attachments/20168_pp_categoriesindigenous.pdf> (accessed October 2003), p. 7.

others may join this group from time to time. Some (but certainly not all) people may prefer living in the public space to housing alternatives. Memmott et al. observed that "this group may see recognition of their rights to public space and access to storage and ablution facilities as higher priorities than conventional accommodation".[15]

- **Transient homelessness**: the transient homeless are those people who "experience temporary, intermittent and often cyclical patterns of homelessness due to transient and mobile lifestyles, living in temporary arrangements without secure tenure".[16] Memmott et al. argue that there is a degree of mobility within and between Indigenous communities that is "an expression of individual autonomy and reflects enduring social and cultural practices and values" and that this mobility should not be considered as 'homeless'. However, they still consider mobility that "is problematic and expressive of instability and lack of support" as homelessness.[17]
- **Spiritual homelessness**: spiritual forms of homelessness may derive from: (a) separation from traditional land; (b) separation from family and kinship networks; or (c) a crisis of personal identity wherein one's understanding or knowledge of how one relates to country, family and Indigenous identity systems is confused.[18] In the Human Rights and Equal Opportunity Commission's (HREOC) *Bringing Them Home* report, members of the 'Stolen Generation' described the loss of cultural links with their Indigenous community; a strong sense of not belonging in either the Indigenous or non-Indigenous communities; and the inability to establish the links necessary to prove ownership of native title as a result of being separated from their traditional lands.[19] While issues relating to

[15] Memmott et al., *Final Report,* p. 9.

[16] Memmott et al., *Final Report,* p. 13.

[17] Memmott et al., *Final Report,* p. 13.

[18] Memmott et al., *Final Report,* p. 15; see also Young.

[19] HREOC, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families,* HREOC, Sydney, 1997, under "The Effects of Separation from the Indigenous Community", <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen/> (accessed December 2004).

spiritual homelessness are acknowledged, they are not the subject of this report.

- **Overcrowding**: overcrowding has been a recurring theme in studies of Indigenous homelessness.[20] In comparison to the national trend, Indigenous households tend to be larger and more complex, often made up of a number of family sub-groups.[21] Memmott argues that the point at which an Indigenous household is considered 'overcrowded' may differ from other community standards, making it difficult to use definitions of homelessness that draw on "community standards for housing, residential mobility, household stress or insecurity".[22]
- **Escaping unsafe or unstable family circumstances**: while domestic violence is by no means unique to Indigenous communities, this has been a key trigger in particular for Indigenous women and young people leaving the home. For some the move is temporary or cyclical, with the literature and consultations for the current study noting a pattern for some people of moving back and forth from a violent family home.[23] Family breakdown and domestic violence has been identified as a key pathway to homelessness for Indigenous and non-Indigenous people,[24] and as such is discussed extensively in the current study.

Towards a working definition

As described above, homelessness is not just the lack of bricks and mortar. Some people may feel 'housed' living in public space while others are homeless within their homes. For others, homelessness is characterised

[20] Memmott et al., *Final Report,* p. 11–12.

[21] Memmott et al., *Final Report,* p. 12; See ABS, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples,* cat. no. 4704.0, ABS and Australian Institute of Health and Welfare (AIHW), Canberra, 2001.

[22] Memmott et al., *Positioning Paper,* p. 31.

[23] Chung et al.; Consultations with Walgett SAAP, February 2004; Violence Prevention Service (VPS), Walgett, November 2003.

[24] D MacKenzie & C Chamberlain, *Homeless Careers: Pathways in and out of Homelessness,* Counting the Homeless 2001 Project, Swinburne and RMIT Universities, Hawthorn, 2003, <http://www.countingthehomeless.com.au/page3.htm> (accessed November 2004).

by constant movement in and out of different housing. Coleman perhaps provides the most inclusive view of homelessness, describing it as "having no legitimacy or control over the spaces in which one lives".[25]

This report recognises the value of this encompassing definition and the hardship experienced by those who fall within it. However, the definition of homelessness used in this project is one articulated by Chamberlain and McKenzie and used by the ABS.[26] Recognising that 'homelessness' is a socially constructed concept that only makes sense in a given place and time, Chamberlain and McKenzie form a definition that takes account of the 'minimum community standard' of expected accommodation.[27] With this 'standard' in mind they identify three categories of homelessness:

- primary homelessness—people without conventional accommodation, such as those living on the streets, sleeping in parks, sheds or humpies, squatting in derelict buildings, or using cars or railway carriages for temporary shelter
- secondary homelessness—people who move frequently from one form of temporary shelter to another, including people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own) and those using boarding houses on an occasional or intermittent basis
- tertiary homelessness—people who live in boarding houses on a medium- to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is

[25] A Coleman, "Five Star Motels: Spaces, Places and Homelessness in Fortitude Valley Brisbane", draft PhD Thesis, School of Social Work and Social Policy, University of Queensland, 2000, cited in Memmott et al., *Positioning Paper,* p. 20.

[26] Chamberlain & MacKenzie, *Counting the Homeless 2001,* pp. 1–2.

[27] Chamberlain & MacKenzie, *Counting the Homeless 2001,* p. 1.

> not self-contained; and they do not have security of tenure provided by a lease.[28]

A fourth group of people not counted as 'homeless' by the ABS, but who are included in this report, are 'marginal residents of caravan parks'. These are "people who were renting their caravan, but no one at the dwelling had full-time employment and all persons were at their 'usual address'".[29] Like boarding house residents, marginal residents of caravan parks (including families) rent a single space for eating, sleeping and cooking, and share communal bathroom facilities. Indeed, Chamberlain and Mackenzie observe, on the basis of data that they collated, that caravan parks are used as alternatives to boarding houses outside the capital cities.[30] Like boarding houses, caravan parks may be used as emergency accommodation for some people as well as longer term housing for people unable to enter, or excluded from, public housing or the private rental market. For this reason, Chamberlain and Mackenzie suggest that "for some policy purposes, marginal residents of caravan [parks] might be thought of as a part of the tertiary population".[31] Note that this definition generally excludes older retirees or 'sea changers' who have chosen to live in residential parks.

While the neat categorisation of people into these groupings enables us to provide some picture of the extent of homelessness in NSW, it masks the mobility of homeless people between these groups (e.g. from primary to secondary homelessness). For many, homelessness is characterised by constant movement between different types of accommodation: the street, homeless shelters, boarding houses. Alternatively, it may be from home to a refuge, a family member, or a caravan park.

---

[28] Chamberlain & MacKenzie, *Counting the Homeless 2001,* pp. 1–2.

[29] Chamberlain & MacKenzie, *Counting the Homeless 2001,* p. 49.

[30] C Chamberlain & D McKenzie, *Counting the Homeless 2001: NSW,* Swinburne & RMIT Universities, Hawthorn, 2004, <http://www.countingthehomeless.com.au/SWI002%20NSW_reportFA.pdf> (accessed November 2004), Table 4.4, p. 43 (see Chapter 3 for details).

[31] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* p. 9.

However, the Chamberlain and MacKenzie definition has been selected for two reasons. First, there are comprehensive ABS statistics available on the basis of this definition. This enables us to report estimates of the extent of homelessness in NSW and provides some boundaries to the scope of this project. Second, this definition is utilised among service providers and those writing about homelessness in this State.

Homelessness and the law

There are valuable data available about the extent and nature of homelessness in NSW.[32] These are discussed in detail in Chapter 3. In addition, there has been a small but growing body of work in Australia examining the legal needs and rights of homeless people (particularly street-based homeless people). However, there is less information available about the access to justice issues faced by people living at primary, secondary and tertiary levels of homelessness in NSW, and about legal service provision to this diverse group. To understand the historical context of the current perspectives, it is useful to undertake a brief summary of the developments in legal approaches to homelessness in key reports, the broader literature and in consequent strategies to meet the (legal) needs of homeless people.

The Sackville report

Professor (now Justice) Robert Sackville's seminal 1976 report to the Commission of Inquiry into Poverty, *Homeless People and the Law,* marked a significant progression in the level of understanding of the impact of the law on the lives of homeless people in Australia.[33]

[32] E.g. Chamberlain & & MacKenzie, *Counting the Homeless 2001: NSW*; AIHW, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2002–03* [*Homeless People in SAAP*] *NSW Supplementary Tables* [*SAAP 2002–03 NSW Tables*], SAAP NDCA Report Series No. 8, AIHW cat. no. HOU 91, AIHW, Canberra, 2003.

[33] Commission of Inquiry into Poverty, *Homeless People and the Law,* Report for the Law and Poverty series (Professor R Sackville, Chair), AGPS, Canberra, 1976 (Sackville Report).

Sackville documented the social isolation, low levels of income and low levels of education among homeless people. He also extended the common understanding of homelessness beyond street homelessness to that highly mobile part of the population who were engaged in seasonal, casual and itinerant work. He further substantiated indications from research at the time: namely, most homeless people were men, aged 35 to 50, alcoholic and had poor physical health.[34]

Sackville focused on the laws of vagrancy and public drunkenness, highlighting the deficiencies of the criminal law as a tool for addressing homelessness. He criticised the prevailing view of homeless people as representing a physical danger to the community,[35] and argued that the laws of vagrancy and public drunkenness—as well as the laws authorising compulsory commitment into institutions that administered long-term 'treatment' for 'alcoholics'—marginalised, stigmatised, and discriminated against those from lower socio-economic backgrounds.[36] He asserted that, far from serving any rehabilitating or deterring function, these laws actually entrenched the behaviours they were attempting to address.[37]

Sackville argued in his report that the laws pertaining to homelessness should be replaced with a consent-based welfare approach, in the form of short-term accommodation where care and legal assistance could be provided.[38] As a more pragmatic alternative, he advocated for significant reforms to long-term treatment institutions to make their committal proceedings more open, impartial and evidence-based; to restrict compulsory commitment to people in danger of causing serious harm; and to make 'treatment' approaches more innovative, independent and flexible.[39]

---

[34] Sackville report, p. 5.

[35] Sackville report, p. 7.

[36] Sackville report, p. 57.

[37] Sackville report, p. 38.

[38] Sackville report, p. 45.

[39] Sackville report, pp. 60–78.

A changing homeless population

In 1985, SAAP was introduced as an attempt to streamline governments' responses to what Sackville and others had found: specifically, that the number of homeless people in Australia was growing, and the homeless population was becoming increasingly diverse. In particular, there were a growing number of women and children escaping domestic violence, as well as young people becoming homeless.[40] SAAP is a joint program of the Commonwealth and the States that funds non-government organisations to provide 'a safety net' of services to people who are homeless or at risk of homelessness. SAAP services include homeless person's hostels, women's refuges and youth crisis accommodation.[41]

It was within this context that in 1989, HREOC commissioned the *Our Homeless Children: Report of the National Inquiry into Homeless Children.* Called the 'Burdekin report' after the inquiry's chair Brian Burdekin, it highlighted the need for a preventative approach to homelessness, and outlined a comprehensive early intervention agenda aimed at supporting young people who are at risk of homelessness.[42] This approach was later reflected by the 1994 reforms of SAAP. Section 4 of the *Supported Accommodation Assistance Act* (Cth) 1994 widened the definition of 'homeless' to include circumstances where a person has housing, but it is not adequate, safe, secure, or affordable.[43]

Chamberlain and MacKenzie, whose definition of homelessness is used in this report, have also made significant contributions to our understanding of pathways into homelessness. In contrast to the common belief at the time of the Sackville report that homelessness was a permanent state with

---

[40] D MacKenzie & C Chamberlain, *Homeless Careers: Pathways in and out of Homelessness,* Counting the Homeless 2001 Project, Hawthorn, 2003, <http://www.salvationarmy.org.au/reports/Homeless_Careers_2003.pdf> (accessed June 2004), pp. 59–60; R Fopp, "After Burdekin – A Brief Evaluation 14 Years On", *Parity,* vol. 16, no. 7, 2003, pp. 13–14.

[41] E.g. AIHW, *Homeless People in SAAP.* See Appendix 1 for definitions relating to SAAP.

[42] HREOC, *Our Homeless Children: Report of the National Inquiry into Homeless Children,* Parliamentary Paper No. 125 of 1989, AGPS, Canberra, 1989 (Burdekin report).

[43] FaCS, *SAAP – The Supported Accommodation Assistance Program,* <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-saap_nav.htm#saap4> (accessed November 2004). See also *Supported Accommodation Assistance Act 1994* (Cth), s. 4.

distinct causes, Chamberlain and Mackenzie conceptualise homelessness as a process of people entering and exiting the homeless population.[44]

Developing a 'rights-based' approach

Recent developments in approaches to homelessness and the law have led to the development of a 'rights-based' approach to homelessness. This approach to homelessness and the law is used in three different contexts:

- lobbying for the implementation of 'human rights' as defined in international law
- a rights-based approach to legal service provision
- involving homeless people in law reform.

International human rights and homelessness

Apart from illustrating a more sophisticated understanding of homelessness, the Burdekin report also adopted a human rights framework. It linked the experiences of young homeless people with 'rights' under international human rights law, and stressed the need for the federal government to recognise and uphold these rights. This approach considers clients' problems in relation to rights under international human rights law, and this has formed the basis of rights-based lobbying and advocacy for homeless people.[45]

While legal rights are enforceable under Australian law, 'human rights' as outlined in international law are not enforceable unless they are implemented into domestic law.[46] Otto connects the present shortcomings

---

[44] MacKenzie & Chamberlain, *Homeless Careers,* pp. 7, 12.

[45] C Goldie, "Rights Versus Welfare", *Alternative Law Journal,* vol. 28, no. 3, 2003, p. 134.

[46] *Minister for Immigration and Ethnic Affairs and Teoh* (1995) CLR 273. In *Teoh,* the majority of the High Court ruled that although Australian ratification of an international human rights instrument would create the legitimate expectation that the government and its agencies would act in accordance with that instrument, unless the instrument was implemented into domestic legislation, then the rights outlined under that instrument would not be enforceable. N O'Neill, S Rice & R Douglas, *Retreat from Justice: Human Rights Law in Australia,* The Federation Press, Sydney, 2004, p. 187.

of Australian substantive law in protecting the 'human rights' of homeless people to the fact that international human rights law has not yet been domestically implemented in this country.[47] She asserts that this stems from Australian governments' traditional preference for more indirect methods of safeguarding individual rights, such as through the institution of responsible government, the establishment of HREOC, and the national SAAP. She highlights that despite these indirect means, the full range of rights that are covered by the International Covenant on Economic, Social and Cultural Rights (including housing-related rights) have not yet been implemented.[48] Hence, a rights-based approach to homelessness calls for the recognition of international human rights, such as those under the covenant.

Implementation of a rights-based approach in legal service provision

In recent years, a number of legal services for homeless people have been established in Victoria, Queensland and NSW. These services have adopted a "rights-based approach' both in terms of advocacy (for recognition of international human 'rights') and to service delivery. Goldie defines a rights-based approach to legal service provision for homeless people as a process that "involves homeless people being at the centre of the processes that develop solutions and in control of decision making that affects them".[49] Thus, recognising that homelessness is linked to legal need, the aim of these clinics is to advocate for and assist homeless people in upholding their legal rights. For example, the earliest of these services, Victoria's Homeless Persons' Legal Clinic (HPLC), was established in Melbourne in October 2001 to provide free legal assistance to, and

[47] D Otto, "Addressing Homelessness as a Violation of Human Rights in the Australian Context", in Australian Federation of Homelessness Organisations (AFHO), *'Beyond the Divide',* papers presented at the Third National Homelessness Conference*,* 6–8 April 2003, Brisbane, AFHO, Canberra, 2003 (*'Beyond the Divide'*), <http://www.pilch.org.au/html/getFile.asp?table=tbl_TCA_Article_Files&field=image&id=209> (accessed November 2004), p. 3.

[48] Otto, pp. 2–3.

[49] Goldie, *Rights Versus Welfare,* p. 133.

advocacy on behalf of, people who are homeless or at risk of homelessness. It is a joint project of the Public Interest Law Clearing House (PILCH) in Victoria and the Victorian Council to Homeless Persons, and is known as 'VPILCH HPLC'. The clinic provides civil, administrative and some summary criminal legal services at crisis accommodation centres and welfare agencies in Melbourne so as to encourage direct engagement with clients. It also attempts to influence law reform processes, so as to reduce the degree and extent to which homeless people are disadvantaged and marginalised by the law. Legal services are provided by volunteer lawyers from PILCH law firms and legal departments. At the time of writing, the VPILCH HPLC was funded by the Victorian Department of Justice through the Victoria Legal Aid Community Legal Sector Program Fund.[50] Similar clinics have subsequently been initiated in other States. Queensland PILCH's (QPILCH) HPLC commenced operation in Brisbane in December 2002. In May 2004, the NSW Homeless Person's Legal Service (HPLS) was established in Sydney by PILCH and the Public Interest Advocacy Centre (PIAC) (see Chapter 6).

This approach is similar to the model for community legal centres (CLCs) outlined by the National Association of Community Legal Centres , which facilitates participation by community members in the management of legal services, making the lawyer–client exchange an empowering one for the client, and capacity building and skills transfer.[51]

Involving homeless people in law reform

As indicated above, Goldie and others[52] assert that a 'rights-based' approach to addressing homelessness must involve the participation of homeless people. This involves homelessness agencies providing support

[50] Consultation with Phil Lynch, VPILCH HPLC, October 2003.

[51] National Association of Community Legal Centres (NACLC), *Doing Justice: Acting Together to Make a Difference,* 2003, <http://www.naclc.org.au/docs/Doing_Justice_doc.pdf> (accessed November 2004), p. 11.

[52] See, e.g. K Fernandes, "Reclaiming Housing Rights: Homeless Peoples' Participation is Essential", *Parity,* vol. 17, no. 1, 2004, pp. 17–18; P Lynch, "The Power and Purpose of Rights", *Parity,* vol. 17, no. 1, 2004, p. 103.

for homeless people to take control of developing (legal and non-legal) solutions to their problems.[53]

In relation to legal reforms, both Goldie and Lynch advocate for the participation of homeless people in these law-based processes.[54] Lynch stresses that homeless people must be "empowered and enabled to … have a say in the formulation of laws that affect them". Accordingly, he argues for the establishment of community councils, through which law-makers, service providers, homeless people and business groups can work towards political consensus through dialogue.[55]

Access to justice and legal needs of homeless people

A key aim of this study is to examine factors that may affect the capacity of homeless people to access legal services and participate in legal processes. There has been some literature that focuses specifically on these issues, much of which has arisen from the legal activism discussed above. Much of the literature in this area has been written by the convenor of the VPILCH HPLS, Phil Lynch.

Barriers to justice

Barriers identified as preventing homeless people from addressing their legal needs are commonly divided into two categories. Procedural barriers refer to obstacles (such as the geographical location of legal services) that restrict people's ability to access the support of the law. Substantive barriers, on the other hand, refer to specific laws and law enforcement practices that impact in a discriminatory way on homeless people.[56]

---

[53] Goldie, *Rights Versus Welfare,* pp. 132–33.

[54] Goldie, *Rights Versus Welfare,* pp. 134–35.

[55] P Lynch, "Begging for Change: Homelessness and the Law", *Melbourne University Law Review,* vol. 26, 2002, p. 697. The Foundation is conducting a separate study on the barriers to disadvantaged people—including homeless people—participating in law reform activities.

[56] T Walsh, "Inequality Before the Law: Legal Issues Confronting People Who Are Homeless", *Parity,* vol. 17, no. 1, 2004, pp. 38–40.

Procedural barriers

Lynch and Klease have documented some of the procedural barriers homeless people face in accessing justice. These include:

- lack of civil, administrative and summary criminal law assistance
- location and accessibility of legal services, courts, tribunals and court services
- lack of awareness of the law and their rights
- lack of confidence and empowerment required to seek legal assistance.[57]

Procedural barriers raised by other commentators include:

- lack of advocacy and support within bureaucratic and legal institutions[58]
- lack of face-to-face legal aid services in regional, rural and remote areas[59]
- lack of funding for youth legal services.[60]

Substantive barriers

Substantive barriers are laws and law enforcement practices that are formulated and applied seemingly without regard to the impact on homeless people or homelessness.[61] By way of example, Lynch[62] and

---

[57] P Lynch & C Klease, *Homelessness and Access to Justice: Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice,* Homeless Persons' Legal Clinic and Queensland Homeless Persons' Legal Clinic, Melbourne, 2003, <http://www.aph.gov.au/senate/committee/legcon_ctte/legalaidjustice/submissions/sub13.doc> (accessed November 2004), pp. 22–4.

[58] Burdekin report, paras 21.29–21.31; M Slatter, "On the Way Out: Evictions and Eviction Process", in *'Beyond the Divide'*, <http://www.afho.org.au/4_publications/conference_papers/conference_papers.htm> (accessed November 2004), p. 6.

[59] Senate Legal and Constitutional References Committee, *Legal Aid and Access to Justice*, SLCRC, Canberra, 2004, p. 128.

[60] Senate Legal and Constitutional References Committee, *Legal Aid and Access to Justice,* pp. 155–59.

[61] Lynch, "Begging for Change", p. 705.

[62] Lynch, "Begging for Change", pp. 690–707. See also *Commonwealth Electoral Act 1918* (Cth), s. 99.

Mundell[63] highlight Commonwealth electoral laws that impinge upon the right of homeless people to vote, by requiring people to have been resident in an electoral subdivision for a month before they can register to vote. Alternatively they have to register as an 'itinerant voter'. However, the process for registering as such has been described as "administratively burdensome" for homeless people.[64] The impact of social security policy and practice on homeless people has also been considered in this regard.[65] Immigration laws that restrict rights to services and social security may also leave some new arrivals vulnerable to homelessness.[66]

Lynch also argues that laws are formulated that effectively criminalise homelessness, by "render[ing] unlawful behaviours that would be lawful if conducted in a private dwelling".[67] In NSW examples include laws that prohibit drinking in alcohol-free zones and that enable police to 'move on' people whose presence or behaviour "is causing or likely to cause fear to another person or persons … of reasonable firmness".[68] Other authors emphasise discriminatory laws that particularly affect those experiencing secondary or tertiary homelessness. For example, in NSW the protection afforded by residential tenancy legislation does not extend to residents of boarding houses.[69]

Continuing the focus on the discrimination suffered by homeless people, Lynch draws attention to the role of arbitrary, selective or targeted law enforcement practices, and makes a number of recommendations to

---

63 M Mundell, "Giving Voice to the Voiceless: Homelessness and Democracy", *Parity,* vol. 17, no. 1, 2004, pp. 94–5.

64 Lynch, "Begging for Change", p.695.

65 See Lynch, "Begging for Change", p.696; *'Beyond the Divide', Summary Report*, <http://www.afho.org.au/4_publications/conference_papers/Summary_Report.pdf> (accessed November 2004), pp. 6–7; Horbury, P, "Social Security Law and Homelessness", *Parity,* vol. 17, no. 1, 2004, pp. 46–8.

66 Walsh, p. 39.

67 Lynch, "Begging for Change", p. 690.

68 *Local Government Act 1993* (NSW), s. 642 (alcohol-free zones); *Summary Offences Act 1988* (NSW), s. 28F (power to give reasonable directions in public places).

69 Walsh, p. 38; P Alexander, "Great Expectations: In Pursuit of Legislative Reform for Boarders in NSW", *Parity,* vol. 17, no. 1, 2004, pp. 76–8; A Richardson, "The Erosion of Housing in Australia", *Parity,* vol. 17, no. 1, 2004, pp. 92–3.

address these.[70] He also stresses the existence of widespread discrimination against homeless people by individuals and organisations that are acting "with relative impunity".[71] This includes discrimination by landlords and hostel, caravan park and boarding house operators. Slatter supports Lynch's contention, reporting the existence of discrimination by property managers against tenants who present with security bonds provided by a State housing authority.[72]

Thus, commentators suggest that homeless people are affected by discriminatory laws, discriminatory law enforcement practices and discriminatory behaviour by private organisations and individuals. Many of these substantive barriers, as they apply in NSW, were raised in consultations for the current study and are discussed further in this report.

To address these issues, Lynch recommends programs aimed at educating and empowering homeless people to address their legal rights through access to legal representation, the courts and targeted regulatory and dispute resolution bodies.[73] He also calls for substantive reform to the current anti-discrimination legislation regime.[74] Lynch elaborates on this in an article with Stagoll, where they argue for amendments to State and Commonwealth anti-discrimination legislation so that it prohibits discrimination on the ground of 'social status', which should be taken to mean status as a homeless person, an unemployed person, or a social security recipient.[75] They contend that such reform is consistent with international human rights law,[76] and reflects similar protections in other jurisdictions such as New Zealand and Canada.[77]

---

70 Lynch, "Begging for Change", p. 690. Recommendations at 702–3.

71 Lynch, "Begging for Change", p. 690.

72 M Slatter, "On the Way Out: Eviction and the Eviction Process", in *'Beyond the Divide'* papers presented at the Third National Homelessness Conference, 6–8 April 2003, Brisbane, 2003, AFHO, Canberra.

73 Lynch, "Begging for Change", p. 704.

74 Lynch, "Begging for Change", p. 704.

75 P Lynch & B Stagoll, "Promoting Equality: Homelessness and Discrimination", *Deakin Law Review*, vol. 7, 2002, p. 295.

76 Lynch & Stagoll, p. 13.

77 Lynch & Stagoll, pp. 15–16.

Other literature on access to justice issues for homeless people

As described, there is a small but growing body of writing on the legal needs and rights of homeless people, particularly those at primary levels of homelessness, and the procedural and substantive barriers they face to address these problems. However, there is also a lot of additional material from a broader range of disciplines, which touch upon the legal and access to justice issues facing the diverse group of people who constitute the homeless population in NSW. For instance, much can be drawn from the literature concerning women in domestic violence situations, whom, as demonstrated in Chapter 3, are vulnerable to forming part of the homeless population. Rather than summarising this literature here, relevant studies and project reports have been cited where relevant throughout the report. In this way, our study will build on a solid foundation of existing literature to explore the legal needs of people experiencing primary, secondary and tertiary homelessness, including marginal residents of caravan parks in NSW. The report will also identify existing and potential pathways to homeless people gaining legal support, and the significant role of non-legal services in facilitating the access of homeless people to legal remedies. In doing so, we also discuss the barriers homeless people face in seeking and securing legal assistance and in negotiating the legal system.

Structure of this report

This chapter has presented the context and rationale for the current study. It has outlined the evolving body of knowledge about the nature of homelessness in Australia and the legal and access to justice issues facing people when homeless. Building on this, the current study presents a picture of the particular legal needs of homeless people in NSW, the relevant legal and non-legal services available in this State, and the barriers faced by homeless people in recognising and pursuing their rights.

Chapter 2 of this report outlines the methodology used in this study.

Chapter 3 discusses the numbers of people experiencing homelessness in NSW, together with their geographic distribution, circumstances and characteristics.

Chapter 4 discusses the legal issues facing people as they enter and become entrenched in homelessness.

Chapter 5 explores the barriers faced by homeless people in identifying and seeking support for their legal issues.

Chapter 6 discusses the different types of legal assistance available to homeless people in NSW, the challenges services face in helping homeless clients, and the features of legal assistance services that increase their accessibilty and utility to homeless people.

Chapter 7 examines the role played by non-legal service providers in linking homeless people with legal assistance services and in assisting them to engage in legal processes.

Chapter 8 examines the barriers faced by homeless people to accessing and participating in legal processes relevant to their needs.

Chapter 9 draws together themes from the each of the chapters to present a summary of the legal needs and access justice issues facing homeless people in NSW.

2. Methodology

As discussed in Chapter 1, the purpose of this study is to explore the legal needs and access to justice issues facing people who are homeless in NSW. In order to do this, we have sought the views of homeless people, their advocates and legal and non-legal service providers to homeless people. Information was also drawn from recent and relevant literature and policy documents, legislation and statistical data collected on homelessness and service provision to homeless people.

Because the aims of this study are exploratory in nature, qualitative methods of data collection were employed. Focus groups and semi-structured interviews were used to gather the insights of service providers and other stakeholders. Semi-structured interviews were used to gather the insights of homeless people themselves. Case studies provided by service providers, stakeholders and drawn from the literature were also used.

Data collection

The literature

Information has been drawn from a range of disciplines and fields of study that have considered the issue of homelessness. These include law, social justice, sociology, criminology, and social work, housing and family studies. While some of the literature used in this report has addressed 'homelessness' specifically, other material has focused on the accessibility of the legal system more broadly, and been applied to the homeless context.

To ensure relevance, in general only Australian literature from the late 1990s onwards has been used. The exceptions to this are seminal pieces

of work that demonstrate shifts in thinking on homelessness in Australia since the 1970s (see Chapter 1) and material describing overseas models of legal service delivery to homeless people, pertinent to the Australian environment.

Use of existing quantitative data

In this project we have drawn heavily on two comprehensive ongoing data collections concerning homeless people in Australia: census-based data on homelessness and SAAP data. In addition, we have drawn on data provided by service providers consulted for this study and the findings of relevant research studies identified in the literature review. These sources will be briefly described below.

Census data

In a series of reports based on the 2001 Census and other data, Chamberlain and Mackenzie have provided a comprehensive overview of the nature and extent of homelessness in Australia.[1] Their most recent report, on the estimated numbers of homeless people in NSW, is entitled *Counting the Homeless 2001, NSW.* It should be noted that estimates rather than actual numbers are used because of difficulties in identifying, defining and counting this highly mobile population.[2]

SAAP data

Comprehensive data are also collected by SAAP services.[3] The Australian Institute of Health and Welfare (AIHW) collates the data collected by SAAP services regarding the characteristics and circumstances of their clients, and the services provided to those clients. Data are reported

---

1 Chamberlain & MacKenzie, *Counting the Homeless 2001.* See also Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW.*

2 For a discussion of these difficulties see Chamberlain & Mackenzie, *Counting the Homeless 2001: NSW,* pp.13–14.

3 FaCS, *SAAP – The Supported Accommodation Assistance Program,* <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-saap_nav.htm#saap4> (accessed November 2004). See Chapter 1 for a description of SAAP and Appendix 1 for definitions related to SAAP.

annually within 12 months of the reference period. The Homeless People in SAAP, National Data Collection annual report series provides national data and statistics for each State and Territory.[4]

Law and Justice Foundation of NSW data

This report also refers to preliminary analyses of data from the Legal Needs Survey,[5] conducted by the Law and Justice Foundation of NSW in late 2003. This was a quantitative telephone survey of more than 2400 people living in six localities in NSW identified as socially and economically disadvantaged. One hundred and twenty respondents to this survey indicated they had been homeless in the last 12 months. This small but important sample reported the numbers and types of legal issues they had faced in the previous 12 months. A separate report based on the Legal Needs Survey will be available from the Law and Justice Foundation of NSW in 2005.

Other data

Several legal services consulted in this study provided statistics reflecting the demographic characteristics of their client group and/or the types of legal matters the service dealt with in a given period. No information that could identify individual clients was provided. These services include the Legal Counselling and Referral Centre (LCRC), Women's Legal Services (WLS), Shopfront Youth Legal Centre (Shopfront) and the Blake Dawson Waldron (BDW) legal clinics at Lou's Place and Exodus. These data have been incorporated, where appropriate, in the report.

---

4 See <http://www.aihw.gov.au/publications/index.cfm/series/63> (accessed November 2004).

5 The Law and Justice Foundation, "Legal Needs Survey 2003" (unpublished data). The overall results from this survey are due to be published in late 2005. For description, see Law and Justice Foundation of NSW, *Access to Justice and Legal Needs Program, Background Paper*, 2002, <http://www.lawfoundation.net.au/access/background.html>.

Consultations with service providers, advocates and other stakeholders

Agencies, organisations and individuals who provide services to and/or advocate for homeless people were consulted for this study. These agencies included:

- the Legal Aid Commission of NSW (also known as 'Legal Aid NSW' and 'Legal Aid') and several CLCs and tenancy services
- some courts relevant to the legal issues facing homeless people
- the providers of legal services and clinics that specifically address the needs of homeless people in NSW
- community organisations providing services to homeless people in NSW
- State and local government agencies that work with or support homeless people in NSW
- organisations that provide advocacy and other support to people at particular risk of homelessness.

These organisations are listed in Appendix 2.

Focus groups

Consultations for this project commenced in August 2003, with two 'roundtable' focus groups held at the Law and Justice Foundation's premises with legal service providers and non-legal service providers. Each focus group consisted of approximately 12 participants and lasted for approximately four hours. The questions used to prompt discussion are listed in Appendix 3.

Further focus groups were conducted at the annual forum of the Newcastle Hunter Homeless Interagency Network (NHHIN) held in February 2004. The topic of the forum was 'the legal needs of homeless people'. Approximately 40 agencies (as well as different offices of the same agency) were represented at the forum. They included State and local government

organisations and non-government agencies supporting homeless people in the Hunter region (see Appendix 4). Following presentations, the project team conducted four focus groups with the NHHIN members. Each group consisted of approximately 12 people, and sessions ran for 75 minutes. Each group addressed a different set of questions covering the four following areas:

- legal issues facing homeless people in the region
- barriers to accessing legal assistance in the region
- barriers to homeless people participating in legal processes
- the role of non-legal service providers in supporting clients in legal processes and the challenges faced in doing so.

Stakeholder consultations

Sixty semi-structured interviews with stakeholders were conducted, most between September 2003 and March 2004. Twenty-two of those interviewed were from legal services, 19 were non-legal services, 14 were from government departments and five were from the courts. Interviews were conducted both with individual workers and in groups. The majority of interviews were conducted face-to-face and at the person's workplace. A small number were conducted by telephone. Interviews lasted between 30 and 90 minutes.

The rationale for conducting semi-structured interviews with open-ended questions was to facilitate in-depth discussion with stakeholders. This approach allowed researchers to cover a set of pre-determined issues, while still being able to tailor questions to the particular expertise of the stakeholder, and to explore particular issues raised by the interviewees in greater detail. The broad areas covered in the interviews were:

- What types of legal issues are faced by people when homeless? How do these differ for different groups of homeless people?
- What barriers do homeless people face in accessing legal and other support to address these needs?

- What strategies have been used to address these barriers?
- What issues or problems do homeless people face in participating in the legal process?
- What strategies have been used to address these issues?

Non-legal service providers were also asked about:

- the types of support they gave homeless people facing legal issues
- the challenges they faced in providing this support
- the type of support they need to better assist homeless clients with legal problems.

Consultations with homeless people

Thirty semi-structured interviews were conducted with people who were currently homeless, had recently been homeless or were facing imminent homelessness. Interviewees (also described as 'participants' in this report) were contacted through a range of organisations providing services to homeless people or people facing homelessness in Sydney, Newcastle and Walgett (see Appendix 2).

Individual interviews were conducted by five Law and Justice Foundation researchers at, or near, the contact organisation or at the participant's accommodation, between October 2003 and April 2004. To ensure the sensitive and appropriate conduct of the interviews, all of the interviewers received additional training from St Vincent de Paul Learning Services in interviewing people with complex needs.

In terms of procedure, arrangements were made for the researchers to meet with participants through the agencies. In some cases Law and Justice Foundation interviewers spoke to clients who were at the agency at the time the researchers were present, and who agreed to an interview. In other cases, appointments were made ahead of time, to meet with interested participants.

All interviews were undertaken with the informed consent of the participant. Prior to gaining consent, participants were told that their participation was anonymous and voluntary, that they could choose not to answer any questions, and they could stop the interview at any time. The interviews were recorded with the permission of the participants, with the understanding that the tape and transcribed material would be kept securely, and the tape erased once transcribed. All participants were reimbursed $20 for their time.

Of the 30 people who were interviewed, 16 were men, and 14 were women (including three transgender). Four participants were Indigenous and five were living in rural or regional NSW at the time of the interview. Four young people under the age of 25 were interviewed. Efforts were made to recruit more young people, but two and three potential interviewees did not turn up at each of the two of the contact agencies (supporting young people) as arranged.

In terms of accommodation, 14 participants were currently living on the street and/or in crisis accommodation. Four participants were living in boarding house accommodation, two were staying with family or friends, one did not want to disclose where he was living and another was 'moving around'. One participant was about to be evicted from a Department of Housing (DOH) property. Six participants had been homeless, but were now living, alone or with friends, in private rental or DOH accommodation.

The interview schedule was semi-structured, using open-ended questions (see Appendix 5). This allowed researchers to explore issues raised by participants in greater detail.

The interview schedule was informed by initial roundtable consultation with stakeholders in August 2003. Briefly, participants were first asked if they had a recent legal problem or issue in their life. They were then asked a range of questions covering different areas of the law that had been identified by stakeholders as being particularly relevant to homeless people in NSW. These included housing, income and employment, debt,

fines, family issues, crime and victim of crime issues, relationships with police and health issues.

If the interviewee indicated that they had a 'legal issue' (either identified as such by themselves or according to the list provided by the interviewer), participants were then asked what they had done about it, who they had sought help from if they hadn't done anything about it, why this was the case, and what happened in the end. This order of questions was adopted so a distinction could be drawn between matters identified by interviewees as 'legal' issues and issues that have a legal solution but were not identified as such by the participant.

Limitations of the methodology

A range of homeless people (in terms of age, gender, Indigenousness, accommodation and location) were consulted in this study. However, this group of participants cannot be considered as representative of the homeless population as a whole. Furthermore, due to the relatively small number of homeless people who were interviewed for this study, the types of legal issues and experiences should not be treated as definitive of the entire NSW homeless population. Rather, the insights and views of these participants, and the other stakeholders consulted, were used to gain a deeper understanding of the legal issues homeless people face and the challenges they encounter in engaging with legal processes.

A second issue to bear in mind when reading this report is that qualitative research relies heavily on the reported (subjective) experiences of those interviewed. The experiences or perception of legal services and processes reported by interviewees (homeless participants and other stakeholders) may differ from the law or processes as described in documents or policies. For instance, interviewees may not fully understand or be aware of laws, legal and bureaucratic processes or legal services. Generally, the research team has reported people's views in the belief that they reflect the reality for those participants. However, where possible we have sought to verify some of the statements made by interviewees (e.g. by examining possible

fines for particular offences, when somebody speaks of a penalty received for that offence).

It is also important to bear in mind that the law and legal processes may be applied differently, depending upon the circumstances surrounding an event and the characteristics of the person, office or officer responsible for enforcing that law. This may account for differences between what the reader knows about the law or a legal process and how interviewees have experienced its impact.

Data analysis

The transcribed interviews with homeless participants and stakeholders, focus groups, literature and administrative documentation were analysed using QSR NUD*IST Vivo (NVivo). NVivo is a qualitative analysis software program that facilitates the organisation and coding of textual data for thematic analysis. Information is categorised under particular 'nodes' (or themes) that can be developed prior to coding or as the analysis progresses. In this case, most nodes were developed before data was entered into the NVivo database. Nodes were grouped by research question and based on themes identified in earlier research, particularly as part of the A2J research program (e.g. areas of law/legal issue, types of barriers to accessing legal assistance). New nodes were added where required.

3. Homelessness in NSW

> *For me, homelessness is when your family and friends can't be sure where to find you. Destitute homelessness is when nobody goes looking for you.*[1]

Homeless people in NSW are not a single homogenous group. They include men, women, young people and children, living in a variety of circumstances in locations across NSW. Individual characteristics, circumstances and location can all impact on the range of legal issues homeless people face, the barriers to addressing these legal issues and the pathways for providing legal information and assistance to this diverse group of disadvantaged people. Therefore, an overview of the main characteristics of the NSW homeless population is appropriate. This chapter discusses:

- how many people are experiencing various forms of homelessness in NSW
- the geographic distribution of homelessness
- the demographic and other characteristics of homeless people
- common pathways into homelessness.

Data sources used in this chapter were detailed in Chapter 2.

Numbers of homeless people in NSW

On Census night 2001, there were an estimated 26 676 homeless people in NSW. This equates to 42.2 homeless people per 10 000 in the NSW population.[2] NSW has the highest number of homeless people, but one

---

1 M McGirr, "A Hume Away from Home", *The Big Issue,* vol. 214, 18 October–2 November 2004, p.18.

2 Chamberlain & MacKenzie, *Counting the Homeless 2001,* p. 44. This figure is down from an estimated 29 608 people homeless on Census night in 1996 (a rate of 49.4 per 10 000).

of the lowest rates of homelessness in the nine States and Territories in Australia.[3]

Table 3.1: Number of persons in different sectors of the homeless population, Australia and NSW, Census night 2001

	Australia		*NSW*	
	N	***%***	***N***	***%***
Boarding houses	22 877	23	7815	29
SAAP accommodation	14 251	14	3918	15
Friends/relatives	48 614	49	12 123	45
Improvised dwellings, sleepers out	14 158	14	2 820	11
TOTAL	**99 900**	**100**	**26 676**	**100**

Source: Chamberlain & MacKenzie, Counting the Homeless 2001: NSW, Table 1, p. 6.

As indicated in Table 3.1, on Census night 2001, more than 12 100 people in NSW were living temporarily with friends or relatives.[4] This represents about 45% of the homeless population. On the same night, over 7800 people were living in boarding houses in NSW, while approximately half this number (3918) were staying in SAAP accommodation.[5] More than 2800 people (11% of the homeless on Census night) were living in 'improvised dwellings', including parks, cars, trains and derelict buildings.

As a 'snapshot' of the situation on Census night, these data do not convey the high levels of mobility that are typical of the homeless population.[6] For instance, a woman who was counted as staying in SAAP accommodation on Census night may have been staying with friends prior to staying at a SAAP service, and then slept rough for the rest of the week.

[3] ACT has a homeless rate of 39.6 in 10,000: cited by Chamberlain & Mackenzie, *Counting the Homeless 2001*, p. 44.

[4] Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 24. The census identifies this group of people with the question "What is the person's usual address?" and the response "No usual address", and an address on Census night that is a private dwelling. The ABS has a formula for correcting for those 'missed' as the SAAP accommodation in which they were staying was incorrectly identified as a private dwelling.

[5] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* pp. 19–20.

[6] Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 3.

Marginal residents of caravan parks

In addition to the nearly 26 700 people counted by the ABS as homeless, Chamberlain and Mackenzie have identified a further 6881 people as 'marginal residents of caravan parks'. 'Marginal residents of caravan parks' are households who live permanently in residential parks, where no member of the household is in full-time employment and their accommodation is rented.[7] When marginal residents of caravan parks are included in the figures, the total number of homeless people in NSW on Census night 2001 rises to 33 557 (see Table 3.2).

Table 3.2: Homeless people in different sectors of the NSW population, including marginal residents of caravan parks, 2001

	NSW	
	%	*N*
ABS-defined 'homeless' in NSW (see Table 3.1)	79.5	26 676
Marginal residents of caravan parks	20.5	6881
TOTAL	**100**	**33 557**

Source: Chamberlain & Mackenzie, Counting the Homeless 2001, Table 10, p. 11, Table 6.3, p. 45.

As discussed in Chapter 1, marginal residents of caravan parks together with boarding house residents make up the tertiary homeless population. Chamberlain and Mackenzie found that while 77% of boarding house residents live in the Greater Sydney area, 78% of 'marginal residents' of caravan parks reside in regional centres and country towns outside of Sydney.[8] On the basis of these figures, they made a key observation that caravan parks are used as alternatives to boarding houses outside the capital cities. They also observed that in areas where no SAAP services are available, welfare agencies may send clients to caravan parks for accommodation. Finally, it should be noted that marginal residents of caravan parks only made up about 15% of all people staying in caravan parks on Census night 2001.[9]

7 Chamberlain & MacKenzie, *Counting the Homeless 2001,* p. 49.

8 Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* Table 4.4, p. 43.

9 Personal communication, Chris Chamberlain, February 2005.

Clients of SAAP services in NSW

There are currently 397 SAAP services in NSW, 177 (45%) of which target youth and 89 (22%) that target women escaping domestic violence. One hundred and sixty-six SAAP agencies (42%) are located in Sydney.[10]

In 2002–03, NSW SAAP services provided 47 900 'support periods' to 25 450 different clients.[11] In addition, 12 400 support periods were provided to 9900 children under the age of 18 who accompanied their parents.[12] Support may include accommodation, referrals, meals, counselling, washing facilities and/or other services.[13]

While the number of SAAP support periods provided in NSW has steadily declined since 1996–97, the number of SAAP clients has remained relatively stable.[14] It is estimated that there were 10 750 requests for support that could not be met in the 2002–03 year.[15]

Where do homeless people live in NSW?

Census and SAAP data indicate that people become and remain homeless throughout NSW, with pockets of high homelessness rates in city, suburban, regional, coastal and rural locations. The distribution of homeless people in NSW has significant implications for potential models of legal service delivery to this group of clients. As Chamberlain and MacKenzie note:

> *Most people become homeless in outer suburbs, regional centres and country towns. The provision of early intervention services in these areas assists people in the early stages of homelessness, including those at risk, and reduces the move to the inner city.*[16]

---

[10] AIHW, *SAAP 2002–03 NSW Tables*, Table 2.1, p. 4.

[11] AIHW, *SAAP 2002–03 NSW Tables,* Table 3.1, p. 6. See Appendix 1 for the definitions of 'client' and 'support period'.

[12] AIHW, *SAAP 2002–03 NSW Tables*, Table 9.1, p. 36.

[13] AIHW, *SAAP 2002–03 NSW Tables*, p. 8.

[14] AIHW, *SAAP 2002–03 NSW Tables*, Figure 10.1, p. 41.

[15] AIHW, *SAAP 2002–03 NSW Tables*, Table 7.2, p. 28.

[16] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW*, p. 11.

Homelessness in Sydney

Sixty-three per cent of the NSW population live in Greater Sydney.[17] However 58% of those designated as homeless in the 2001 Census live in Greater Sydney. When marginal residents of caravan parks are included as part of the homeless population, only 51% of the homeless in NSW live in the Greater Sydney area (see Table 3.3).

Table 3.3: Number of homeless people and rate per 10 000 of population, excluding and including marginal caravan park residents, NSW, 2001

	Sydney	*Hunter & Illawarra*	*Rural & remote*	*Coastal*	*NSW total**
Homeless	15 456	3527	3365	4085	26 676
Rate per 10 000	39	37	46	61	42
Caravan park residents	1541	1516	1108	2716	6881
TOTAL	**16 997**	**5043**	**4473**	**6801**	**33 557**
Rate per 10 000 incl. caravan park residents	43	53	61	102	53
% OF TOTAL	**50.7**	**15.0**	**13.3**	**20.3**	**100**

* No geographical information on 243 people

Source: Chamberlain & MacKenzie, Counting the Homeless 2001: NSW, Table 7.9, p. 57.

Census data indicate that there is a very high rate of homelessness in the city core (164 per 10 000). However, about 70% of homeless people in Greater Sydney (more than 10 775 people) are living in suburban Sydney, but outside the central and inner-city area. When marginal residents in caravan parks are included in the picture, 72% of the homeless in Greater Sydney live in suburban areas (see Table 3.4).

In contrast to the city core, approximately half of the homeless people (including marginal residents of caravan parks) in the outer city and growth corridor areas are living with family or friends. A sizeable minority remain in boarding houses or SAAP accommodation in these areas.

[17] Greater Sydney includes the Sydney Metropolitan area, Outer Western Sydney including Penrith and the Blue Mountains, Outer South Western Sydney including Campbelltown, and the Gosford/ Wyong Growth Corridor).

Table 3.4: Geographic distribution of homeless people and marginal residents of caravan parks in Greater Sydney, by accommodation type, 2001

	City Core	*Inner City Ring*	*Outer City Ring*	*Growth Corridor*	*Greater Sydney*
	N=4681	*N=4475*	*N=4904*	*N=2937*	*N=16 997*
	%	*%*	*%*	*%*	*%*
Boarding house	56	51	17	11	36
SAAP	21	10	10	12	13
Friends/relatives	16	36	52	44	37
Improvised dwelling/rough sleepers	17	3	5	8	6
Caravan park	0	0	16	26	9
Total	**100**	**100**	**100**	**100**	**100**
Rate per 10 000	164	47	26	36	43

City Core = City of Sydney, Botany Bay, Leichhardt, Marrickville, South Sydney

Inner City Ring = Lower Northern Sydney, Eastern Suburbs, Inner Western and Central Western Sydney (Auburn, Holroyd and Parramatta)

Outer City Ring = St George–Sutherland; Blacktown; Canterbury–Bankstown; Fairfield–Liverpool; Central Northern Sydney; Northern Beaches

Growth corridors: Outer Western Sydney (Penrith, Blue Mountains); Outer South Western Sydney (incl. Campbelltown); Gosford Wyong Growth Corridor.

Source: Chamberlain & MacKenzie, Counting the Homeless 2001: NSW, Tables 4.3 and 4.5, pp. 42–3.

The figures also indicate that there are many people sleeping rough in outer suburban areas. While they are dispersed over a greater geographic area, there are similar numbers of people sleeping rough in outer suburban and growth corridor areas (475 people) than in the city core and inner city (454 people).[18]

Finally, there are more than 1500 people living as marginal residents of caravan parks in the Greater Sydney area—slightly more than are accommodated in SAAP services in these areas.

Homelessness in regional and rural NSW

While there are more homeless people in Sydney than in other regions of the State, the rate of homelessness per head of population is very high in some rural and regional locations. The homeless rate for coastal NSW[19]

[18] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* p. 42.

[19] Coastal NSW includes three statistical subdivisions: Richmond–Tweed, Mid-North Coast, and South Eastern (extending from the Illawarra to the Victorian border).

(excluding marginal caravan park residents) is 61 per 10 000 (see Table 3.3), compared with 39 per 10 000 in Greater Sydney. However, the distribution and accommodation of the homeless population within these areas vary considerably. For instance, in Tweed Heads 80% of the homeless were with family or friends, but in Lismore only 45% were accommodated in this way. In Coffs Harbour 27% were living in improvised dwellings or sleeping rough.[20]

When marginal residents of caravan parks are included, the rate of homelessness for coastal NSW rises to 102 per 10 000. This is perhaps not surprising as 40% of all marginal caravan park residents were living in coastal NSW.[21] Tweed Heads had the highest number of marginal residents of caravan parks in this area (452 people), while a further 200 were living in each of Coffs Harbour and Port Macquarie. Following is a description of residential parks in the Tweed area:

> *In Tweed Heads there are "about 30" caravan parks. Some cater exclusively for tourists, but others rent out vans to poor people in the off-season. Rents are increased in the summer and marginal tenants are forced to move on. Local informants identified four parks which mainly provide accommodation for poor people and emergency accommodation. They were said to be 'very run down'.*[22]

While the above overview describes different rates and types of homelessness in NSW, it has not described homelessness in each part of the State. This information is available in Chamberlain and Mackenzie's report, *Counting the Homeless 2001: NSW*.[23] The purpose of describing a portion of these data has been to demonstrate that homelessness is a statewide issue, and that the way homeless people are accommodated may vary from area to area. This heterogeneity should be taken into account when considering the legal needs of homeless people in this State.

---

[20] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW*, p. 59.

[21] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW*, p. 60.

[22] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW*, p.61.

[23] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW.*

The transient homeless population

As stated earlier, mobility in and out of housing and other accommodation is a feature of homelessness. However, in addition to people moving from place to place within one area, people move in and out of Sydney and between other locations within NSW and interstate. Shelter NSW described young people in particular moving between country locations, where there is cheap accommodation but no work (e.g. the North Coast), to inner suburban parts of Sydney where there is work, but accommodation is very expensive.[24] This is consistent with the experience of the Northern Rivers Legal Centre, which describes a similar pattern, particularly among people with mental illnesses or alcohol and other drug issues.[25] Unfortunately, there are no reliable statistics available on the numbers of transient homeless people in NSW.

Who is homeless in NSW?

As the following data show, the homeless population in NSW is relatively young, has an increasing proportion of women, an over-representation of Indigenous people, and a high proportion of people with complex needs. Note that the main sources of data for the following discussion are the 2001 Census data as reported by Chamberlain and Mackenzie, and AIHW statistics regarding SAAP clients.

Age

As shown in Table 3.5, an estimated 43% of the NSW homeless population in 2001—nearly 11 500 people—were aged less than 25 years. Yet according to the census data, only 34% of the general population is younger than 25 years.[26] Nine per cent of homeless people were children under 12

[24] Consultations with Mary Perkins & Hazel Blunden, Shelter NSW, November, 2003; and Nathan Ryan, Shared Accommodation Officer, City of Sydney, April 2004.

[25] Consultation with Steve Bolt, Northern Rivers Legal Centre, December 2003.

[26] ABS, *2001 Census Basic Community Profile and Snapshot*: *NSW,* Canberra, 2002, <http://www.abs.gov.au/Ausstats/abs%40census.nsf/4079a1bbd2a04b80ca256b9d00208f92/c2ce6c310b89361fca256bbe008371f3!OpenDocument> (accessed November 2004).

years of age who were homeless with at least one adult, and another 35% were people aged between 12 and 24 years of age.

Table 3.5: Number and percentage of homeless people (excluding marginal caravan park residents) by age, and percentage female in each age group, NSW 2001

	N	*% of homeless population*	*% who are female*
Under 12	2357	9	48
12–18	6242	23	52
19–24	2895	11	47
25–34	4880	18	38
35–44	3783	14	29
45–54	2879	11	27
55–64	1977	8	28
65 or older	1663	6	27
Total	**26 676**	**100**	**39**

Source: Chamberlain and Mackenzie, Counting the Homeless 2001: NSW, extracted from Tables 3.5 and 3.6, pp. 27–8.

Comparing data from the first national census of youth homelessness in 1994 and 2001 Census data examined by the same criteria, Chamberlain and Mackenzie estimate that the number of homeless teenagers in Australia increased by 8.4% between 1994 and 2001.[27]

Where homeless young people are accommodated

In 2002–03, SAAP supported 9990 children who were homeless with their parents. Eighty-eight per cent of these children were aged 12 years or younger.[28] In addition, SAAP supported a further 5550 clients under the age of 20. Unaccompanied people aged between 18 and 20 made up 22% of the total adult population of SAAP clients. A further 15% of all SAAP clients were aged between 20 and 24 years.[29]

Relevant literature and consultations for the current study suggest that many homeless teenagers are accommodated, at least in the early stages

[27] C Chamberlain & D MacKenzie, *Youth Homelessness, 2001. A Research Program Funded by All State and Territory Governments and the Salvation Army,* RMIT University, Melbourne, 2002, http://www.countingthehomeless.com.au/CTHRPT01.pdf, p. 32.

[28] AIHW, *SAAP 2002–03 NSW Tables,* Table 9.1, p. 36.

[29] AIHW, *SAAP 2002–03 NSW Tables,* Table 4.1, p. 10.

of homelessness, with family members and friends.[30] For instance, in their study of youth homelessness, Mackenzie and Chamberlain estimated that 80% of homeless school and TAFE students in NSW were staying temporarily with other households or moving around. A further 18% were in SAAP accommodation, such as refuges, hostels, transitional housing or community placements. Two per cent were 'on the streets'.[31] Students make up 42% of an estimated 6242 homeless youth (aged 12–18 years) in NSW.[32] Chamberlain and Mackenzie observe that:

> *When homeless teenagers drop out of the education system, many become long-term unemployed. Most of these young people remain homeless for a period, and some make the transition to chronic homelessness.*[33]

It appears that as young people become more entrenched in homelessness, accommodation status changes. For instance, Project i, a five-year study conducted in Melbourne, reports on the living arrangements of 403 homeless young people aged 12–20 years, only 8% of whom had been out of home for less than one month. Forty-two per cent had been away from home for 4–6 months and 31% for longer than 12 months. The study has found:

- 26% of participants were staying at friend's houses
- 7% were living on the streets
- 36% were staying at youth refuges
- 32% were living in medium term or transitional housing
- 4% were staying in hotels/motels.[34]

---

[30] See Chamberlain & MacKenzie, Counting the Homeless, 2001: NSW; Chamberlain & Mackenzie, *Youth Homelessness, 2001,* pp.16–18; B Rossiter, S Mallett, P Myers & D Rosenthal, *Living Well? Homeless Young People in Melbourne,* Australian Research Centre in Sex, Health and Society, LaTrobe University, Melbourne, 2003; Caseworker 4.

[31] Chamberlain & Mackenzie, *Youth Homelessness, 2001,* p.18.

[32] Chamberlain & Mackenzie *Youth Homelessness, 2001,* p. iv.

[33] Chamberlain & Mackenzie *Youth Homelessness, 2001,* p. v.

[34] Young people were contacted through services, e.g. refuges, Centrelink, accommodation services. Rossiter et al., *Living Well?,* pp. 8–9.

Perhaps most telling was the fact that 57% had been living at the same place for less than a month.[35]

In consultations, Shelter NSW described young people seeking backpacker accommodation, in preference to staying in boarding houses.[36] However, inner-city homelessness workers said that backpacker accommodation in Inner Sydney tend to refuse entry to people with identification indicating they are Sydney residents.[37]

Gender

On Census night 2001, women and girls made up nearly 40% of the homeless in NSW.[38] However, the proportion of homeless females in each age group decreases until the 35–44 age group, and then plateaus out. Thus, while there were roughly equal numbers of homeless males and females under the age of 25, approximately 70% of those aged 35 and over are male (see Table 3.5).

Other data support this observation. In 2002–03, nearly 70% of female SAAP clients and 56% of male SAAP clients in NSW were aged 34 years or less.[39] Similarly, in 2002–03, the Homeless Person's Information Centre (HPIC) (a statewide information and referral service for homeless people) received more calls from male clients (56%) than female clients (44%). However, approximately half (49%) the calls from clients aged under 18 were from girls, whereas over 70% of the calls from people over the age of 50 were from men.[40]

---

35 Rossiter et al., *Living Well?,* pp. 8–9.

36 Consultation with Shelter NSW, November, 2003.

37 Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, Homeless Person's Information Centre (HPIC); Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

38 Chamberlain and Mackenzie, *Counting the Homeless 2001: NSW*, p.7.

39 AIHW, *SAAP 2002–03, NSW Tables,* Table 4.1, p. 10.

40 Data provided by HPIC. HPIC is a telephone-based accommodation service for homeless people, which has been provided directly by City of Sydney Council (City of Sydney) since 1984. People can call HPIC from anywhere in NSW, though most callers are from people in Sydney. Note: these data count the numbers of calls, not individual callers. Some callers call frequently.

Where men and women are accommodated

The spread across different forms of accommodation appears to differ slightly for women and men when they are homeless. On Census night 2001 in NSW, 50 % of homeless women and nearly 40% of homeless men were found to be staying temporarily with family and friends (see Table 3.6). Seventeen per cent of homeless women and 13% of men were accommodated in SAAP accommodation. Approximately 10% of homeless men and women were living in improvised dwellings.[41]

Table 3.6: Where homeless men and women were accommodated, NSW, 2001

	Males (N=16 272) %	*Females (N=10 404) %*
Boarding house	36	20
Friends/relatives	39	50
SAAP	13	17
Improvised dwellings	11	10
Total NSW	**100**	**100**

Source: Chamberlain & MacKenzie, Counting the Homeless, 2001: NSW, p. 29.

During 2002, an estimated 13 boarding houses in the then South Sydney Council area closed down (particularly smaller places with up to six rooms), with approximately 137 beds lost. This pattern appears set to continue.[42] Unfortunately, there is no available data on where people who were accommodated in boarding houses have moved to since the 2001 census, but Table 3.6 appears to suggest that these closures would have affected more homeless men than women.

Gay, lesbian, bisexual and transgender people

There are no current reliable data on the numbers of gay, lesbian, bisexual or transgender homeless people in NSW. Census and SAAP data do not separately identify people by these criteria. However, there are some

[41] These proportional differences were not formally tested and may not be statistically significant.

[42] Consultation with Nathan Ryan, Shared Accommodation Officer, City of Sydney, April 2004. Also, see South Sydney City Council, *2002 State of the Environment Report,* SSCC, 2002, pp. 48–9.

Australian studies that examine the link between homelessness and sexual identity, particularly among young people.

A 1995 report for TwentyTen Youth Service estimated that there were between 5000 and 6250 homeless gay, lesbian and bisexual youth in Australia. However, this estimate was calculated using research undertaken in the United States, which found that one in four gay and lesbian young people stated they were forced to leave home because of their sexuality.[43]

A more recent study of homeless youth in Melbourne found that few of the 399 respondents self-identified as gay (1%) or lesbian (1%). However, 14% thought of themselves as bisexual or were undecided about their sexuality. Eighty per cent of respondents indicated that they were attracted to the opposite sex only. After comparing these figures to studies of 'housed' youth, Rossiter et al. report "these data indicate that young people attracted to the same sex and/or both sexes are over-represented among the homeless population".[44]

Studies on homelessness among gay, lesbian and bisexual youth suggest that sexuality is one of the issues that prompts gay, lesbian, bisexual and transgender youth to leave home. Other factors include family violence, alcohol and drug use within the family, sexual assault and/or poverty.[45] Consultations for the current study also indicate that transgender people face particular social and legal issues that draw them into and sustain homelessness.[46]

---

[43] Irwin, et al., p.16.

[44] Rossiter et al., *Living Well?,* p. 24.

[45] J Irwin, B Winter, M Gregoric & S Watts, *As Long As I've Got My Doona. A Report on Lesbian and Gay Youth Homelessness,* Australian Centre for Lesbian and Gay Research, University of Sydney, Sydney, 1995, p. 17; Perth Inner City Youth Service, Closets in SAAP, FaCS, Perth, 2003, p. 7, <http://www.facs.gov.au/internet/facsinternet.nsf/VIA/newsaap/$File/closets.pdf> (accessed November 2004); see also A Mackenzie, "Young, Gay and Homeless", in *'Beyond the Divide',* <http://www.afho.org.au/4_publications/conference_papers/Mackenzie.pdf> (accessed November 2004).

[46] Consultation with Grace Abrams, the Gender Centre, January 2004; Interviews nos. 16, 23 & 25.

Families

> *High unemployment rates over the past few decades, coupled with decreasing affordability of housing, has placed many families at greater risk of homelessness. The increasing family homelessness rate also reflects the incidence of family violence, with many women and children becoming homeless as a result of escaping domestic violence. The impacts of homelessness are significant, with adults and children who are homeless experiencing poorer health, education and connection to other family and community.*[47]

Family homelessness has been described as an 'emerging' issue in Australia,[48] with one study noting that "families with children are the fastest growing group among Australia's homeless".[49] Families include couples with children, women with children and, less commonly, men with children.

Excluding marginal residents of caravan parks, families made up 9% of all homeless households[50] in Australia on Census night 2001, but nearly one-quarter (23%) of the entire homeless population in this country.[51] In NSW, 2357 children under the age of 12 were identified as homeless in the company of at least one adult.[52]

---

47 RPR Consulting, *Family Homelessness Prevention Pilot [FHPP] Interim Evaluation Report,* FaCS, Canberra, 2003, p.8, <http://www.facs.gov.au/internet/facsinternet.nsf/content/fhpp_interim.htm> (accessed November 2004).

48 RPR Consulting, *FHPP Interim Evaluation Report,* p. 8; M Mundell, *Condensed Summary: Youth Component of Submissions to the Victorian Homelessness Strategy,* Council to Homeless Persons, Victoria, 2003.

49 Hoogland; see also T Bartholomew, "Family Homelessness: Evolving Understandings, but Static Responses", *Parity,* vol. 15, no. 10, 2002, pp. 12–13.

50 'Households' includes single person households, couples and families. Hence, the number of households in the homeless population is less than the number of homeless individuals, because each homeless couple or family is counted as only one household. See Chamberlain & Mackenzie, *Counting the Homeless 2001*, p. 19.

51 Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 36.

52 Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* Table 2, p. 7.

Where homeless families are accommodated

According to the 2001 Census data, one in five homeless families in Australia were living in improvised dwellings or sleeping rough (including in cars). Just over 40% were in SAAP accommodation and a further 28% were doubling up with other family or friends. Eleven per cent were living in boarding houses.[53] Given the similarities in the distribution of the homeless population in Australia and in NSW (see Table 3.1), the distribution of homeless families across accommodation types in NSW may reflect this nationwide pattern.

There are no available data on the numbers of families living as marginal residents of caravan parks in NSW. The Parks and Village Service (PAVS) reports that, anecdotally the number varies considerably from park to park.[54] A report on child care for families in caravan parks stated that:

> *... families lived in sub standard conditions in caravans where they eat, sleep and socialise in one room with no privacy for parents and exposing children to unnecessary stress. Poor standards in shared amenities (toilets and showers, laundries), inadequate or non existent physical safety provisions were commonly observed. Caravans do not provide adequate protection from inclement weather, heat, humidity, rain and cold, nor were there community facilities such as community rooms or play areas for families to use.*[55]

In NSW in 2002–03, approximately 17% of all SAAP support periods to adults were to adults (usually mothers) with accompanying children.[56] In some rural areas, approximately one-third of support periods provided by SAAP were to adults with children (predominately women with

---

[53] Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 36.

[54] Consultation with Joy Connor, PAVS, March 2003.

[55] G Eddy, *Final Report, Caravan Parks Pilot, Family Crisis Child Care Program, Period March 2001–January 2003,* FaCS, 2003, p.17, <http://www.facs.gov.au/internet/facsinternet.nsf/VIA/homelessness/$File/Family_Caravan_Parks_Pilot.pdf> (accessed November 2004).

[56] AIHW, *SAAP 2002–03 NSW Tables,* Table 5.1, p. 17. 93% of support periods to adults with children were to women, 5% to couples and 2% to men with children. AIHW, *SAAP 2002–03 NSW Tables*, Table 9.3, p.37. See Appendix 1 for the definition of 'accompanying child support period'.

children).[57] However, these figures do not represent all families seeking SAAP assistance. AIHW reports that couples with or without children and single adults with children seeking immediate accommodation through SAAP were more likely than single people to be turned away from SAAP services in Australia. The most likely reason for this was reported to be that there was insufficient accommodation at the SAAP agency where the request was made.[58]

Indigenous Australians

The rate of homelessness among Indigenous Australians[59] in NSW is 110 per 10 000 compared to 40 per 10 000 for the non-Indigenous population. Five per cent of homeless people in NSW on Census night 2001 identified as Indigenous Australians, compared with 2% of the general NSW population. Indigenous people were over-represented in all sectors of the homeless population, but most prominently in SAAP (10% of people in SAAP) and among those living in improvised dwellings (8%).[60]

Chamberlain and Mackenzie warn that these figures may underestimate Indigenous homelessness. This is because the figures are based on the census question about 'usual address'. However, as Indigenous people more commonly move between homes within their extended family network, 'home' and 'usual address' have a broader cultural meaning.[61]

---

[57] AIHW, *SAAP 2002–03 NSW Tables*, Table 5.1, p. 17. 36% of SAAP support periods in the Mid-North Coast were for women and children, as were 34% of support periods in the Nepean region, 32% in the Central Coast and 31% in the Hunter.

[58] AIHW, *Demand for SAAP Assistance by Homeless People 2001–02,* AIHW cat. no. HOU 110, AIHW, Canberra, 2004, pp. 53.

[59] Aboriginal people are indigenous to NSW. The broader term 'Indigenous Australians' is used here, as this is the term used in the data sources.

[60] Chamberlain & MacKenzie, *Counting the Homeless 2001*: *NSW,* pp. 63–4.

[61] Chamberlain & MacKenzie, *Counting the Homeless 2001*: *NSW,* p. 63; see also Memmott et al., *Final Report,* p. 13.

Where Indigenous homeless people are living

Excluding marginal caravan park residents, 42% of homeless Indigenous people in NSW were living in Greater Sydney (compared to 59% of non-Indigenous homeless people). Nine per cent of Indigenous homeless people are in North Western NSW (compared to 2% of Non-Indigenous homeless people), a further 9% in the Mid-North Coast (6% non-Indigenous), 8% in the Hunter (7% of non-Indigenous) and 7% in Northern NSW (3% non-Indigenous).[62]

When marginal residents of caravan parks are included, the proportion of Indigenous homeless people living in Sydney (compared to outside Sydney) drops to one-third. Of the 554 Indigenous marginal residents of caravan parks, 41% are living in the Mid-North Coast or Richmond Tweed areas.

In 2002–03, 17% of SAAP clients in NSW identified as Indigenous. It is noteworthy that nearly two-thirds of this client group were women. Yet less than half (approximately 46%) of non-Indigenous SAAP clients are female.[63] Australia-wide, Indigenous Australians represented 22% of all SAAP clients with accompanying children, and were more likely than other cultural groups to be accompanied by four or more children.[64]

Refugees and other recent immigrants

Eighty-five per cent of clients in NSW SAAP services in 2002–03 were born in Australia.[65] As a point of comparison, 71% of the general population in NSW is Australian born.[66] The smaller proportion of overseas-born clients in SAAP than overseas persons in the general population may indicate that

---

62 Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* p. 64.

63 AIHW, *SAAP 2002–03 NSW Tables.* These figures are calculated from Table 4.4, p. 13. See Appendix 1 for the definition of 'SAAP client'.

64 AIHW, *Children Accompanying Homeless Clients, 2002–03: A Report from the SAAP National Data Collection,* AIHW, Canberra, 2004, <http://www.aihw.gov.au/publications/hou/cahc02-03/cahc02-03.pdf> (accessed November 2004), p. 8.

65 AIHW, *SAAP 2002–03 NSW Tables,* p. 12.

66 ABS, *2001 Census Basic Community Profile and Snapshot, NSW.*

fewer overseas-born people are homeless and/or overseas-born homeless people do not access SAAP services and are accommodated differently while homeless (e.g. with family and friends or on the street).

In consultations for this project, concerns were raised about homelessness among people residing in Australia without permanent residency status or citizenship. This includes people on Temporary Protection Visas and people recently arrived from New Zealand who are unemployed or unable to work.

Foley and Beer's recent study on housing and homelessness among newly arrived Australian residents reported that young refugees are six times more likely to be homeless than other young people in Australia.[67] Foley and Beer also found that discrimination by property managers and overcrowding in poor quality private rental accommodation is the common experience of many recently arrived refugees, with anecdotal evidence suggesting that many refugees end up homeless, or at risk of homelessness, after facing housing difficulties.[68]

People with a history of substitute care as children

There appears to be some evidence indicating an increased risk of homelessness in adulthood for people who have experienced substitute care in childhood. For example, the 1989 HREOC Inquiry into Homeless Children (issuing the Burdekin report), on the basis of previous studies together with evidence presented to the inquiry, found:

> *A period of time spent in a child welfare or juvenile justice institution, or otherwise detached by the welfare system from the natural family, seems to increase significantly a child's chances of becoming homeless.*[69]

---

[67] P Foley & A Beer, *Housing Need and Provision for Recently Arrived Refugees in Australia,* Australian Housing and Urban Research Institute, Southern Research Centre, Canberra, 2003, p. 25.

[68] Foley & Beer, p. 12.

[69] Burdekin report, p. 109. See also pp. 109–17.

More recently, a 2004 Senate committee inquiry about people who experienced institutional or out of home care as children reported that "evidence to this Committee [regarding homelessness among care leavers] … told very similar stories to those reported by Burdekin".[70] However, while there is strong anecdotal evidence of the over-representation of care leavers in the homeless population, there is no statistical information available about what happens to people when they leave state care or about the proportion of homeless people who have a history of substitute care as children.[71]

People recently released from prison

Some research suggests a strong association between homelessness and re-incarceration. In a recent study Baldry et al. followed the post-release experiences of 194 ex-prisoners in NSW and 145 ex-prisoners in Victoria. The incidence of homelessness among the NSW sample increased from 20% at the pre-incarceration stage to 38% at six months post-release. At nine months post-release it decreased again to 28%, as people moved in and out of homelessness. Interestingly, the homelessness rate of the Victorian participants reduced from 12 to 8% in the same nine-month period. Based on the data collected, Baldry et al. estimated that up to half of the NSW participants experienced episodes of homelessness in that nine-month period.[72]

---

[70] Senate Community Affairs References Committee, *Forgotten Australians. A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children,* SCARC, Canberra, 2004. p.162; see also E Baldry, D McDonnell, P Maplestone & M Peeters "Ex-prisoners and Homelessness", *'Beyond the Divide',* p. 5. <http://www.afho.org.au/4_publications/conference_papers/Baldry.pdf> (accessed November 2004).

[71] Burdekin report, p.109; Senate Community Affairs Reference Committee, *Forgotten Australians,* p. 29 and Appendix 5. There is evidence of the over-representation of care leavers in the prison system. See T Butler & L Milner, *2001 NSW Inmate Health Survey,* NSW Corrections Health Service, Sydney, 2003, pp.25–6.

[72] E Baldry, D McDonnell, P Maplestone & M, *Ex-prisoners and Accommodation: What Bearing do Different Forms of Housing Have on Social Reintegration for Ex-prisoners? Final Report,* Australian Housing and Urban Research Institute, Melbourne, 2003, <http://www.ahuri.edu.au/global/docs/70068_final_exprisoners.pdf> (accessed November 2004), pp. i, 12.

It should be noted that Baldry et al. used Chamberlain and Mackenzie's primary level as their definition of homelessness. The researchers commented that if all three levels had been included in the definition, "most of the sample, especially in NSW, would be homeless".[73] Indeed, the study found high levels of involuntary transience were the common experience of most participants, and that this was the factor most predictive of re-incarceration.[74] The study also identified Indigenous female ex-prisoners and sole parents as the most disadvantaged of the study's participants.[75] The Law and Justice Foundation of NSW will shortly be conducting a separate study into the legal needs of prisoners and people recently released from prisons in NSW.

Complex needs and histories of homeless people

Available data, existing literature and the consultations for this current study suggest a higher than average prevalence of psychiatric disorders, substance use issues and trauma (including being a victim of crime) among people experiencing homelessness, particularly among those entrenched in homelessness.

Mental Illness

A high prevalence of psychiatric disorders among those in the homeless population has been reported in the literature and anecdotally by people working in the field.[76] However, actual estimates vary considerably with

[73] Baldry et al., *Ex-prisoners and Accommodation,* p. 11.

[74] Baldry et al., *Ex-prisoners and Accommodation*, pp. i, 12–13.

[75] Baldry et al., *Ex-prisoners and Accommodation*, pp. 20, 25.

[76] C Robinson, *Understanding Iterative Homelessness: The Case of People with Mental Disorders,* Australian Housing and Urban Research Institute, Sydney, 2003, <http://www.ahuri.edu.au/attachments/70072_FINAL_incipienthomelessness.pdf > (accessed November 2004); S Parker, L Limbers & E McKeon, *Homelessness and Accommodation Models for People Living with Mental Health Problems,* 2002, <http://www.mhcc.org.au/> (accessed November 2004); C Robinson, *Shifting the Deckchairs: Homeless People and Mental Health Services in Inner-City Sydney,* Wesley Mission Publications, Sydney, 1997.

the definitions and methodologies employed to collect the data, and particularly with the population of homeless people from which the study sample was drawn.

A 1998 study by Hodder, Teeson and Buhrich reported that about 75% of homeless people contacted through inner-city hostels in Sydney had at least one significant mental disorder (as defined by formal diagnostic tests). The prevalence was higher for women (81%) than men (73%).[77] The expected prevalence rate of at least one mental disorder in the Australian population is 18%.[78] It should be noted that these estimates are drawn from a group of people entrenched in homelessness and cannot necessarily be generalised to other groups of homeless people (e.g. women escaping domestic violence and living with other family members, young people living temporarily with friends, people renting in caravan parks because they are poor).

In the Project i study, of a sample of 403 homeless people aged 12–20 years, 26% reported a level of psychological distress indicative of a psychiatric disorder. Fourteen per cent reported clinical levels of depression, 12% had clinical levels of anxiety, 12% had clinical levels of psychosis, and nearly 35% of the sample had attempted suicide, 11% in the past three months.[79] Thirty-one per cent of the sample group had been out of home for more than 12 months, and 42% for 4–6 months.[80]

Different mental illnesses tend to be more prevalent among different demographic groups. As Parker et al. observe:

---

[77] Based on a sample of 210 homeless people contacted through inner-city SAAP services. T Hodder, M Teesson & N Buhrich, *Down and Out in Sydney: Prevalence of Mental Disorders, Disability and Health Service Use Among Homeless People in Inner Sydney*, 1998, <http://www.wesleymission.org.au/publications/r&d/Down%20and%20Out%20in%20Sydney.doc> (accessed August 2004), p. 19. See also N Buhrich, T Hodder & M Teesson, "Schizophrenia Among Homeless People in Inner Sydney: Current Prevalence and Historical Trends", *Journal of Mental Health,* vol. 12, no. 1, 2003, pp. 51–7.

[78] Hodder et al., p.19.

[79] Rossiter et al., *Living Well?,* p. 17. Young people were recruited from 73 services and agencies supporting homeless people across Melbourne.

[80] Rossiter et al., *Living Well?,* pp. 8–9.

> *Younger age is more strongly associated with schizophrenia, major depression and alcohol disorders. Males have a higher prevalence of alcohol disorder, but women exhibit almost twice as much major depression. Single or separated people are more likely to suffer alcohol disorders and separated people have higher rates of depression.*[81]

This may be reflected in the different types of mental health issues reported in different demographic groups in the homeless population as well. Parker et al. observe that while affective and non-psychotic disorders are seen as less severe than 'major' mental illnesses, "their incidence in the homeless population far exceeds that in other groups".[82]

Turning to another sector of the homeless population, the Select Committee on Mental Health reported that an estimated 40% of people in licensed boarding houses have a mental illness.[83] In a submission to the committee, the NSW Office of the Public Guardian observed that boarding houses were often the only option for people with a mental illness who could not be placed within the very limited number of community-based options for people with special needs.[84]

Finally, HPIC[85] statistics indicated that the most commonly self-reported client characteristic recorded for 2002–03 was 'mental/psychiatric illness'. This characteristic was recorded for 30% of all the 43 962 calls (rather than individual callers).[86]

---

[81] Parker et al., section 3.1.

[82] Parker et al., section 3.1.2.

[83] Select Committee on Mental Health, *Mental Health Services in NSW – Final Report*, Parl. Paper No. 368, Legislative Council, NSW Parliament, Sydney, 2002, p. 133. From the submission of the Coalition for Appropriate Supported Accommodation. The methodology used for reaching this estimate was not reported.

[84] Submission of the Public Guardian, reported in Select Committee on Mental Health, *Mental Health Services in NSW,* p. 133.

[85] HPIC is a statewide telephone-based information and referral service for homeless people.

[86] HPIC data provided by City of Sydney. These data represent 'calls', not 'individuals'; while it suggests an incidence of mental health problems within this population, it may also reflect that people with mental health problems are more likely to phone HPIC more frequently. This may mean that they are experiencing more frequent and repeated episodes of homelessness than callers who self-report other characteristics.

Alcohol and other drug use

Alcohol and other drug dependency are also reported as highly prevalent disorders among some groups of homeless people.[87] In their study of 201 homeless people in inner-city Sydney, Hodder et al. found:

- 49% of men in the sample had an alcohol use disorder, with 42% alcohol-dependent. Fifteen per cent of women had an alcohol use disorder and 13% were alcohol-dependent. This compares to general population rates of 9% of men and 4% of women with alcohol use disorders[88]
- 34% were dependent on drugs, with 19% of men and 23% of women using or dependent on opiates including heroin. An estimated 2% of the general population used heroin[89]
- more than 70% of the sample aged 18–44 years had some type of substance use disorder.[90]

The Project i study reported "high levels of substance use among the homeless young people interviewed", noting the level of injecting drug use as 'alarming'. Twenty-eight per cent of participants self-reported injecting drugs in the past three months (including heroin, amphetamines, crack/cocaine and sedatives). In contrast, 0.6% of young people (14–19 years of age) in the general population were reported to inject an illicit drug in the previous 12 months.[91]

Another issue reported in the literature and in the consultations with stakeholders in the current study, was the extent of 'dual diagnosis' where people have both substance abuse and other mental health issues. Again, these issues were most commonly reported among people entrenched in homelessness.[92]

---

87 Parker et al., section 3.1; Hodder et al., p. 21.

88 Hodder et al., p. 21.

89 Hodder et al., p. 22.

90 Hodder et al., p. 25.

91 Rossiter et al., *Living Well?,* p. x.

92 E.g. Hodder et al.; Rossiter et al., *Living Well?*; C Psychogios, "Homelessness and Disability in Australia", *Parity,* vol. 17, no. 4, 2004, pp. 11–12.

However, the relationship between alcohol and other drug dependency and/or mental health on the one hand and homelessness on the other does not appear to be straightforward or 'causal'. For instance, MacKenzie and Chamberlain point out that some young people in particular may leave home to escape the mental health and substance abuse issues of family members and that some people may develop substance use or mental illness issues after becoming homeless.[93] Indeed, housing crisis, family breakdown and the experience of being homeless may, of themselves, trigger or exacerbate mental health or substance use issues. Parker et al. observe:

> *Once there, the stress of being homeless—exposure to violence, sexual abuse, concomitant substance abuse, and a range of physical health problems—promotes high rates of emotional distress. Depression and distress, two to eight times more likely to occur in homeless people, dramatically exacerbate the symptoms of original mental illness and hamper an individual's ability to exit from homelessness.*[94]

Thus, rather than necessarily causing homelessness, it has been argued that drug and alcohol dependency and mental illness can put people at greater risk of 'chronic homelessness'.[95] It is also reasonable to expect that the prevalence of mental health and alcohol and other drug issues will vary within the homeless population (e.g. among SAAP residents compared to those living with family and friends).

Histories of trauma

Hodder et al. found that 93% of their sample of 210 homeless people in inner-city Sydney reported at least one experience of major trauma in their lives. Trauma could include sexual or physical assault, witnessing someone being badly injured or killed, life-threatening accidents or disasters, war, torture or terrorism. Trauma was reported by 100% of

[93] MacKenzie & Chamberlain, *Homeless Careers.*

[94] Parker et al., section 4.3.1.

[95] MacKenzie & Chamberlain, *Homeless Careers,* p. 57.

women and 91% of men, with multiple experiences of extreme trauma reported as 'common'.[96] The traumatic events may have pre-dated their homelessness (e.g. through family violence).

The vulnerability of homeless young people to being a victim of sexual assault is discussed in Rossiter et al,[97] and the vulnerability of homeless people to being a victim of any crime is discussed in Chapter 4 of this report.

'Causes' of homelessness

A number of reports discuss 'causes' of homelessness.[98] Causes identified include:

- structural causes, including poverty, inadequate affordable housing and unemployment
- government fiscal and social policy causes, including economic and industrial reform, privatisation, availability of public housing and welfare expenditure
- cultural causes, such as dispossession of land and provision of culturally inappropriate accommodation to Indigenous populations
- individual causes, including mental illness, substance and alcohol addiction, gambling, domestic violence and family fragmentation.

While opinion differs as to the relative impact of each of these factors, none can be considered in isolation from the other. The literature and consultations suggest that the experience of homelessness, while differing from person to person, usually involves multiple causes, which cannot be easily separated. While the relative impact of any of these factors

---

96 Hodder et al., p. 29.

97 See also Rossiter et al., *Living Well?,* which includes additional references at p.28.

98 Lynch & Klease, p. 14. See also Council to Homeless Persons, *Fact Sheet 1*: *Overview of Homelessness,* <http://www.chp.org.au/public_library/policy_homelessness.chtml> (accessed November 2004); MacKenzie & Chamberlain, *Homeless Careers.*

will vary from case to case, the chronic shortage of affordable long-term accommodation and the shortage of crisis accommodation for people who are homeless were consistently raised in the literature and our consultations as contributing to and sustaining homelessness.[99]

Lack of affordable housing in NSW

> *When a relationship lasts even longer than a public housing waiting list, you know you're onto a good thing.*[100]

Public housing is a key source of longer term accommodation for people who are homeless or inadequately housed. However, as the following figures indicate, the demand for public housing in NSW far outstrips its supply. The 2002–03 DOH annual report indicated:

- DOH directly managed 129 000 properties, including 12 600 through community housing and 4000 properties on behalf of the Aboriginal Housing Office.
- There were 80 188 households on the waiting list as of 30 June 2003.
- DOH allocated housing to 10 462 new tenants in 2002–03.[101]

These figures suggest that approximately one tenant for every eight households on the waiting list were housed by DOH in the 2002–03 year. 'Homelessness' is one factor that enables a person or family to be placed on the priority housing list. Thirty-seven per cent of the tenants allocated housing in 2002–03 were priority housing applicants.[102]

---

[99] NHHIN Forum, Working Group 1; Consultation with Joy Connor, PAVS, March 2004.

[100] Sue, *Big Issue* vendor, Pitt Street, Sydney, in *The Big Issue,* vol. no 189, 2003.

[101] DOH, *Annual Report 2002–2003,* DOH, Sydney, 2003.

[102] DOH, *Annual Report 2002–03,* p. 14.

Lack of employment/low income

> *The interdependent relationship between employment and housing is an important consideration in attempts to alleviate or prevent homelessness. Many people become homeless as a result of unemployment, and attaining employment can offer a direct pathway out of homelessness.*[103]

Mackenzie and Chamberlain suggest that the "increase in the number of households below the poverty line is the structural factor underpinning the increase in homelessness over the past two decades". They state that "some poor households can survive financial crises, because they have relatives or friends who assist them, but a minority tip over into the homeless population".[104] These authors also observe that the contraction of the youth labour market and the increasing dependence of youth on families for financial support has been a significant factor in the emergence of youth homelessness. They note:

> *It also means that young people who leave home because of family conflict are unlikely to get full-time employment if they drop out of school. In the 1960s, most of them avoided homelessness because they got jobs. Now they cannot.*[105]

The vast majority of homeless people are not in the workforce or are on a very low income. Australia wide, Chamberlain and Mackenzie found that 60% of those aged 16 or older living as marginal residents of caravan parks or in boarding houses were not in the labour force (e.g. on a pension, home duties). A further 25% of marginal residents of caravan parks and 14% of boarding house residents were unemployed (seeking employment). Forty-three per cent of homeless people (aged 16 or older) living with family and friends were also not in the labour market, with a further 16% unemployed.[106]

---

[103] AFHO, *Policy Platform: Homelessness and Employment, Education and Training*, AFHO, Canberra, undated, <http://afho.org.au/5_policy/Policy_Platform/Emp_Ed_Train.pdf>, p. 1. (accessed November 2004).

[104] MacKenzie & Chamberlain, *Homeless Careers,* p. 60.

[105] MacKenzie & Chamberlain, *Homeless Careers,* p. 59.

[106] Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 51. Note that part of the definition of being a 'marginal resident of a caravan park' is that no one in the household is in full-time employment.

In terms of income, Chamberlain and Mackenzie showed that 50% of homeless households living with family and friends in Australia and 74% of households living as marginal residents of caravan parks had a household income of less than $400 per week. More than 70% per cent of those living in boarding houses had a personal income of less than $300 a week.[107]

The relationship between homelessness and unemployment and low income is also reflected by other data. For example, the three most common primary sources of income recorded by HPIC in 2002–03 were the Newstart Allowance (30% of all calls), the disability support pension (27% of all calls) and the sole parent's pension (11%).[108]

Further, administrative data provided by three legal service providers to homeless people in NSW indicated that on average, at least three-quarters of their homeless clients received government benefits, with a significant proportion receiving the disability pension.[109] Between 4–11% of the clients of these services had no income. Homeless people without any income include refugees on Temporary Protection Visas, people without visas, recent arrivals from New Zealand, and people who could not comply with Centrelink requirements.[110]

Pathways to homelessness

While various causes of homelessness have been identified, the following observation remains pertinent:

[107] Chamberlain & Mackenzie, *Counting the Homeless 2001,* p. 52. All figures exclude those under 15 years.

[108] Data provided by HPIC.

[109] Legal service data for pro bono clinics at Exodus and Lou's Place, provided by BDW; legal service data provided by the LCRC.

[110] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, Homeless Person's Information Centre (HPIC); Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

> *Given the diversity of the contemporary population of homeless people, and the complex and multiple needs of homeless people, it is unlikely that explaining homelessness can be reduced to a single factor causal theory.*[111]

Rather than looking for 'causes' of homeless, MacKenzie and Chamberlain explored common pathways into homelessness. They identified three homeless 'careers': a 'youth career' and two adult careers: one precipitated by a housing crisis, the other by family breakdown. The authors also note that some adults enter homelessness as a young person and remain in this situation up into adulthood. The types of legal issues facing people as they move though each of these 'career' trajectories have implications for the type and timing of intervention and support that may be needed. Below is a discussion of these trajectories.

'Youth career' pathway

The 'youth career' pathway focuses on young people leaving home before they have the capacity to live independently. The move out of home tends to be precipitated by family conflict. This may involve conflict between the young person and the parent(s) about behavioural boundaries or particular issues (e.g. the young person's sexuality) or arise from family violence, abuse or neglect. Hoogland observed:

> *Most children leave because they have no real choice—because of serious abuse, sustained family conflict or complete family breakdown, poverty, social isolation, and a sense of hopelessness that places near-intolerable stresses on families.*[112]

In the current study one participant commented:

> *I was made homeless when I first left home. I told my parents that I wanted to go to university. I come from a cattle property. 'You don't want to be a grazier, fuck off.' So I left. I had a car and a pillow. I knew what I was going through. I knew I had this attraction to men and thought that*

[111] MacKenzie & Chamberlain, *Homeless Careers,* p. 12.

[112] Hoogland.

> *I must be gay. That caused problems for my family. I was thrown out of home when I returned because I was gay. I ended up living with a youth counsellor—he took on kids in a small mining town in Queensland, and I ended up living in a youth refuge.*[113]

MacKenzie and Chamberlain note that there is often a period when the young person is in and out of home and still at school. The young person may initially stay with other family or friends, with some moving onto crisis or SAAP accommodation.

The reasons given by young people for seeking SAAP assistance are consistent with this pathway. During 2002–03, 'relationship/family breakdown' was cited as the main reason for seeking SAAP support in nearly 17% of support periods given to young men and 21% of those to young women aged under 25. Other main reasons for seeking support given by men and women under age 25 were:

- eviction (15% males, 11% females)
- financial difficulty (13% males, 10% females)
- their usual accommodation was unavailable (13% males and 9% females)
- domestic violence (10% females, 1% males)
- 'time out from family or other situations' (8% of support periods to males and 10% to females).[114]

Physical, emotional or sexual abuse was cited as a reason for seeking support in 5% of support periods to young women. This may be underreported in SAAP figures as some young women do not want to disclose the abuse.[115]

---

[113] Interview no. 25.

[114] AIHW, *SAAP 2002–03 NSW Tables,* Table 5.3, p.19.

[115] B Adkins, K Barnett, K Jerome, M Heffernan and J Minnery, *Women, Housing and Transitions Out of Homelessness,* Australian Housing and Urban Research Institute, Queensland Research Centre, Brisbane, 2003, pp. 6, 36.

Adult pathways: housing crisis career

The housing crisis pathway acknowledges the fundamental role of poverty and escalating debt in causing homelessness.[116] In the households from which these homeless people come, the main income earner tends to be either outside the labour market or long-term unemployed.[117] The shift to homelessness may be very sudden, facilitated, for instance, by illness or injury, family breakdown, unmanaged debt, loss of employment and no resources to accommodate this situation. As Mackenzie and Chamberlain note, "once adults lose their accommodation there is a sharp break and their problems usually get worse. Many move into the homeless population for a sustained period of time and some adapt to homelessness as a 'way of life'".[118]

MacKenzie and Chamberlain suggest that this pathway probably accounts for the largest proportion of the homeless population. This contention is supported by SAAP data.

The following reasons were prominent among the most commonly cited 'main reasons' clients sought support from NSW SAAP services in 2002–03:

- usual accommodation unavailable (10% of all support periods)
- financial difficulty (11%)
- eviction/ending of previous accommodation (10%)
- recent arrival to area with no means of support (6%).[119]

Adult pathways: family breakdown

When people leave home due to family breakdown, Mackenzie and Chamberlain report that there is commonly a period when people move in and out of their family home a number of times, particularly when

[116] MacKenzie & Chamberlain, *Homeless Careers,* p. 30.

[117] MacKenzie & Chamberlain, *Homeless Careers,* p. 33.

[118] MacKenzie & Chamberlain, *Homeless Careers,* p. 2.

[119] AIHW, *SAAP 2002–03 NSW Tables,* Table 5.3, p. 19.

domestic violence is involved.[120] Support agencies are often not notified of the problems until the situation is very serious.[121] By this stage, crisis responses to find accommodation become the priority.

Again this pathway is reflected in the 'main reasons' provided by clients for seeking SAAP accommodation. In 2002–03, domestic violence was the most frequently cited 'main reason' for seeking SAAP support in NSW (18% of all support periods), with 'relationship/ family breakdown' accounting for a further 11% of support periods and 'time out from family/ other situation' cited as the main reason in a further 5% of support periods. However, domestic violence was the main reason for seeking assistance in 39% of support periods to women alone aged over 25 and in 51% of support periods to women with children.[122] While these figures are high, they may still underestimate the extent of domestic violence among women leaving home.

> *Often women are …reluctant to label experiences of abuse in relationships as domestic violence, citing relationship difficulties or substance abuse as the presenting reason.*[123]

The Commonwealth Family Homelessness Prevention Pilot (FHPP), a federal project involving partnership between Centrelink and other community service providers to prevent homelessness among families, also revealed a high incidence of family violence and family conflict among the 242 families assisted.[124]

---

[120] MacKenzie & Chamberlain, *Homeless Careers,* p. 40–1. For estimates of the extent of domestic violence-related homelessness, see Access Economics, "People Homeless Due to Domestic Violence", in *The Cost of Domestic Violence,* pp. 45–57.

[121] MacKenzie & Chamberlain, *Homeless Careers,* p. 45.

[122] AIHW, *SAAP 2002–03 NSW Tables,* Table 5.3, p. 19.

[123] B Adkins, K Barnett, E Greenhalgh & M Heffernan, "Women and Homelessness: Innovative Practice and Exit Pathways", in *'Beyond the Divide',* <http://www.afho.org.au/4_publications/conference_papers/Adkins.pdf > (accessed November 2004), p. 6.

[124] RPR Consulting, *FHPP Interim Evaluation Report,* pp. 5–6.

Transition from youth to adult homelessness

A third point of entry to adult homelessness is the transition from youth homelessness. While there is some evidence that early intervention to get young people to return home or to find appropriate alternative accommodation may be working,[125] some young homeless people remain homeless into their adult lives. Mackenzie and Chamberlain found that by the time these young people make the transition to adult homelessness, many have issues with drugs, alcohol or mental health, have had contact with Juvenile Justice, are unemployed, and are extremely poor and marginalised. Thus, at this point, they require intensive support. However, intervention at this late stage is less likely to be successful.[126]

Finally, it should be noted that there is considerable overlap between each of the different 'pathways'. For instance, for many people the experience of family breakdown will be tied up with financial hardship and the loss of accommodation. Generally, however, the consultations with service providers and homeless people in the current study, as well as the published data and academic literature, support the type of framework identified by MacKenzie and Chamberlain.

Summary

> *The old, derelict wino on the park bench has been joined by younger men, unemployed and hopeless; by the confused and mentally ill, frightened by the pace of activity surrounding them; by women and children, desperate to escape violent and destructive domestic situations; by young people, cast off by families who can't cope or don't care.*[127]

On Census night 2001, there were an estimated 33 557 people living in homeless conditions in NSW. These people included men, women,

[125] MacKenzie & Chamberlain, *Homeless Careers,* p. 24–5.

[126] MacKenzie & Chamberlain, *Homeless Careers,* p. 49.

[127] Hoogland.

young people and children living temporarily with family and friends, in boarding houses, in caravan parks, in SAAP accommodation and on the street. Approximately half of these people were living in the Greater Sydney area. Only 14% of the homeless in NSW were living in the city core of Sydney. A further 13% were living in the Inner City Ring (see Table 3.4).

Excluding marginal caravan park residents, 43% of the homeless in NSW are under the age of 25 years. This includes young people who are homeless as part of a family group and young people who are homeless alone. Among the younger groups of homeless people, there are equal proportions of young men and women. However, the proportion of homeless men in each age category increases with age. Also represented in the homeless population are Indigenous Australians, families, people who have left prison or state care, gay, lesbian, bisexual and transgender people, refugees and a relatively high proportion of people living with mental illnesses, alcohol and other drug abuse issues and histories of trauma and abuse. Overwhelmingly, homeless people are very poor, usually unemployed and may struggle to maintain an income. It is difficult to separate legal issues from these other complex needs and issues.

While acknowledging the considerable structural factors that impact on homelessness, including diminishing available accommodation and employment, we have not sought to identify a 'cause' of homelessness. Rather, following the lead of Chamberlain and Mackenzie, we have acknowledged common 'pathways' into homeless. These recognise the impact of family breakdown and domestic violence, along with poverty-related 'housing crisis, as a pathway to homelessness.' The loss of connection with family in particular is a key factor in youth homelessness. It is in the context of these pathways that we can begin to discuss the legal needs of homeless people in NSW.

4. Legal issues facing homeless people in NSW

Legal problems are among the many complex issues facing people who are homeless. The purpose of this chapter is to identify the different types of legal issues facing homeless people in NSW.

People tend to face different legal issues as they move through a 'homeless career'.[1] For example, people becoming homeless as a result of family breakdown usually face family law and domestic violence-related issues. On the other hand, people becoming homeless as a result of financial crisis tend to face debt- and housing-related legal issues. Different again, when people have become entrenched in homelessness they tend to face legal issues related to fines and other criminal activities. This chapter will discuss the legal issues commonly encountered by the homeless, which are as follows:

- family law
- care and protection
- domestic violence
- victim of crime
- housing (including SAAP Services, boarding houses, caravan parks and villages)
- discrimination
- debt
- social security
- crime (including fines).

---

[1] See MacKenzie & Chamberlain, *Homeless Careers,* p 1 for a description of 'homeless careers'.

When describing the legal issues associated with people who are homeless, there are two important qualifications that should be kept in mind. First, identifying the legal issues facing people as they become homeless and once they have become homeless is useful for determining appropriate sites of intervention to address their issues. However, distinguishing between legal issues that lead into homelessness and the legal issues that maintain homelessness is more problematic. For example, a family that becomes homeless as a result of family breakdown and domestic violence may also have a housing-related legal issue.

Secondly, many homeless people have more than one legal issue affecting them at any one time. For instance, more than three-quarters of the homeless participants interviewed for the current study had experienced three or more legal issues. To illustrate further, in 2003 the Law and Justice Foundation of NSW conducted a telephone survey of legal need among more than 2400 people living in 'disadvantaged' areas of NSW (South Sydney, Fairfield, Campbelltown, Newcastle, Nambucca and Walgett).[2] One hundred and twenty respondents indicated that they were or had been homeless during the last 12 months.[3] Preliminary analysis of the survey data suggest that homeless respondents faced more legal events than respondents who were not homeless.[4] Thus, at any one time a homeless person may have several legal issues and/ or their homelessness may place them at further risk of legal problems.

---

[2] Law and Justice Foundation of NSW, "Legal Needs Survey 2003", unpublished data.

[3] 'Homeless' respondents were those who reported living in a tent or other improvised accommodation, a boarding house or hostel, or had no fixed address, or no place to live in the 12 months prior to the survey. Respondents who were not identified as 'homeless' are described as 'housed' respondents.

[4] For a discussion of the definition of 'legal event' see the Law and Justice Foundation of NSW, *Access to Justice and Legal Needs: A Project to Identify Legal Needs and Barriers for Disadvantaged People in NSW. Stage 2: Quantitative Legal Needs Survey, Bega Valley (Pilot)*, Law and Justice Foundation of NSW, Sydney, 2003, pp. 6–7.

Family law

Family breakdown has been identified in the literature as a major contributing factor to homelessness for many women and men.[5] As a result, people becoming homeless as a result of family breakdown may experience family law-related legal issues. This is supported by preliminary analysis of the Law and Justice Foundation's Legal Needs Survey 2003, which suggests that a higher percentage of the homeless respondents surveyed had a family law issue compared with those who were not homeless.[6] Family law-related issues, in particular child contact and residency, comprised more than half of the activities undertaken by the Women's Legal Resource Centre for 'homeless' clients in the 2002–03.[7] A number of homeless participants for this study reported experiencing family law-related legal issues.[8]

Issues to do with property settlement were reported as contributing to people's financial disadvantage, which may exacerbate the experience and risk of homelessness for men, women and their families. In relation to her financial circumstances after her separation from her partner, one homeless participant stated:

> *I guess after my separation it was a bit difficult. And I didn't get anything out of the separation. My ex just walked off with practically all my assets ... His [new] partner made my life really difficult.*[9]

A caseworker supporting homeless men reported that he had clients who had been financially disadvantaged by property settlements and were under financial pressure from child support commitments (particularly if they are on income support themselves).[10]

---

5 MacKenzie & Chamberlain, *Homeless Careers;* AIHW, *SAAP 2002–03 NSW Tables.*

6 Law and Justice Foundation of NSW, "Legal Needs Survey 2003".

7 'Family law' is the collection of the following categories as recorded on the Women's Legal Service's database: child contact, child residency, divorce, child support, spouse maintenance, property, property in marriage, property in de facto, separation, other family law. 'Homeless' include women recorded as homeless, living with family/friends, in crisis accommodation or in boarding houses or caravan parks.

8 Interview nos. 11, 17, 18, 19, 20 & 26.

9 Interview no. 17.

10 Caseworker 2.

A number of homeless people in our study also reported problems with parenting orders, resulting in loss of custody to the other parent or reduced access to their children.

> *It's playing with my head that kids, one day, you play with them, the next day you can never see them. They're not dead, but you've just got no access to them. Originally I'm from WA. I'm married with two children (10 and 7). I've got a consent order for access to my children, but I am yet to see them for the first time. We are at war: I signed over the house in order to get access to the children, but because it was open-worded on the consent order, her access could be once every 60 years for 5 seconds, and that's legal, 'cause there's no time on it.*[11]

Difficulties with parenting orders were reported to be compounded by a lack of appropriate housing. For instance, one caseworker spoke of a 'catch-22' situation, in which to get appropriate housing the parent needs to have residency of children, but in order to be granted residency of children, they must have appropriate housing. This caseworker was of the view that DOH would only give a single man a bedsit or a one-bedroom flat, even if he was seeking residency of his children. However, he added that not having appropriate housing can cause problems for men (and women) who are seeking residency of their children.[12] This was also reported by Chamberlain and MacKenzie:

> *Colin, 34, lost his job and was subsequently evicted. He lived in his car for some weeks, before moving to a boarding house. He has one son from a previous relationship. Five-year-old son, the heart and soul of his life, is not permitted to stay at the rooming house with him. Custody hearing only now allows him daytime access. They go to parks, beaches, swimming pools, and films, all at higher cost than their home. He is currently behind with his rent and at risk of losing his single room.*[13]

---

[11] Interview no. 11; also Interview nos. 18, 19, 20 & 26.

[12] Caseworker 2; also Interview nos. 18, 19 & 20 talked about difficulties having residency of their children due to their homelessness.

[13] MacKenzie and Chamberlain, *Homeless Careers,* p. 35.

Care and protection

Parents

Interviews for this study indicated that care and protection issues were a problem for many homeless people. Care and protection matters concern the intervention of the State government through the Department of Community Services (DoCS) into the lives of children who are at risk of abuse or neglect.[14] Some families who are homeless were reported to be afraid that DoCS would remove their child if they admit that they are homeless.[15] Furthermore, due to mandatory reporting obligations for DoCS, parents also reported being afraid of approaching services (including SAAP services) with their children, for fear that their children will be removed by DoCS. A single mother told researchers in one study:

> *I've already been involved with Family Services and was frightened to admit I was homeless. They might separate us, and send my son to a shelter, or take the younger children into care. I didn't know what to do. It was terrible. I felt like such a failure to my kids.*[16]

This type of fear was reported to be exacerbated in small towns where refuge or SAAP workers and DoCS workers know each other.[17]

A number of homeless people consulted in this study had children who were already in the care of DoCS. One participant described the difficulties she encountered in trying to set up suitable accommodation so she could have her children returned to her:

> *I had DoCS involved. I had family services involved. We had a meeting and they all, Department of Housing and everything, they all put references in to have me priority-housed. This went on for about six months. Then they told me there was nothing available. At that time, I told them that I'd take anything. One room even, just so that I had*

---

[14] *Children and Young Persons (Care and Protection) Act 1998* (NSW), s. 34

[15] Consultation with Sybille Kaczorek, San Miguel Family Centre, November 2003.

[16] Single mother, 35 years old. MacKenzie & Chamberlain, *Homeless Careers*, p. 32.

[17] Consultation with WLS, November 2003.

somewhere for me and the kids to sleep. They told me that there was nothing available.[18]

Children and young people

While this study did not examine care and protection issues in detail, in the literature, homeless children and young people are reported to often have a history of interaction with DoCS. Young people may have already been in care prior to becoming homeless, or they might come into contact with DoCS after they become homelessness.[19] The prevalence of care and protection issues was raised in the 1989 Burdekin report: a study commissioned for the report, which documented the experiences of 100 homeless children in Queensland and NSW, found that 29 per cent of children interviewed had been the subjects of a child welfare report.[20] The report also found that Aboriginal children nationally are over-represented in child welfare.[21]

Two young people interviewed for this study also had children who were in the care of DoCS. One had also been under DoCS care herself when she found out that she was pregnant:

He's with DoCS because I had him when I was 16. I was underneath DoCS at the time ... I ended up having a mental breakdown. There was only three choices I had—give my son to my mother, give my son to my uncle or hand him over to DoCS. I wasn't going to give him to my mum because she was an alcoholic and was abusive. My uncle was the father. So, the only other choice I had was to give him to DoCS. I signed the papers and that.[22]

---

[18] Interview no. 20.

[19] Baldry et al. have argued that "some evidence is suggesting that one of the strongest predictors of being homeless and incarcerated is having been a state ward or in substitute care for an appreciable part of childhood". Baldry et al., "Ex-prisoners and Homelessness", p. 5. <http://www.afho.org.au/4_publications/conference_papers/Baldry.pdf> (accessed November 2004).

[20] I O'Connor, "*Most of Us Have Got a Lot to Say and We Know What we are Talking About': Children's and Young People's Experiences of Homelessness* (1988), pp. 102–4, as reported in Burdekin report, para. 21.11.

[21] Burdekin report, para. 21.23.

[22] Interview no. 22.

Legal issues arise when parents or young people wish to challenge the care orders made about them.[23]

Domestic violence

Victims

The literature indicates that domestic violence contributes to homelessness for women and their families when women have to leave their homes in order to escape the violence.[24] When this is coupled with the financial disadvantage they may experience as a result of leaving their partners, homelessness can become a reality for these women. In 2002–03 an estimated 94 400 people in Australia were homeless due to domestic violence.[25] In the same period, the estimated temporary accommodation costs due to domestic violence was $88.1 million.[26]

Early indications from the Law and Justice Foundation's Legal Needs Survey are that a higher percentage of homeless respondents had a legal issue arising from domestic violence compared with other respondents.[27] Further, domestic violence-related issues accounted for the second largest group of legal activities undertaken by the WLS for 'homeless' clients in 2002–03, after family law (including child contact and residency issues).[28]

---

[23] Legal services data provided by Shopfront Youth Legal Centre (Shopfront). Shopfront specifically directs its services to homeless children and young people.

[24] Chung et al., p. 46; see also AIHW, *SAAP 2002–03 NSW Tables* and Chapter 3 of this report.

[25] This includes victims, their families and perpetrators. Access Economics, *The Cost of Domestic Violence,* p. 55.

[26] This included government funding (both state and federal) to supported SAAP and contribution by domestic violence victims themselves to accommodation such as boarding houses, motels, caravan parks. Access Economics, *The Cost of Domestic Violence,* p. 56.

[27] Law and Justice Foundation of NSW, "Legal Needs Survey 2003". The respondent could be a victim or a perpetrator of domestic violence.

[28] 'Family law' is the collection of the following categories as recorded on the WLS database: child contact, child residency, divorce, child support, spouse maintenance, property, property in marriage, property in de facto, separation and 'other family law'. 2002–03 legal services data provided by the WLS, where 'homeless' has been defined using the Chamberlain and Mackenzie definition.

Women who experience domestic violence may leave and return to their homes many times before leaving permanently.[29] The path into homelessness for women who experience domestic violence appears to start often after they have experienced the violence for a sustained period of time, and are consequently forced to leave home to stay with friends or family, or at a refuge or other SAAP service.

> *I lived in Canberra with my ex. He was too violent so I came back home here with my kids. And I have been living with mum ever since.*[30]

Chamberlain and MacKenzie note that intervention at this point is difficult because many women do not seek assistance.[31] Relevant legal processes at this point may include securing an apprehended violence order (AVO), with or without an exclusion order, family law matters, including child residency and contact, child support and property settlements (e.g. shared debts).

One caseworker from the Hunter region commented that if a woman leaves her partner because of domestic violence, the stress of the relationship breakdown is compounded by having to find safe accommodation and deal with the legal issues arising from the relationship breakdown. In this caseworker's experience, women may find life more out of control and difficult when they leave the domestic violence situation than when they were in it.[32]

Exclusion orders

An apprehended violence order (AVO) is one option for people experiencing domestic violence. AVOs can impose a number of conditions on the defendant, namely, the prohibition of the defendant from assaulting, threatening or interfering with the person in need of protection.[33] In

---

[29] MacKenzie & Chamberlain, *Homeless Careers,* pp. 40–1; see also Chung et al.

[30] Interview no. 26.

[31] MacKenzie & Chamberlain, *Homeless Careers,* p. 8.

[32] Newcastle Workshop Group 1.

[33] R Barry (ed.), *The Law Handbook: Your Practical Guide to the Law in NSW,* 9th ed., Redfern Legal Centre Publishing, Redfern, NSW, 2004, p. 1023.

addition, a Magistrate can also make an 'exclusion order' under s 562D of the *Crimes Act 1900* (NSW). This prohibits the defendant from staying at or entering the family home, regardless of their legal interest in the property.[34] Addressing domestic violence through AVOs and exclusion orders can alleviate homelessness for women in some circumstances, because:

> *For women and children victims of domestic violence, exclusion orders provide an opportunity to leave a situation of domestic violence but remain in their own homes.*[35]

The reality is, however, that exclusion orders are used infrequently in the justice system and women are still leaving home following domestic violence. Edwards conducted a study into the granting of exclusion orders in NSW at local courts in Waverley and Sutherland.[36] The study found that exclusion orders are often not attached to AVOs. For example, 32 exclusion orders between both courts were made over a six-month period compared to approximately 30 AVOs at Waverley Local Court and 50 AVOs at Sutherland Local Court per week.[37]

In granting exclusion orders, Magistrates must consider the accommodation needs of the parties involved and any effects on the children.[38] Edwards found that the accommodation needs of the defendant were being considered over the accommodation needs and general interests of women and children; a lack of available accommodation for the defendant was often cited by Magistrates as a reason for not granting exclusion orders.[39]

---

34 *The Law Handbook*, p. 1024.

35 R Edwards, *Violence Excluded: A Study into Exclusion Orders in South East Sydney*, Violence Against Women Specialist Unit, NSW Attorney General's Department, Sydney, 2004, <http://www.agd.nsw.gov.au/cpd.nsf/files/ViolenceExcluded.pdf/$FILE/ViolenceExcluded.pdf> (accessed June 2004).

36 Edwards, p. 2.

37 Edwards, p. 14.

38 *Crimes Act 1900* (NSW), s 562D.

39 Edwards, p. 14.

Edwards also highlights the role of the police in granting exclusion orders through the use of Telephone Interim orders. These are orders made in situations where it is not possible to have an AVO made straightaway in court, but where the police believe that a domestic violence offence has occurred.[40] Edwards found that it was easier to have an exclusion order granted as part of a telephone interim order and to have it continued than at a hearing.[41]

In summary, exclusion orders can play a significant role in preventing women and children from becoming homeless. Edwards provides strong argument for the need for police and magistrates to be better informed of the existence of exclusion orders and their relevance in preventing homelessness for women and families. As one victim asked:

> *Why do we women live in refuges when the perpetrators live in the comfort to which they are accustomed? Why must we three eke out a living on a pension of $330 per week of which $130 goes in rent while my husband lives on his salary of $750 per week of which $85 goes on the mortgage and lives alone in a four-bedroom, two-bathroom house.*[42]

Defendants

Perpetrators also face legal issues arising out of domestic violence. Defendants may be rendered homeless by the enforcement of exclusion orders[43] that contain 'do not approach' and 'not to contact' provisions.[44] A lack of alternative accommodation can push defendants into homelessness. This not only affects men, but women and young people who are defendants to AVOs. One woman who was interviewed stated:

> *I had my own Housing Commission place, and two children. The father and I separated and the kids find it very hard, they are very nasty to me. So my daughter (17 years old) was in a gang so I slapped her, and*

40 *The Law Handbook,* p. 504.

41 Edwards, p. 12.

42 Chung et al., p. i.

43 Exclusion orders can be made as part of an AVO.

44 Consultation with Legal Aid NSW, October 2003.

> *because I hurt her she reported it to the police ... She put an AVO on me. I had to leave my own house and have the father move in with her, so I pay the rent there and I can't even live there.*[45]

Another stakeholder spoke about young people as defendants to AVOs:

> *One thing that has been coming up recently is often breach of AVOs, where they've had to leave their parents house, or their mother's house, fathers had to leave and when there's been police involved, the police have encouraged the family to take an AVO on a young person, then maybe after a week or two the young people has again gone to approach them, the family or whatever, and it may not necessarily be for any sort of violence, it's just the young kid wants to go home again and he ends up getting his AVO breached again like that.*[46]

One rural solicitor said that it was fairly common for people to be breached for going home when they weren't allowed to, particularly if they were intoxicated.[47]

Victim of crime

Many homeless people (women, men and young people) have been victims of crime. A lack of secure housing means that many homeless people are vulnerable to acts of violence while homeless. In the Law and Justice Foundation's Legal Needs Survey 2003, preliminary analyses of the data suggest that a higher percentage of homeless respondents said they had been a victim of assault in the previous year compared with other respondents.[48] In a 1998 study of homeless people living in inner-city Sydney, 58% of the 157 respondents had been seriously physically attacked or assaulted, 46% had been threatened with a weapon, held captive or kidnapped, and 55% had witnessed a serious crime while homeless. Among the 38 women

[45] Interview no. 19.

[46] Roundtable Consultation, 27 August 2003.

[47] Consultation with Richard Ikaafu, WALS, Walgett, May 2004.

[48] Law and Justice Foundation of NSW, "Legal Needs Survey 2003".

who were surveyed, two thirds had been indecently assaulted and half had been raped while homeless.[49]

Twenty of the 30 homeless people interviewed in the current study reported that they had experienced crimes such as assault, stalking and sexual assault, being 'conned', being mugged and having their property stolen while homeless.

A manager in a SAAP service for men referred to the dangers of living on the streets for homeless people and the threats to safety that they face. He said that many of their clients come in during the day to sleep, having kept 'one eye open' to ensure their safety while sleeping rough during the night.[50] One participant stated:

> *When you're living out on the street, you've gotta be careful and you've gotta watch where you go down, where you go to sleep, because you don't know whose gonna come up after you. And if they find out that you've been paid, then they're a threat. They want to come up and rob you, because they know you've got a pension.*[51]

Another participant reported having been the victim of crime on three separate occasions:

> *I got threatened by a guy with a syringe. That was in Redfern ... I also got hit on the head with a big heavy frypan and got concussion. I was also robbed at knifepoint at the Cross but that was a few years ago. I reported it as I was a bit scared and really pissed off. He took me gear and me money.*[52]

A few of the homeless participants in this study also reported being the victim of a crime while they were staying at a boarding house or refuge.

> *I was in a very unfortunate situation where I was socially and in company with some people and this gentleman stalked me and he came into the*

[49] Hodder et al., p 29.

[50] Consultation with Brian Hockings, Welfare Services Manager, Matthew Talbot Hostel, November 2003.

[51] Interview no. 2.

[52] Interview no. 12.

> *place where I was staying (a boarding house in inner-city Sydney) and he accused me of stealing a laptop computer and he went to the police and told them that I stole the laptop computer, and of course I had no knowledge and it transpired that he was a con artist and as a result I had to leave my hotel where I was staying.*[53]
>
> *I won three meat trays. I had them all in the fridge frozen and put them into small sections ... I came home that night and found they had just got a knife and had cut the bags open.*[54]

Consistent with experiences cited in the literature,[55] women living on the street reported being vulnerable to assault, including sexual assault.

> *I've been homeless for about six weeks and for the first four weeks I stayed at a place a friend was staying and they were all alcoholics and it got to the stage where the men expected sex from me to stay there. So I said no and I left and I fell asleep in the park, and I was almost raped.*[56]

Other groups such as gay and lesbian and transgender people who are homeless are also at great risk of violence on the streets. A social worker from the Gender Centre stated that there are many examples of homeless transgender people suffering violent assault, abuse and murder.[57] One young transgender woman working as a prostitute reported:

> *I've been raped and bashed. And the guy got off with a fucking speed charge, because I was a sex worker and it's what you should expect.*[58]

Consultations with stakeholders and participants in the current and other studies suggest that many homeless people were victims of crime as children.[59] One caseworker commented:

---

[53] Interview no. 17.

[54] Interview no. 13; Interview no. 10 also reported having items stolen in boarding accommodation.

[55] Hodder et al., p. 29; Rossiter et al., p 28, reported that 59% of the homeless young women interviewed had "experienced involuntary sex".

[56] Interview no. 19.

[57] Consultation with Grace Abrams, Gender Centre, January 2004.

[58] Interview no. 25.

[59] See also Mackenzie & Chamberlain, *Homeless Careers*; Chung et al.

> *A lot of our clients present with a past history of having been say in institutional care in their younger years and you know there's allegations of physical sexual abuse and so on that have contributed to their psychological damage and some of these people want to pursue civil action to recover compensation.*[60]

One participant stated:

> *I was sexually abused by my father as a child. There was one stage about four years ago when I thought I should do something about it. I went to the police and they said it is a long time ago and you would have a hard time proving it … and don't waste our time basically. And so that was pretty hard.*[61]

People who have been the victim of a violent crime current and past and suffered an injury as a result can apply to the Victim's Compensation Tribunal under the Victims Support and Rehabilitation Act 1996 (NSW).[62] A number of the legal clinics that provide services to homeless people in Sydney assist clients to complete applications for victim's compensation.[63] Applications to the Victim's Compensation Tribunal will be discussed in further detail in Chapter 8.

Housing

As defined in Chapter 1, people who are homeless may be living on the street, in SAAP accommodation or a refuge, with family or friends, or in a boarding house or caravan park. People at risk of homelessness might be living in private rental accommodation or public housing. Housing-related legal issues vary with accommodation type.

Preliminary analysis of the Law and Justice Foundation's Legal Needs Survey 2003 indicated that an overwhelming number of homeless people

---

[60] Roundtable Consultation, 27 August 2003.

[61] Interview no. 9.

[62] *The Law Handbook,* p. 1078.

[63] E.g. BDW legal clinics at Exodus and Lou's Place, the PIAC/PILCH HPLS and Shopfront.

reported that they had had a housing-related legal issue in the twelve months prior to the survey.[64] These data may reflect Chamberlain and MacKenzie's notion of the 'housing crisis career', in which adults begin to move into homelessness as a result of financial and housing problems, which lead to them losing their accommodation and becoming homeless.[65]

Legal issues relating to housing may essentially be divided between those issues that contribute to a loss of accommodation, and those issues that lead to people having problems regaining stable accommodation once they are homeless. Ideally, legal intervention should occur before people lose their accommodation. However, people may also need legal assistance to regain accommodation.

Housing-related debt

Consultations with stakeholder groups and homeless people for the current study indicated that housing-related debt can contribute to people losing their accommodation and prevent them from regaining it. Debts can arise from rent arrears or from damage to a property, with the accumulation of debt potentially leading to eviction. This can occur in the private rental market, public housing, boarding houses and caravan parks. However, most of the following examples refer to tenants' relationships with the DOH, perhaps reflecting the experience of those interviewed for this study.

Rent arrears

Some participants reported falling into arrears with their rent as a result of financial disadvantage or loss of income.

> *When Social Security cut me off the dole, I was made homeless. No money to pay rent. That was it. So luckily for me I went and saw the Housing people and they said ... tough luck, bugger off and come back in 12 years' time.*[66]

[64] Law and Justice Foundation of NSW, "Legal Needs Survey 2003".

[65] MacKenzie & Chamberlain, *Homeless Careers,* p. v.

[66] Interview no. 13.

An older Indigenous woman living in public housing said that she faced eviction because she had fallen behind in rent due when in hospital for a month.

> *I went down to Sydney for hospital for a while …so I got so far behind. They want me to put $1000 in on Friday and I haven't got it. So they are going to kick me out.*[67]

Damage

Debt arising from damage to a property caused by tenants themselves or by others (including family or friends) is another source of housing-related debt. WLS staff, including domestic violence support workers, commented that they had many female clients with DOH debt arising from damage caused by their partners to the property in domestic violence situations.[68] The following case study exemplifies this problem. The woman from rural NSW described below was homeless with her three children under the age of seven.

> *She had left her de facto (who was father of children) two weeks before the baby was born. She was living out of her car staying at several friends' houses. He had a history of violence to her. One year previously they were living together with their children in a Department of Housing house in another town. He violently assaulted her causing her physical injuries and causing extensive damage to several walls in the house and the door. She fled the home and notified the Department of Housing that she was handing in the keys. At the date of relinquishing her tenancy she had several hundred dollars in arrears. The Department of Housing tenancy agreement listed her and de facto jointly as tenants. She accrued a further one week's rental debt as she handed her keys in at the beginning of the rental period (and so was liable for the full two weeks' rental). The Department of Housing assessed the damage to her home at $2000. She had a debt to the Department of Housing of about $3000 (rental arrears and damages/repairs).*

---

[67] Interview no. 27.

[68] Consultation with WLS, November 2003.

> *She began paying small amounts of this debt during the year. She did not make regular payments but did make lump sums when she had the money—$50 amounts here and there and several $200 one off payments.*
>
> *After leaving her de facto she approached the Department of Housing for emergency/priority housing. She was advised by the Department of Housing that she could not go back onto the Priority Housing Waiting List until she had substantially repaid her debt to the department. She approached two real estate agents in town to inquire about homes for private rental. They said there were no properties available. The Department of Housing had sent her an 'Acknowledgement of debt' form to sign, stating that she accepted the debt and nominating a suitable repayment regime.*[69]

Problems arise when people do not notify DOH when another person causes damage to their property, or if they leave their property without notifying the department and other people continue to inhabit the property.

> *He [teenage son] got straight into the house after I moved out and it was just trashed. So I got a bill there. I just wasn't thinking straight. I never notified them. I never told them I was moving out.*[70]

Damage by others was identified by one caseworker as a particular issue for people going to prison who do not want to lose their DOH property, so they allow their friends or family to live in the property. The tenant is subsequently responsible for any damage done to the property or rent not paid while they were in prison.[71]

Outstanding debt

As well as contributing to homelessness, outstanding housing debt was identified as a barrier for people trying to re-access DOH accommodation. To be eligible for public housing a tenant has to "repay, or undertake a formal agreement to repay, any outstanding debts owed to the Department

---

[69] Case study provided by Women's Legal Services.

[70] Interview no. 5.

[71] NHHIN Forum, Workshop Group 1.

[i.e. DOH]".[72] Some housing debts were said by caseworkers to be as high as $6000.[73] DOH will negotiate arrangements with tenants to repay rental arrears, which may include paying by instalments. However, one caseworker stated that more recently this had become much harder to do.

> *But they're not allowed to access housing again until such time as that debt is paid off. So they can't live anywhere. They can't generally work because they can't present themselves properly to work so how do they end up getting back into the system? So how do we have these laws that allow these things to happen?*
>
> *Public housing plays a crucial role in the provision of stable accommodation to many financially and socially disadvantaged people. Hence, exclusion from public housing prohibits people from accessing stable accommodation, putting them at direct risk of homelessness.*[74]

Renewable tenancy agreements

The NSW Government recently passed the Residential Tenancies Amendment (Public Housing) Act 2004 (NSW) to target 'anti-social behaviour' in public housing.[75]

Under the Act, 'acceptable behaviour agreements' (ABAs) may be used by DOH to regulate the behaviour of those tenants that it believes are responsible for anti-social behaviour.[76] Where any other 'lawful occupant' of the premises breaches the ABA, the tenant who has signed an ABA is treated as having breached the ABA themselves.[77] DOH plans to implement these powers once it has drafted its related policy, and trialled ABAs in two geographic areas.[78]

---

[72] See DOH, *Policy ALL0040A: Priority Housing,* 2003, <http://www.housing.nsw.gov.au/phop/all0040a.htm> (accessed November 2004).

[73] Roundtable Consultation, 29 August 2003.

[74] Roundtable Consultation, 29 August 2003.

[75] See *Residential Tenancies Amendment (Public Housing) Act 2004* (NSW).

[76] *Residential Tenancies Amendment (Public Housing) Act* 2004 (NSW), Sch. 1, cl. 3 – new s. 35A.

[77] *Residential Tenancies Amendment (Public Housing) Act* 2004 (NSW) Sch.1, cl.3 – new s. 35A(2)

[78] C Martin, *The Public Housing 'Anti-social Behaviour' Laws – Information Sheet for Tenants,* 2004, <http://www.tenants.org.au> (accessed November 2004).

The new laws require that, following an application from DOH, the Consumer, Trader and Tenancy Tribunal (CTTT) must order that the tenancy be terminated in either of two situations:

- a tenant refuses the DOH's request to sign an ABA[79]
- a tenant cannot prove that a member of the household, or any lawful occupant of the premises, did not seriously or persistently breach the ABA.[80]

Further, even where no ABA applies, the new laws provide extra grounds for the CTTT to grant an application from DOH for immediate termination of the tenancy, such as where the tenant has intentionally engaged in conduct that would be reasonably likely to cause a member of staff to be intimidated or harassed.[81]

These laws have the potential to put public housing tenants at greater risk of homelessness. They present particular problems for tenants (and their families) with mental illnesses, acquired brain injuries or intellectual disabilities.[82] The government envisages that the particular difficulties faced by such tenants will be addressed through support from interagency specialist response teams.[83] However the decision not to provide extra funding to staff this initiative has been criticised by one service provider.[84]

---

[79] *Residential Tenancies Amendment (Public Housing) Act 2004* (NSW), Sch. 1, cl. 5 – new s. 64(2A)(a).

[80] *Residential Tenancies Amendment (Public Housing) Act 2004* (NSW), Sch. 1, cl. 5 – new ss. 35A(2), 64 (2A)(b).

[81] *Residential Tenancies Amendment (Public Housing) Act 2004* (NSW), Sch. 1, cl. 8 – new s. 68A.

[82] R Lake, *Housing NSW Acceptable Behaviour Program,* 2004, <http://www.pwd.org.au/e-bulletin/pwd_e-bulletin_10.html#nsw3> (accessed November 2004).

[83] A Megarrity, *Residential Tenancies Amendment (Public Housing) Bill, Second Reading Speech,* 3 June 2004, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20040603043> (accessed November 2004), p. 9640.

[84] Uniting Care, 2004, <http://www.unitingcarenswact.org.au/library/housing_homelessness/letter_tebbutt_public_tenants0604summary.doc> (accessed November 2004).

Residential tenancy databases (RTDs)

There are several RTDs operating in NSW.[85] Each are privately owned electronic databases that purport to act as 'risk minimisation' services for property managers (including landlords, real estate agents, caravan park owners and boarding house operators). For a fee, property managers can use them to gain access to adverse information about prospective tenants.[86]

RTDs were identified by a number of caseworkers and tenancy workers in this study as a significant barrier to homeless people re-entering the private rental market.[87] Landlords or real estate agents can place people on these lists and essentially 'blacklist' them, whereby other landlords will not rent out properties to listed tenants.

> *If you end up on a tenant black-list, then you cannot gain accommodation, and then you get back into that problem of falsifying documents to regain some sort of accommodation.*[88]

During the course of this research, tenancy workers and other caseworkers commented that there was no legislation governing the use of RTDs, nor were there mechanisms for appealing a decision to place a tenant on a database.[89] They felt that people were being put on such databases arbitrarily and, "even if an issue was resolved, it was very difficult to get off a database, making it very difficult to secure accommodation".[90] Tenancy workers also felt that people were being put on the databases for

---

[85] Note the Queensland residential tenancies legislation provides greater protection to tenants.

[86] While most RTDs can only be accessed by real estate agents, there are some RTDs that other property managers can access, including caravan park managers, self-managing landlords, and restricted letting agents. See Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General, *Residential Tenancy Databases Issues Paper,* 2003, <http://www.consumer.gov.au/html/download/Fianl%20discussion%20paper.pdf> (accessed November 2004), p. 5.

[87] Consultation with Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003; Jo Hamilton, Convener, NHHIN, December 2003; Tenants Union of NSW (Tenants Union), tenancy workers and BLAG, January 2004; caseworker 4.

[88] Interview no. 25.

[89] Consultation with Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003.

[90] Consultation with Jo Hamilton, Convener, NHHIN, December 2003.

making complaints to the CTTT, or for personality clashes with real estate agents.[91] In the late 1990s, Boswell and Warren estimated that about 7500 tenants in NSW may be adversely affected by RTDs per year. They also suggest that this number is likely to have significantly increased with the growth of RTDs over the past decade.[92]

Until recently, residential tenancy databases operated largely unchecked by government regulation.[93] However, legislation introduced on 15 September 2004 established a new Rule of Conduct for real estate agents, aimed at making the listing procedures of RTDs fairer.[94] The legislation limits the reasons for which a real estate agent may list a tenant to situations including where debts are owed by the tenant to the landlord, or where the CTTT has terminated the tenancy because of the tenant's behaviour.[95] The new reforms have also set time limits for listings to be retained and improved the process for dealing with disputes about listings. Finally, tenants will no longer be charged up to $4.50 a minute to check whether they are listed on a database.[96]

While the new regulations in NSW fail to prohibit RTDs, they represent improved protection from RTD abuse for many tenants. However, they have been criticised for not going far enough, since they fail to provide tenants with rights which they can seek to have enforced by the CTTT. Further, they do not apply to database users who are not real estate agents, such as private landlords and boarding house or caravan park operators.[97]

---

91 Consultation with Tenants Union and BLAG, January 2004; Caseworker 4.

92 Shelter NSW, *Submission to the Commonwealth Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General Inquiry into Residential Tenancy Databases,* 2004, <http://www.consumer.gov.au/html/Residential/submission%20downloads/Shelter_NSW.pdf> (accessed November 2004), p. 5.

93 Shelter NSW, p. 9.

94 See Business Agents Amendment (Tenant Databases) Regulation 2004.

95 Property, Stock and Business Agents Regulation 2003, Sch. 6A, cl. 4(2).

96 See <www.tica.com.au> (accessed July 2004). TICA is one of the largest tenancy databases operating in Australia and New Zealand; C Martin, *Tenant Blacklists to be Regulated at Last: New Rule of Conduct for Agents Offers Some Hope against Database Listings,* 2004, <www.tenants.org.au> (accessed 19 November 2004).

97 See C Martin, *New Tenant Database Rule to Commence,* 2004, <http://www.tenants.org.au/> (accessed November 2004).

Finally, the new restrictions purport to apply only to listings made after 15 September 2004,[98] leaving the thousands of people who were listed before this date without the protection afforded by this new legislation. However, since the legislation is somewhat ambiguous on this point, there may be grounds for arguing that some of the provisions of the new Regulation also apply to pre-September 15 listings, such as the requirement that tenants have free access to listed information about themselves. It is uncertain how the Regulation will eventually be interpreted.

Boarding houses

Many homeless people, particularly in inner-city Sydney, live in boarding houses on a medium- to long-term basis.[99] Because boarders and lodgers are excluded from the protection of the *Residential Tenancies Act 1987* (NSW) (by s 6(1)(d) of that Act), boarding house residents lack legislative protection against arbitrary eviction, disputes over payment and other unfair treatment from boarding house landlords.[100] This means that there is no regulation of living conditions, penalties for rent arrears or unfair and arbitrary evictions for people using this type of accommodation. Unsanitary and dangerous conditions, unsatisfactory lock systems on doors, people's belongings being stolen, exorbitant rent and people's reluctance to complain about these conditions for fear of being evicted were problems mentioned by participants and tenancy workers interviewed for this study. One participant noted:

> *The place where I was staying before I moved into this other place, they were charging $120 a week and it was just a pest-infested dive. You know, the place was filthy, the kitchen was filthy ... no one was looking after the place so I just moved out. And things got taken out of me room too.*[101]

[98] Property, Stock and Business Agents Regulation 2003, Sch. 6A, cl. 2.

[99] See Chapter 3.

[100] See Chapter 3.

[101] Interview no. 10.

Another participant had this to say:

> *It's a dive. The toilet doesn't flush, and when it does flush the water runs downstairs into the power box and a roof with a big hole in it. They've got smoke alarms that have got nothing in them. $230 a week, it's disgusting. I felt safe there because I've got a partner. I didn't felt safe there, you know. At night, you can't lock the door. From the inside you can, from the outside it just unlocks. You pay $230 a week for this two-room nothing. You might as well be living on the street.*[102]

One tenancy worker commented:

> *Repairs are another issue for boarders and lodgers. In fact, repairs are a big issue to them. A lot of boarders and lodgers are too scared to approach boarding house operators about repairs. Since boarders and lodgers do not have tenure, they want to maintain friendly relations with boarding house operators. Also, the physical presence of boarding house operators in the boarding house is relevant. The operators often live on the boarding house premises and collect rent from the boarders and lodgers. To the tenants, the boarding house operators are, therefore, scary figures. Thus, the tenants are too scared to approach the boarding house operators about repairs.*[103]

A recent fire audit conducted by South Sydney City Council in 2002 reported dangerous conditions in boarding houses. This audit found that of the 100 boarding houses that underwent a fire inspection, over 95% of these required some degree of upgrading to meet current safety standards.[104]

Currently, there is no legislative protection against eviction or the use of penalties for boarding house residents who are late with rent.

> *Some people pay week-to-week. If they fall behind in their rent, some landlords may be lenient but others will evict them straight away.*[105]

---

[102] Interview no. 20.

[103] Consultation with Tenants Union, tenancy workers and BLAG, January 2004.

[104] South Sydney City Council, *2002 State of the Environment Report*, SSCC, Sydney, 2002, pp. 48–49.

[105] Nathan Ryan, Shared Accommodation Officer, City of Sydney, April 2004.

> *We stayed in a boarding house on 'x' Street. That was about May last year ... [partner] went to Housing because he was on the dole at the time and he got three weeks' rent [assistance] and that got us a room. But the second week he just got sick and we had to spend some of that bond cheque because he could not go up to work and by the third week he got a couple of days' work and paid our rent but we were still behind because the policy was that for every day you are late with the rent you have to pay an extra $20. So we only lasted there not even a month.*[106]

Furthermore, bonds required by boarding house operators are not held by the Office of Fair Trading or by any other rental bond board. Hence, landlords can retain bonds without a good reason.

One participant indicated that they would leave if a problem arose to avoid confrontation:

> *I am usually pretty well alright with landlords. Mainly with rooming houses—I've stayed with rooming houses—there's just been problems, I don't get along with someone, I'll complain to management and this fellow's been there longer than me so management will take his side. Just little things like that. To save confrontation I just move out and start again. It's just easier to move on. In 22 years I couldn't count all the addresses I've had. I've lived in four capital cities. Three capital cities in the last four months alone.*[107]

The NSW Boarders and Lodgers Action Group (BLAG) has been conducting a long-term campaign for legislative reform to provide protection to people living in private boarding houses. A Boarders Bill has been drafted by BLAG, covering the legal process for eviction, a process for getting back possession of goods, a process for repairs and maintenance and a process for recovery of bond.[108] However, at this stage, the bill has not been adopted.

---

[106] Interview no. 21.

[107] Interview no. 5.

[108] BLAG, *BLAG Campaign Kit, 2004,* Tenants Union, North Sydney, 2004, <http://www.tenants.org.au/member/publications/campaign_Kit_2.pdf> (accessed November 2004).

Caravan parks and villages

> *I moved into a caravan. Now that is accommodation which does not require references, can be a week-to-week arrangement rather than a 3-month, 6-month or 12-month lease. A lot of us find ourselves in accommodation which is less than favourable. The kind of accommodation which you wouldn't even consider as a dog kennel. In my caravan, the walls seeped water. But that's where we find ourselves, because we can't rent through the mainstream rental market.*[109]

Caravan parks vary in type of clientele and standard. Some caravan parks cater only to tourists or elderly people while other parks may provide general accommodation in addition to holiday accommodation. Parks also vary in the amenities, services and standard of accommodation they offer. Our interviews indicate that the legal issues facing marginal residents of caravan parks[110] and villages are similar to the legal issues facing people living in (inner-city) boarding houses. According to a solicitor working with park residents, like boarding houses, marginal residents may experience arbitrary eviction and in some residential parks conditions are unsanitary and unsafe.[111] Another solicitor commented that there were often restrictions on the length of time people could stay in a park, since many parks evict people at the beginning of holiday seasons.[112]

Residential park residents who sign an agreement to rent are governed immediately by the following NSW legislation: *Residential Parks Act 1998*, Residential Parks Regulation 1999, *Landlord and Tenant (Rental Bonds) Act 1977* and *Consumer, Trader and Tenancy Tribunal Act 2001*. Under these Acts they are assigned certain rights and can bring matters before the CTTT.[113] However, park residents who have not entered into

---

[109] Interview no. 25

[110] Defined as households who are renting their vans on a permanent basis, and with no member in full-time employment. Marginal residents of caravan parks are covered by this report (Chapter 1).

[111] Consultation with Joy Connor, PAVS, March 2004.

[112] Consultation with John Fitzgerald, Legal Officer, PAVS, February 2004.

[113] NSW Department of Fair Trading, *Application of Residential Park Laws,* <http://www.fairtrading.nsw.gov.au/realestaterenting/parksvillages/applicationofresidentialparklaws.html> (accessed November 2004).

formal agreements with park owners have less protection from arbitrary eviction, and limited redress when conditions are unsanitary or they are treated unfairly. Consultations with tenancy workers suggest that many marginal residents of caravan parks fail to enter into formal agreements with park owners.[114] Tenancy workers also report that like residents of boarding houses, people are often afraid to complain about conditions, for fear of being evicted.[115] The story of one male caravan park resident illustrates this well.

> *He has been living in the park for 17 months. He has no written agreement. The tenant's home is a van with a framed vinyl annex and wooden door with an inadequate lock. The van itself has no door. The annex's door can be easily forced open, even when locked. The tenant has been burgled twice. He has been complaining to the park owner for the past 12 months about this and other problems but is fearful of eviction because he doesn't have a written agreement.*
>
> *There are urgent repairs needed: attached to van is a gas bottle which is leaking—the valve is faulty. The hot-water system sits adjacent to this bottle and has an open flame and only a thin piece of metal separates the flame from the gas bottle. Additionally, the electrical outlet in the kitchenette is buzzing and shorting out. Appliances continuously cut out and only through wiggling plugs can the tenant make them work.*
>
> *Further, the van is infested with fleas (he has no pet), cockroaches, and rats; there is rat faeces all through his belongings. Vermin enter through a hole in the floor and, presumably because there is no door to the van.*
>
> *Despite numerous requests by the tenant the park owner does not respond. Rather, he has told the tenant that he is planning to redevelop the park for under 55 year olds, the implication being that the tenant will be evicted at the owner's whim. The tenant has therefore felt unable to take his complaints further for fear of eviction. He was raised in this area and has nowhere else to go.*[116]

---

[114] Consultation with Joy Connor, PAVS, March 2004; Consultation with John Fitzgerald, Legal Officer, PAVS, February 2004.

[115] Consultation with Joy Connor, PAVS, March 2004.

[116] Case study provided by PAVS, May 2004.

Thus, fear of eviction further limits the capacity of park residents to take action if they face arbitrary eviction or unsafe or unsanitary living conditions. This fear is compounded by the increase in the number of park closures due to development[117] across NSW which has limited the availability of alternative accommodation once people are evicted.

Discrimination

Illegal discrimination has been identified as a factor that not only affects people while they are homeless but may also contribute to their becoming homeless. For example, discrimination against people trying to gain access to accommodation may contribute to them becoming homeless. Discrimination against people in relation to employment may contribute to general financial disadvantage, which in turn may compound the risk of homelessness.

Discrimination against certain groups of people trying to access accommodation in the private rental market has been raised as an issue in consultations for the current study and in the literature, racial discrimination being a particular issue for Aboriginal people.

> *Discrimination for our Aboriginal clients is huge in terms of ...quite well-demonstrated cases of people being told ...that places have been let when they haven't actually been let ... particularly around tenancy and things like boarding houses and private rental market. We get lots of complaints of people being refused accommodation ...and finding that ... one of their mates came around half an hour later and got offered the place.*[118]

Age discrimination was also raised as a particular problem for young people:

[117] Consultation with Joy Connor, PAVS, March 2004.

[118] Roundtable Consultation, August 2003.

> *Young people often have trouble accessing private rental, because real estate agents will not let them sign leases. Sometimes the youth services will sign a lease on their behalf, but this can lead to problems.*[119]

Chung et al. in their study on domestic violence and homelessness also refer to marital status discrimination against 'single mothers' by some landlords and real estate agents who are reluctant to let premises to 'single mothers' receiving income support.[120] Chamberlain and MacKenzie also identified this group as facing discrimination when seeking housing:

> *Louise is a single mother with three children. She was employed as a secretary at a local school, but left her job when she was diagnosed with a serious illness. Then her landlord issued a notice to quit. To her surprise she encountered considerable discrimination. Real estates were reluctant to rent a property to a single parent who was not employed. She has been moving from place to place, trying not to outstay her welcome.*[121]

One transgender participant and one caseworker working with transgender clients who was interviewed for this study reported experiencing discrimination in both finding accommodation and in the job market:

> *When you're talking about things that have led to homelessness, we've got quite a few transgender clients who have lost jobs, have been refused accommodation, have you know been discriminated against in a range of different ways that have contributed to them becoming homeless.*[122]

> *Trying to rent a property, they want to know your financial history, your employment history. If you're a transgender and you've been a street worker for eight or nine years, where am I going to find a reference for a house? Where am I going to find a financial history? I'm not. No one's going to give a transsexual prostitute a loan. No one's going to give a transsexual prostitute a job. No one's going to give a transsexual prostitute a roof over his or her head. If you try and take these issues up you find you get a black mark against your name.*[123]

---

[119] Consultation with Jo Hamilton, Convenor, NHHIN, December 2003.

[120] Chung et al., p. 49.

[121] MacKenzie & Chamberlain, *Homeless Careers,* p. 36.

[122] Roundtable Consultation, 27 August 2003.

[123] Interview no. 25.

People with complex needs such as drug and alcohol abuse and mental illness, who are over-represented in the homeless population, are reported to routinely be discriminated against in accessing employment and housing.[124] This further exacerbates their risk and experience of homelessness. Discrimination on the basis of psychiatric disability will be investigated further in the Law and Justice Foundation's Access to Justice and Legal Needs of People with a Mental Illness report.

Finally, people who are homeless appear also to be discriminated against on the basis of their homelessness: in employment and in accessing employment, transport and goods and services. According to Lynch, people who are homeless are turned away from restaurants, refused bus entry and rejected by landlords. Lynch concludes that while there continues to be no legal protection from discrimination against a person on the basis of their socio-economic status, homeless people will continue to be discriminated against.[125] Thus, people rendered homeless perhaps from being discriminated against on the grounds of their race, gender and marriage status attract further discrimination and added barriers to redressing their situation as a consequence.

Discrimination in SAAP services

Stakeholders consulted for the current study reported that certain groups of homeless people are being denied access to some SAAP services on the basis of mental illness, substance abuse or a history of violent behaviour.[126] Some stakeholders felt that people with complex needs were being denied access because SAAP services are not equipped (with funding and appropriately trained staff) to assist people with mental health and/or substance abuse issues.[127] Comments were also made that eviction

[124] Robinson, *Understanding Iterative Homelessness.*

[125] P Lynch, "From Cause to Solution: Homelessness and the Law in Australia and the United States", *'Beyond the Divide',* http://www.afho.org.au/4_publications/conference_papers/conference_papers.htm (accessed November 2004).

[126] NHHIN Forum, Workshop Groups 1 & 3.

[127] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

(usually on the basis of breaking service rules such as bringing alcohol onto the premises) in some circumstances was wrongful; that sometimes the decision to evict was left to the discretion of the worker;[128] and that there had been in the past reports of an 'unofficial blacklist' preventing some people from accessing particular hostels for behaviour infractions.[129]

The NSW Ombudsman recently reported on the issue of exclusion and eviction of people with complex needs from SAAP services.[130] It found that many SAAP services had specific policies to exclude people with a mental illness, drug and alcohol problems, people with disabilities, people who exhibited challenging behaviour, pregnant women or people unable to pay for accommodation. The NSW Ombudsman recommended that SAAP services should move away from a "presumption of risk to considered assessment and risk management", whereby "policies, procedures and practices are inclusive, and that any exclusions be based on considered assessment of the presenting circumstances of individual clients and fair and transparent exiting procedures".[131]

Consultation with the Gender Centre also suggested that some SAAP services are reluctant to provide services to people who are transgender, and described incidents where a person's identity was not recognised and they were placed with people from the opposite gender.[132] Reflecting on her experience in accessing supported accommodation, one transgender participant said:

> *They wouldn't let me stay in the women's section and made me stay on a men's floor. I felt really unsafe. I had to leave. I didn't think I could complain to the Anti-Discrimination Board because I thought that the (service) had an exemption on the basis of religious grounds.*[133]

---

[128] Consultation with Michael Coffey, Youth Accommodation Association, December 2003.

[129] NSW Ombudsman, *Assisting Homeless People: The Need to Improve Their Access to Accommodation and Support Services*, Sydney, 2004, p.74, http://www.nswombudsman.nsw.gov.au/publications/page.html (accessed November 2004).

[130] NSW Ombudsman, *Assisting Homeless People.*

[131] NSW Ombudsman, *Assisting Homeless People,* p. 14.

[132] Consultation with Grace Abrams, social worker at Gender Centre, January 2004.

[133] Interview no. 16.

This may act as a barrier to people accessing services. For example, one stakeholder working with gay and lesbian young people consulted for the current study said that gay and lesbian young people reported fear of discrimination deterred them from accessing SAAP services.[134]

Debt

Debt is experienced as both a precursor to homelessness and as a feature of people's lives once they are homeless. Consistent with Chamberlain and MacKenzie' 'housing crisis career', the accumulation of debt when people are already financially disadvantaged can result in people losing their accommodation.[135] This can be made worse by gambling and drug and alcohol issues.[136] Preliminary analysis of the Law and Justice Foundation's Legal Needs Survey 2003 suggests that nearly three times the number of homeless people had experienced credit or debt problems compared with other respondents.[137] The Interim Evaluation Report of the FHPP found that two-thirds of the 242 families assisted in the project had debts, while only 5% had sufficient funds to cover bonds or emergencies.[138]

Debt also figures in people's lives once they have become homeless. All the legal clinics supporting homeless people consulted for this study indicated that they commonly assisted homeless clients with debt matters.[139] For instance, debt was one of the three most common legal problems dealt with by the PIAC/PILCH HPLS in its first six months of operation. When fine matters are added to general debt, then these constituted 15% of the

[134] Consultation with Althea MacKenzie , Twenty10 Youth Services, June 2004.

[135] MacKenzie and Chamberlain, *Homeless Careers,* p. 7.

[136] Consultation with Brian Hockings, Welfare Services Manager, Matthew Talbot Hostel, November 2003; see also Lynch "Begging for Change". For a discussion on the relationship between gambling and homelessness see E Antonetti & M Horn, *Gambling the Home Away: A Study of the Impact of Gambling on Homelessness,* Hanover, Melbourne, 2001.

[137] Law and Justice Foundation of NSW, "Legal Needs Survey 2003".

[138] RPR Consulting, *FHPP Interim Evaluation Report,* pp. 5–6.

[139] As indicated by data provided by the LCRC, BDW clinics at Exodus and Lou's Place, and the PIAC/PILCH HPLS. See Chapter 6 for a description of these services.

267 legal problems dealt with in this period.[140] The LCRC submission to the Law and Justice Foundation for the current study noted:

> *The accumulation of fines, arrears on contract repayments, Centrelink repayments and repayments to pawn brokers mean these clients need someone to advocate on their behalf [to] (i) negotiate and implement a system of payment by instalments or (ii) to reduce amounts being unfairly claimed by creditors.*[141]

Consultations with caseworkers, other stakeholders and homeless people themselves indicated that some of the debts that tipped people into homelessness (e.g. rent arrears), continued to impact on their lives once they have become homeless. Indeed, debt to government agencies including fines, Centrelink-related debt and housing debt were major issues for those consulted. The nature and impact of these types of debt are discussed in greater detail in the relevant sections of this chapter.

Mobile phone debt also was identified as a problem for homeless people by a couple of stakeholders.[142] The LCRC reported that the biggest consumer problem facing its clients related to the charges levied by mobile phone companies when contracts are ended prematurely by customers.[143]

> *I just stopped the contract, and told them where to put it, and their phone literally. They reckon I owed them $600, but the phone hadn't been working anyway. They chased me for a while, sent me some letters, but then they stopped. It would cost them more to go to court and get the money out of me anyway.*[144]

The LCRC submission to this project stated that "many of the clients coming to the LCRC are easy targets for people selling 'attractive' ways of life, the mobile phone companies take advantage of those who can least

---

[140] Data provided by the PIAC/PILCH HPLS, for the period 28 May to 27 November 2004.

[141] Submission by Prue Gregory on behalf of the LCRC, 21 September 2002.

[142] NHHIN Forum, Workshop Group 1; submission by Prue Gregory on behalf of the LCRC, 21 September 2002.

[143] Submission by Prue Gregory on behalf of the LCRC, 21 September 2002.

[144] Interview no. 15.

afford contracts".[145] A caseworker from Newcastle commented that for many people who are homeless, mobile phones provide the only stable point of contact available to them. This is particularly important when people are searching for employment or housing. The mobile phone takes on greater significance when a person's accommodation may be changing rapidly. This same caseworker observed that homeless people may enter into contracts even if they are aware that they will not be able to make repayments.[146]

Debt to banks, particularly from overdrawn accounts, was also raised as an issue of concern. One caseworker referred in particular to difficulties with direct debit facilities. Where a person has arranged to have bills directly debited from their account, and it happens that there are insufficient funds to pay a certain bill, the bank may choose to process the direct debit anyway. If this happens, the bank may charge the person a dishonour fee, an account overdrawn fee, and interest on the overdrawn amount.[147] The total sum of the fees can have a considerable impact.

> *How the banks let them overdraw I've got no idea. They then get charges on their debits which puts them more in debit, and then they get more charges. They never get ahead. I try and tell people to at least leave $5 in their account every month. It's a big problem with people who are alcoholics.*[148]

Thus, a common feature of debt and debt repayment for the homeless, irrespective of its source, is that it often compounds, not only making the debt harder to repay but also leaving less funds available for adequate housing.

---

[145] Submission by Prue Gregory on behalf of the LCRC, 21 September 2002.

[146] NHHIN Forum, Workshop Group 1.

[147] CCLC, *Pitfalls with Direct Debits from Cheque/Savings Accounts*, <http://www.cclcnsw.org.au/DFT_Project_2002/module_18_Banking/cw_dd.html> (accessed November 2004).

[148] Consultation with Manager, Walgett Centrelink, February 2004.

Social security

As noted in Chapter 3, the majority of homeless people are unemployed and dependent on social security benefits administered through Centrelink. Twenty-four homeless participants consulted for this study were currently receiving social security benefits from Centrelink. Eleven participants reported that they had had some sort of problem with Centrelink.[149] These problems related to eligibility, breaches, debt and getting 'cut off', or late payments. These issues and their relationship to homeless people are discussed below.

Eligibility

For people at risk of or experiencing homelessness, ineligibility for social security benefits can exacerbate the risk or experience of homelessness. In the current study, stakeholders reported instances of homeless clients experiencing problems proving or meeting the eligibility criteria for social security benefits. Clients included young homeless people, ex-prisoners and people on Temporary Protection Visas.

In addition, two homeless participants interviewed for this study who were from New Zealand also reported having experienced problems with eligibility for social security benefits.[150] New Zealand citizens are permitted to work in Australia. However, since February 2001, they are not permitted to apply for social security payments unless they obtain permanent residence.[151] Both of these participants said they were not aware of these changes before they came to Australia. Both referred to the cost of applying for permanent residence as a barrier to actually obtaining permanent residence, which would allow them to receive social security benefits.

[149] Interview nos. 2, 3, 5, 9, 10, 12, 13, 18, 20, 21 & 23.

[150] Interview nos. 18 & 20.

[151] Department of Immigration and Multicultural and Indigenous Affairs, *New Zealanders in Australia,* 2004, <http://www.immi.gov.au/facts/17nz.htm> (accessed November 2004).

> *The immigration thing. I was wondering why it costs so much. I thought we were supposed to be the same country.*[152]
>
> *I am a bit confused ... I started casual work early in October and I have [not got work now] and I have been two times to see if I am entitled to anything while I am out of work and they said no because ... well I understood that after I had been here for two years I would be entitled to benefits. But obviously they have since changed the laws and now I have to be a permanent resident.*[153]

Similarly, people on Temporary Protection Visas are entitled to work and have access to Medicare but they are not entitled to income support (Newstart, Youth Allowance or the disability support pension).[154] Without adequate financial support, this puts people on Temporary Protection Visas at risk of homelessness.

It is also possible that homelessness may exacerbate problems in meeting eligibility requirements for social security benefits. Lynch argues that Centrelink's proof of identity requirements discriminate against people who are homeless and therefore unlikely to possess identity documents such as birth certificates or drivers licences.[155] One stakeholder working with young homeless people reported that this may include young people leaving home after family breakdown or disagreement who can have great difficulty in providing proof of identity and proof of their independence in order to be eligible for income support from Centrelink.[156]

Young people can, in such circumstances still be eligible for income support if they can establish that it is 'unreasonable' for them to return home. However, one caseworker interviewed in this study reported that as

---

[152] Interview no. 18.

[153] Interview no. 20.

[154] Department of Immigration and Multicultural and Indigenous Affairs, *Temporary Protection Visas,* 2003, <http://www.immi.gov.au/facts/64protection.htm> (accessed November 2004).

[155] P Lynch, "Homelessness and the Right to Social Security", *Lawyer's Weekly*, vol. 150, 2003, p. 10.

[156] Caseworker 4. See also B Rossiter & R Sutton, "Accessing and Maintaining Income Support: Difficulties, Research and Collaborative Solutions", in *Out of the Blue: New Responses to Young People and Homelessness*, papers from forum at St Kilda Town Hall, Melbourne, 2003.

part of their assessment, Centrelink officers sometimes ring the applicant's parents. The parents may state that the young person is able to return home, thereby undermining the child's assertion that it is 'unreasonable' for them to do so.[157]

People coming out of prison who are estranged from their families were also identified by stakeholders consulted for this study as having problems as they may not be able to obtain identification (such as birth certificates) held by family they are estranged from.[158] Thus, such people's efforts to ensure financial security are stymied at a crucial point in their lives. This may increase the risk of homelessness for people exiting prison.

Breaching

Breaching was the main problem relating to social security benefits reported by both caseworkers and participants in the current study. 'Breaching' (the reduction in or termination of payment) occurs when a social security recipient fails to comply with either the 'administrative' or 'activity test' requirements of their allowance. Administrative requirements include attendance at Centrelink interviews and the provision of certain personal information to Centrelink (e.g. change of address, notification of any income). 'Activity test' requirements refer to 'looking for work' requirements, which include participating in training or a Work for the Dole program.[159] 'Activity test' requirements only apply to Newstart and Youth Allowance.

Several homeless participants in this study reported that they had been breached at some point.[160] Examples of these include:

[157] Caseworker 4.

[158] NHHIN Forum, Workshop Group 3.

[159] D Pearce, J Disney & H Ridout, *The Report of the Independent Review of Breaches and Penalties in the Social Security System*, Sydney, 2002, http://eprints.anu.edu.au/archive/00001515/01/index.html (Accessed November 2004).

[160] Interview nos. 2, 10, 12, 13 and 23.

> *I keep worrying about the banks and Centrelink, if the money is going in, because if you do a little fault, they will just lock you out and don't pay you.*[161]

> *You always get some hassles but it's pretty run of the mill. They've cut me off and stuff, but they always put me back on. It's happened a few times. One time they said I didn't give them my tax file number, but they already had it, and another time they said I didn't put my form in, and I was cut off. They said I had to go see someone. That means you've got to wait and see if you get it sorted out.*[162]

Caseworkers interviewed for this study reported that homeless people can often have great difficulty in complying with administrative and activity test requirements. One caseworker from Walgett suggested that homeless people have difficulty in complying with social security requirements because they do not fully understand what is expected of them:

> *Clients of Walgett SAAP services are most usually from the lower socio-economic strata of society and have been bewildered by rules and expectations of government departments, agencies and lifestyle choices.*[163]

This is evident by the fact that homeless people may be breached as a result of not declaring their earnings to Centrelink. Social security recipients are allowed to earn a certain amount of additional income, but they must declare the gross amount of income they earn to Centrelink each payment period. One caseworker noted recipients are required to disclose the 'gross amount' of income they receive, but that many of this person's homeless clients did not know the exact gross amount they earned in a particular week because their pay period did not correspond to the Centrelink pay period or they may have been paid cash in hand.

> *A lot of this casual[isation] ... of the workforce has brought with it a lot of strange arrangements designed to avoid tax and clients sometimes*

---

[161] Interview no. 2.

[162] Interview no. 12.

[163] Walgett SAAP Services, *Submission for Recurrent Funding for an Alcohol and Other Drug Worker at Walgett SAAP Services*, 2003, p. 5.

> *get themselves into bother in the sense of sometimes honestly under-disclosing their income. Sometimes they're not even informed what the gross amount is. They're just given an amount in cash and God knows what the employer is doing, whether the employer is actually remitting to the Tax Department at all and they end up getting into bother and getting breached for that and getting cut off benefits for quite lengthy periods.*[164]

One participant reported:

> *I notified them. I told them I was doing it. But because the job's pay week and the Social Security's pay week didn't match up I had to let Social Security know in advance what I thought I might be earning. So if I knew I was going to be working I would have put down more on the form so they wouldn't [breach me] ... But I didn't know how much I was going to get until I actually got paid. So, that was fine except that Social Security took me to court. They said I had been cheating.*[165]

Another reason why homeless people have difficulty in complying with Centrelink requirements is that they lack a fixed address at which to receive correspondence from Centrelink. Examples were given of homeless people being breached or their payment being cut off because they had failed to receive a letter that had required them to do something (such as attend a job interview or a Centrelink interview).[166]

> *Not replying to correspondence is common. You know, 'We sent you three letters and you didn't respond so you're cut off until further notice.'*[167]

> *You know you always have trouble with Social Security. They keep chopping and changing the rules and don't inform you or nothing else, but you just go do and see them ... to sort it out. I went down once, they cut me off. They got their letters sent back and, well, no address, so we'll just cut him off. You know I went down there and they paid it up ...*[168]

---

[164] Roundtable Consultation, 27 August 2003.

[165] Interview no. 13.

[166] Consultation with Kevin Rozzoli, Haymarket Foundation, October 2003.

[167] Roundtable Consultation, 27 August 2003.

[168] Interview no. 10.

A caseworker working with young homeless people stated that private job network agencies can recommend that clients be breached for not showing up for an appointment or job interview with them, even when, as is often the case for homeless people without addresses, the client did not receive the letter from Centrelink that notified them that they had to go to the interview.[169]

Debt and issues related to breaching could be avoided with appropriate intervention before they occur. It should be recognised that Centrelink outreach workers and social workers (such as those attending SAAP services described in the previous example) can and do intervene before people are breached or before they incur large debts. Their role is discussed in greater detail in Chapter 7.

Centrelink debt

The other legal issue relating to social security that was raised in this study was debt to Centrelink. People usually accrue Centrelink debt in situations where they have received payments from Centrelink that they were not entitled to. For example, they may have not declared their earnings and earned too much in a particular period, or they may be ineligible for a particular payment because their circumstances have changed (e.g. they may not have informed Centrelink of the fact that they had stopped studying).

> *Yes, I have already been breached for not declaring my earnings, but I did the wrong thing. But I only did three days' work and I had to pay over a thousand dollars.*[170]

One caseworker referred to a situation where a client had gone to prison and Centrelink had not been informed. As a consequence, the client accumulated a debt of $7000 to Centrelink.[171] Another participant who

[169] Consultation with Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003.

[170] Interview no. 23.

[171] Roundtable Consultation, 27 August 2003.

had been overseas for sometime had a nervous breakdown, found himself homeless, and was faced with an old Austudy debt on his return to Australia.

> *I had a debt with Austudy from [10 years ago] that I was unaware of. It was a debt of $800 which I never knew was there as far as I was concerned and that had gone with interest and penalties to about $3500 ... And I was saying, 'Even if I owe it this is the first that I am aware of it ... I was not here, I can show you my passport, I was not even in the country.' They said, 'That is irrelevant.' Anyway, I got a letter a couple of weeks ago saying they have decided to wipe the penalties and the interest and I just have to pay the original debt.*[172]

The usual procedure for debt repayment to Centrelink involves money being deducted from a recipient's payment each fortnight until the debt is cleared. In the above case the participant had $53 taken out of each Newstart payment until the debt was cleared. The Newstart allowance for a single adult is $394.60 a fortnight.[173] Given this, it is easy to see that homeless people on social security payments who either accidentally or otherwise incur Centrelink debt are left financially vulnerable.

Crime

Criminal law issues feature prominently in the lives of people who are homeless. Preliminary analysis of the Law and Justice Foundation's Legal Needs Survey 2003 suggests that nearly twice the number of homeless people who responded to the survey had experienced a criminal legal problem compared with housed respondents.[174] At Shopfront, a legal service for homeless and disadvantaged young people under the age of 25,

---

[172] Interview no. 9.

[173] Centrelink, *Newstart Allowance Payments,* <http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_nsa.htm> (accessed November 2004).

[174] Law and Justice Foundation of NSW, "Legal Needs Survey 2003". This excluded Domestic Violence and Traffic Offences.

64% of matters dealt with related to criminal court matters and criminal advice, while a further 6% related to fines.[175]

Shopfront is situated in inner-city Sydney. Young homeless people in this region are likely to have been homeless for longer periods of time, moving between sleeping rough, boarding houses and emergency accommodation in a state of chronic homelessness. People at this stage, whether they are young or older people, are highly marginalised from society, may have drug and alcohol and mental health issues and are more likely to have had interactions with the police and the justice system.[176]

The criminal law issues they face reflect their living situation: public transport fines and street offences are a result of them being particularly visible to police and other enforcement officers responsible for regulating the use of public space; drug and alcohol-related crime, assault, and theft. Their interaction with the criminal law should be viewed within its context of serious homelessness. It is the last point on the spectrum of legal issues facing homeless people, spanning issues affecting them as they enter into homelessness to those affecting them once they have become entrenched in homelessness.

Fines

Participants and stakeholder consultations for the current study indicated that fines[177] were a major problem for many homeless people who, because of their lack of private housing and economic disadvantage, were more likely to be publicly visible. They consequently accrue multiple fines for street offences such as drinking in public spaces and public transport fines.

---

[175] Data provided by Shopfront. It should be noted that Shopfront has determined criminal law to be a casework priority. However, this itself reflects the legal needs of its clients.

[176] See MacKenzie & Chamberlain, *Homeless Careers,* p. vi.

[177] This includes both on the spot infringement notices (issued by authorised officers such as police officers, council rangers or transit officers for minor offences such as littering, offensive conduct, drinking alcohol on a train or illegal parking) and court-imposed fines. Both are enforced in substantially the same way. Inner City Legal Centre (ICLC) & Redfern Legal Centre, *Fined Out,* 2004, <http://www.iclc.org.au/fined_out/> (accessed November 2004).

> *Train tickets now only go till 4 am the next morning. People sleeping on the train can then get fined for having an invalid ticket (caseworker).*[178]

Consultations suggested that young homeless people are particularly susceptible to receiving fines.[179] Sanders notes that while young people aged 15 to 24 years constitute only 14% of the population in NSW, in 2002 14 to 24 year olds received approximately 35% of fines.[180] One homeless young woman recounted her experience:

> *One of them [a fine] was issued when I was mentally unstable at the time, and I ran across the train tracks without using the train bridge, so they issued me a fine … Well, after the first fine when I ran across the train tracks, I got another one, for smoking on the platform.*[181]

Further, homeless people may be unable to afford to pay the original fine, or, without a regular address, they may not receive notification of the fine. As penalties and interest are added to the original fines, homeless people accumulate fine-related debt.

> *I've had one fine that was really ironic actually. I went to jail in March, but I was supposed to be at jury duty on the 16th, and I didn't know about it. And I got fined. I said, 'How come I get picked for jury duty with my criminal background?' We're still arguing about that at the moment. I'm doing it directly with them, just arguing at the moment. It was a small fine at the time, but I was in jail for almost four years, and the interest added up. It was $1600 when I got out of jail.*[182]

The accumulation of fine-related debt may compound people's financial disadvantage while homeless. This in turn, makes it harder for homeless

---

[178] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

[179] Newcastle Workshop Group 4.

[180] Sanders, J, *Fines and Young People (or, All You Need to Know about the SDRO),* 2004, <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/48109001084410066281.doc> (accessed November 2004).

[181] Interview no. 29.

[182] Interview no. 15.

people to pay off their fines. Furthermore, failure to pay a fine can lead to further legal problems. For example, once a fine is issued it is referred to the Infringement Processing Bureau. If it remains unpaid it is then referred to the State Debt Recovery Office (SDRO), which issues a fine enforcement order. If, after 28 days following the issue of a fine enforcement order no arrangements have been made to pay the fine, the SDRO may direct the Roads and Traffic Authority (RTA) to suspend a person's licence, prevent a person from re-applying for their licence, or cancel the person's licence after six months has passed.[183] Given their financial disadvantage, homeless people who have incurred fines may be at risk of having their licence cancelled as a result of not paying a fine. This was identified as an issue by a homeless participant:

> *I was in Byron and I got a littering fine. And I didn't even litter. I don't think so. We were camping. And so I owe money to them and it keeps going up and I can't afford to pay it and they cancelled my licence.*[184]

Suspension of a licence is a particular problem for homeless people living in rural and regional areas with limited access to public transportation. Furthermore, if people continue to drive while they do not have a licence, this may place them at risk of being charged with an offence and/or accumulating more fines. In turn, this may place people at risk of going to jail.

> *We do quite a lot of work with fines and ... the problem ... is that it's not just the amount of the fines which escalate but the consequences of those. It goes off to State Debt Recovery Office and they whack on another 50 bucks on the fine towards costs. Can't pay that. A little bit down the track the driving licence gets suspended and ... and then they still can't pay it but they just drive anyway. [He] inevitably gets picked up for driving while suspended. He'd cop another fine for that and then you know again you're disqualified and you know we certainly get clients*

[183] This may occur even when the original infringement was unrelated to a motor vehicle issue. *Fines Act 1996* (NSW), ss. 65–68. The use of RTA sanctions against young people is restricted to matters where the fine relates to a traffic or parking offence. *Fines Act 1996* (NSW), s. 65(3).

[184] Interview no. 30.

> *where jail suddenly becomes a prospect very quickly because they just keep driving and often for rational reasons that they can't pay.*[185]
>
> *One of the issues then was that the client was being banned from driving and they were from different states as well. She wanted to try and clear them all and start working on it so that she could clear her name so the process of getting them all into you know into NSW so they could be dealt with here, that couldn't be done. She couldn't pay the fines in NSW for Victoria and then also they wouldn't accept small payments. I mean she's on welfare so if she was willing to say 'I can pay x amount a fortnight until I've paid it off'... But they said no you've got to pay it all. So she's constantly running. She's trying to do the right thing. It's impossible for her and at the end of the day it will be a jail sentence when we looked into it and then often people go into jail for a minor thing like that and come out more traumatised because of incidents in the inside which is then, they come out going, well either way I've got no hope, so they lose faith in the whole system if they ever had any.*[186]

Because of their greater public visibility and economic disadvantage, homeless people are vulnerable to incurring fines. Their financial disadvantage makes it difficult for them to pay off their fines, resulting in the accumulation of penalties and interest to the original fine. This in turn makes it harder for homeless people to pay off the original fine, which can have serious consequences such as cancellation of a person's licence. Thus, not only does homelessness increase the risk of incurring a fine, it may also lead to a person being more vulnerable to the consequences of not paying a fine.

'Move on' powers

Under s 28F of the *Summary Offences Act 1988* (NSW), police have the power to ask a person to 'move on' in certain situations, for instance if a person is seen to be 'intimidating or obstructing another person'.[187]

---

[185] Roundtable Consultation, 27 August 2003.

[186] Roundtable Consultation, 27 August 2003 (caseworker).

[187] Shopfront, *Police Powers and Your Rights,* <www.theshopfront.org/documents/policepowers.pdf> (accessed November 2004), p. 3.

Because homeless people, particularly at primary levels of homelessness, spend much of their time in the public space, they are highly visible to police. Homeless participants, particularly those who sleep rough in parks, bus stops and other public spaces, commonly report being asked to 'move on' by police:

> *The other day police approached me, told me I had to move, said I was taking up too much space. First time [this happened]. 'How am I taking up too much space?' He said, 'You're fine to stand there, you just can't sit there.' I just left, I just couldn't handle it. I went and sat in Hyde Park for a couple of hours to try and make sense of it.*[188]

> *Sometimes when we would be waiting for a food van, the coppers would get a bit narky and ask us to move on.*[189]

As a result, a couple of people commented on the need to 'travel around' to avoid the police moving them on:

> *Sometimes when you sleep out the police will come and move us on and there are just not enough places to sleep around the area and when they move you on you either have to stay up all night or you find somewhere else to sleep or if it is raining you can't sleep in the laneway or down in x Park down over there. They sleep over there. Or down the back behind the wine cellar. Or we sleep down in the x carpark. So we travel around a bit at night if we get moved on by the police.*[190]

> *I don't get asked to move on—I do a lot of walking.*[191]

It was also suggested by one stakeholder that homeless people are vulnerable to being told to move not only by police, but also security guards and council rangers.[192] However, few of the homeless people we consulted reported much contact with either group.

---

[188] Interview no. 5.

[189] Interview no. 6.

[190] Interview no. 4.

[191] Interview no. 2.

[192] Consultation with Shelter, 5 November 2003.

Another stakeholder stated that homeless people are also more likely to be the targets of rigorous policing practices, getting checked for outstanding warrants and searched for drugs.[193] This is further corroborated by the following comments by two homeless participants interviewed for this study:

> *The only other problem I had was when I was in Melbourne. I was living on the streets. The police would often hassle me and check my history or do warrant checks. When I threatened to put them up for harassment they got more narky and tried to intimidate me. If anything, it made me more determined. It wasn't just me, it was others on the street as well that they were harassing. I just had the balls to take them on.*[194]

> *No, the police have this thing about harassing homeless people on the street, like I will be walking and I had my bags with me and they pulled me up and searched me, just because I looked like a hobo, like a drug addict and I found that really insulting.*[195]

And as one caseworker describes it, what starts as being moved on may progress to being searched for drugs. If a person has had a number of charges, the situation can become quite serious.

> *And so something that started from just trying to I suppose move people on from the neighbourhood because they're loitering is turning into like clients being charged for really minor, minor charges. But you usually find that they probably had a string of them over the last couple of months which actually turns into more serious charges. It might be going from possession to not paying fines to things like that. And going into being incarcerated over just a build up of simple issues like that.*[196]

Relationships with police are discussed in further detail in Chapter 7.

---

[193] Consultation with Brian Hockings, Matthew Talbot Welfare Services Manager, November 2003.

[194] Interview no. 6.

[195] Interview no. 19.

[196] Roundtable Consultation, 27 August 2003.

Drug-related criminal activity

Perhaps reflecting the high rates of drug and other alcohol abuse among people who have been chronically homeless (see Chapter 3), stakeholders and participants indicated that a small number of homeless people commit drug-related crimes.[197] Offences range from possession of and selling drugs to offences arising from the need to obtain income to buy drugs, such as prostitution, theft, break and enter and assault.

> *Yeah, I got charged a while back [in 2000]. I got charged for car [theft], assault and GBH and that. I was in for two and a half months. And then rehab for three months.*[198]

Thus, homeless people as a group are more likely to encounter the law than other groups because of their greater involvement in illicit drug-taking. Further, their lack of financial resources may also mean that homeless people use illegal means to get sufficient money to support their addiction.

Conclusion

Homeless people in NSW face a variety of legal issues. Legal issues faced by people at the point of entering into homelessness usually differ from the types of issues faced by people who have been homeless for some time. First, as people become homeless they tend to face legal issues which are closely tied to the incidents leading to their homelessness. These include:

- family-law- and domestic-violence-related legal issues reflecting family breakdown and violence
- housing-related legal issues, including housing debt, problems with residential tenancy databases and eviction reflecting the person's loss of housing

[197] Sergeant Frank Helsen, City Central LAC, NSW Police, May 2004; Roundtable Consultation, 27 August 2003; Caseworker 1; Interview nos. 11 & 28.

[198] Interview no. 28.

- debt-related legal issues reflecting financial disadvantage
- unlawful discrimination preventing people maintaining financial and accommodation security.

Secondly, homeless people face the following legal issues, arising as a consequence of being homeless:

- problems with complying with social security requirements as a result of being homeless
- vulnerability to crime as a result of a lack of secure housing
- legal issues related to boarding house and caravan park accommodation
- fines and being moved on as a result of homeless people's greater visibility and occupation of public space
- criminal law problems relating to alcohol and other drug abuse.

Consultations with participants and stakeholders also indicate that homeless people tend to experience multiple legal issues at any one time. When unresolved, these legal issues can lead to and compound homelessness. As will be discussed in Chapter 5, homeless people face a range of barriers in seeking legal assistance for these issues, resulting in many issues remaining unresolved.

5. Barriers to accessing legal assistance

> *Because you've already fallen outside the boundaries of most support services there are two things here. One is the lack of knowledge of information. If you don't have a fixed home address and your life is transient, you don't know about support services. You do not know about legal services. You do not know about free medical services. You don't know anything about the way the world works. Because your life suddenly starts to become a circle of wake up, put your face on, dread the night, go out, do what you've got to do, come home, pound yourself with drugs or alcohol or some sort of substance, and then crash out and then get up and do it again. There is no forethought, no planning, no availability to move outside that boundary when you're there.*[1]

As illustrated in Chapter 4, homeless people in NSW tend to face multiple legal issues as they move through homelessness. Prominent among these are eviction, housing debt and blacklisting, family law, domestic violence issues and other crime, debt and income related issues. For many homeless people, legal problems are intertwined with social issues.

Homeless people face a variety of barriers in accessing legal assistance. Some barriers relate to their circumstances, such as limited resources to spend pursuing a legal issue and competing immediate priorities. More systemic barriers include the complexity and formality of the law and the limited resources available to support the range and extent of legal need among disadvantaged people in NSW.

This chapter discusses the barriers homeless people face in identifying and seeking support for their legal issues.

---

[1] Interview no. 25.

The barriers to homeless people seeking legal assistance

The homeless people consulted for this project described the efforts they make to address issues that arise in their lives. These included going to the Centrelink office to sort out a payment problem, finding accommodation or visiting Legal Aid to get legal advice or assistance.

However, people experiencing homelessness are confronted by a range of barriers to resolving legal issues and finding pathways out of their homelessness. As one legal service provider stated some clients might have their accommodation sorted but find everything else has fallen apart (e.g. the electricity has been cut off, they can't afford clothing or food, etc.).[2] While the barriers faced and the capacity to deal with these obstacles vary considerably from person to person, some prevailing themes have been identified.

Having other priorities

A point consistently raised in this study was that unless there was a legal crisis (e.g. imminent eviction, an acute episode of domestic violence or arrest by police), legal needs were simply less of a priority for people when homeless than other immediate needs. For men, women, young people and families experiencing homelessness, other priorities included getting accommodation, earning an income, looking after family, satisfying an addiction or getting medical attention.[3] Caseworkers observed:

> *When families are in crisis, there is just too much to deal with. Legal issues fall to the bottom of the list. The legal issues may become more*

---

[2] Consultation with Anne Cregan, BDW, July 2004.

[3] E.g. Consultations with Robbie McInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003; Drew Roberts, Aboriginal Housing Office (AHO), December 2003; IDRS, October 2003; Brian Hocking, Matthew Talbot Hostel, November 2003; Jane Sanders, Shopfront, September 2003; Caseworker 2; NHHIN Forum, Working Groups 1 & 4. This is also consistent with the experience of the Victorian and Queensland HPLCs: Consultation with Phil Lynch, VPILCH HPLC, October 2003; QPILCH, *The Homeless Persons' Legal Clinic, End of Pilot Report,* QPILCH, Brisbane, 2003.

> *relevant—able to be faced—when people have stabilised to some extent.*[4]
>
> *Men that come out of prison have a lot of non-legal issues to deal with: accommodation, food, getting their gear back, furnishing a home, sorting out relationships, then legal issues. Legal issues are not, therefore, something that they are able to deal with.*[5]
>
> *For many of the young people that we deal with, a legal issue becomes very often an issue that is too hard to understand because they've got other huge issues happening often at their age, with family, with drug issues, those sorts of things.*[6]

Tenancy workers described clients who were too preoccupied with finding alternative accommodation to fight eviction.[7] As a result of being preoccupied with other priorities legal issues do not get dealt with, and may accumulate and compound.

Feeling overwhelmed by the issues

A homeless lifestyle not only reduces the amount of time people have to address complex legal needs, but also people's emotional capacity to do so. As one woman stated:

> *I am sick of turning up to places run down and filthy dirty, sick from not eating, I just don't have the energy to do it. I want to help myself but I don't have the energy to help myself. I need somewhere I can settle in for a week and put my affairs in order.*[8]

An experienced SAAP manager described this as leading to a 'paralysis of indecision', where, faced with the need to take actions, the person can become too frightened or overwhelmed to do anything at all.[9]

---

4 Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003.

5 NHHIN Forum, Working Group 1.

6 Roundtable Consultation, 27 August 2003; also raised at the NHHIN Forum. Similar observations were made by Jane Saunders, Shopfront, September 2003.

7 Consultation with the Tenants Union, tenancy workers and BLAG.

8 Interview no. 19; also Consultation with Gender Centre October 2004.

9 Consultation with Brian Hocking, Matthew Talbot Hostel, November 2003.

Inner-city outreach services talked about a number of homeless people who 'keep running away from the issues', even when there were solutions available.[10] Homeless participants expressed sentiments such as "I was under a bit of stress and I thought that I didn't want to add to that and I just wanted to put the whole thing behind me."[11] Another said:

> *If you've been raped on the street one night, your concern is getting home to bed. Your concern is getting whatever fix it is that you can take to get your mind off what's happened to you. It's not about going rehashing it with a police officer or with Legal Aid, or with a hospital.*[12]

Consultations suggest that some homeless people 'resolved' issues by simply 'moving on'. In the words of one participant:

> *To save confrontation I just move out and start again. It's just easier to move on. In 22 years I couldn't count all the addresses I've had.*[13]

Again, legal issues tend to remain unaddressed in such circumstances.

Reluctance to 'complicate' issues

Some participants in this study also felt reluctant to further 'complicate the situation'. This was particularly apparent in family law and domestic violence matters. One young man who wanted contact with his two-year-old daughter, had not spoken to a lawyer. He said:

> *I want to, but I don't want to cause trouble between me and my ex.*[14]

A young woman in a regional location spoke about a man who had been making threatening phone calls and following her. She said:

> *I was thinking of getting an AVO but it might cause more trouble.*[15]

---

[10] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

[11] Interview no. 23, speaking of a sexual harassment matter.

[12] Interview no. 25.

[13] Interview no. 5 (see Chapter 4 under "Housing" for details of his situation).

[14] Interview no. 28.

[15] Interview no. 30.

Previous research into domestic violence and homelessness has also noted a fear of further 'worsening' situations by acting on legal advice to leave violent situations or have an AVO taken out.[16]

Cost of legal services

While some solicitors provide legal advice in the first consultation for free, the costs of engaging a private solicitor are generally well beyond the means of homeless people. Even in personal injury matters, where a lawyer may work on a 'no-win, no-fees' basis, the client may have to pay disbursements (e.g. filing fees, photocopying, expert reports). The client also risks paying the other side's legal fees if they lose the case.

Realistically, because of their very limited or non-existent financial capacity, homeless people are reliant upon subsidised or free legal assistance services, such as legal aid, LawAccess, CLCs, pro-bono legal clinics and services or Aboriginal and Torres Strait Islander Legal Services (commonly known in NSW as Aboriginal Legal Services (ALSs). However, as discussed below, homeless people may even face barriers accessing these services.

Isolation from services

Legal Aid offices, CLCs and ALSs are located in city, suburban and regional centres in NSW, while most specialist legal services for homeless people are located in inner-city Sydney.[17] However, for homeless people, access to these services is made more difficult by a lack of access to transport, particularly in rural and regional NSW.[18] In some areas there is no public transport at all. In other areas, public transport may be available, but people cannot afford to use it. As one rural CLC lawyer observed:

---

[16] Chung et al.; Society of St Vincent De Paul, *Home is Where the Heartache is,* 2002, <http://www.vinnies.org.au/files/Home%20Is%20Where%20the%20Heartache.pdf> (accessed November 2004), pp. 4–7.

[17] See Chapter 6 for information on legal services.

[18] E.g. Consultations with Natalie Ross, ICLC, December 2003; Jane Sanders, Shopfront, September, 2003; Richard Ikaafu, WALS, Walgett, May 2004; Caseworker 5; NHHIN Forum, Working Group 2.

> *Some homeless people who cannot obtain emergency shelter or accommodation in a regional town will try and secure accommodation with a friend, who may live some distance out of town. The poor availability of public transport and the expense of existing transport options make it difficult for these people to come into town to access services, including Centrelink, and accommodation services.*[19]

Further, as mentioned in Chapter 4, homeless people using public transport without tickets risk being fined, and going (further) into debt.

Lack of access to transport (which is independent of the violent partner) has also been identified as an issue for women, particularly in rural or regional areas, seeking to leave or address domestic violence.[20]

Lack of stable accommodation

> *I think they sent me a letter here—but I didn't know where to get it… If I knew, I would have seen them about it and they would not have cut my money.*[21]

A lack of stable housing usually involves a lack of or limited access to private telephone use, no consistent telephone number for people to return calls to, limited internet access,[22] no one place to safely keep documents, including documents establishing identity, no fixed address to receive

---

[19] Consultation with Steve Bolt, Northern Rivers CLC, December 2003.

[20] The Women's Services Network (WESNET), *Domestic Violence in Regional Australia: A Literature Review. A Report for the Commonwealth Department of Transport and Regional Services,* Partnership Against Domestic Violence, Office of the Status of Women, Canberra, 2000. p.16.

[21] Interview no. 3.

[22] For information on internet usage by disadvantaged families, see G Zappala & J McLaren, "Patterns of Computer and Internet Access and Usage Among Low Income Households", in G Zappala, *Barriers to Participation: Financial, Educational and Technological: A Report into the Barriers to Societal Participation Among Low-Income Australians*, The Smith Family, Camperdown, NSW, 2003, pp. 64–82. Of particular note was that 70% of the young people on the Smith Family Learning For Life program, reported in this study, used the internet at school, while 29% used it at home. One in five used the internet at a friend's house (21%) and 16% at a public library. Only 1% used the internet at a youth centre (p. 78).

mail[23] and a reduced likelihood of being granted bail.[24] Some homeless people use mobile phones to keep in contact with others. However, as reported in Chapter 4, this can lead to people accumulating debt they cannot service. Homeless people living in rural areas may not even have the option of using a mobile phone because there is no signal coverage.[25]

For street-based homeless people, a lack of accommodation may extend to having no place to regularly shower and wash clothes. Service providers reported that some people avoided legal services, as they felt ashamed of the visible state of their homelessness. They had not washed and did not have clothing which they felt was appropriate to wear to a legal service or to go to court.[26] One participant reflected:

> *... if I see a hobo walking past that looks filthy dirty, I won't be saying 'doesn't he look dirty' because now I've been there, I know what it's like. Just because there is nowhere to have a shower.*[27]

Lack of alternative accommodation

A key barrier to people in marginal accommodation (particularly boarders and lodgers and marginal residents of caravan parks) accessing legal or tenancy support is the fear of losing the only accommodation available to them. There appears to be legitimate grounds for such fears. As discussed in Chapter 4, boarders and lodgers do not have the legal protection of being a 'tenant'. The legal protection afforded to the marginal residents of caravan parks can be equally dubious. In both cases, people are

---

[23] Consultations with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004; Robbie McInnes, Senior Community Programs Officer, DoCS Metro Central Region October 2003; NHHIN Forum, Working Groups 1 & 2; QPILCH.

[24] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003.

[25] Consultation with Steve Bolt, Northern Rivers CLC, December 2003.

[26] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004; NHHIN Forum, Working Group 2.

[27] Interview no. 19.

reported to take no action when they have legitimate complaints about their accommodation (e.g. necessary repairs are not made), as they have literally nowhere else to go if they are evicted. As the following case study indicates, eviction following a complaint is a risk, irrespective of whether the complaint being made is justified.

> *A family with five children had been in a caravan park in a rural town for three months where the father was looking for work, after his job on a property finished. The family did not have the money for the bond or furniture to move to a house. The caravan which they were living in leaked, the door didn't lock and the park facilities were not maintained properly, so the father complained to the park manager and requested that the leaks be fixed. Following a visit to the park by the local tenant's advice service and the Park and Village Service, the father learned he should put his concerns in writing and had the right to take the park owner to the Consumer, Trader and Tenancy Tribunal if repairs were not completed. On receiving the letter the park owner promptly gave the family an eviction notice. Although the family were initially prepared to take the matter to the tribunal they decided against it as they felt it would make it difficult to get accommodation elsewhere in the town if they had a reputation as trouble makers.*[28]

The reluctance of caravan park residents to make complaints about conditions to park owners was compounded in rural areas. Here, residents felt that being branded as a 'troublemaker' would not only jeopardise their accommodation, but their capacity to gain employment in the area. As PAVS observed, networks in rural towns are tight. Residents realise this and are hesitant to take action about substandard accommodation or unjustified eviction.[29]

Lack of alternative and appropriate accommodation was also described as a significant barrier to women wanting to leave domestic violence situations and obtain legal protection. Both emergency accommodation and/or alternative long term housing for women and children are in short

[28] Case study provided by Joy Connor, PAVS.

[29] Consultation with Joy Connor, PAVS, March, 2004.

supply, particularly in rural and regional areas.[30] The accessibility of families to some refuges is further limited by rules which mean that male children aged over 12 years cannot be accommodated.[31]

Transience/lack of networks

As discussed in Chapter 3, a common feature of homelessness is mobility, that is, mobility between different accommodation, in and out of local areas and between states. A barrier to transient homeless people accessing legal services is their being unfamiliar with local services and having little opportunity to establish support networks in each location. Having examined the needs of families living in residential parks, Eddy described the impact of transience on families:

> *For families living in caravan parks support and access to information are two significant needs. The majority of families who move, remove themselves from any support networks they have developed. The Caravan Project (Hunter) of the Family Action Centre has recognised that the effects of a transient lifestyle can be evident many years after they have stopped moving. Families who fail to develop a support network manifest their isolation and fail to access community services.*[32]

Feeling intimidated by the legal system

The legal environment is, and is perceived to be, formal and complex. A consistent theme in the consultations for this study was that many felt intimidated by the legal system, including some legal assistance services.[33] The LCRC noted that "clients will often delay coming to seek advice

---

[30] NHHIN Forum; Consultations with Sybille Kacorek, Community Development & Research Worker, San Miguel Family Centre, November 2003; Manager, Centrelink, Walgett, February 2004; Deb Gardam, Walgett SAAP, February 2004; Chung et al., pp.63–73.

[31] Consultation with Deb Gardam, Walgett SAAP, February 2004; see also Chung et al., p. 47.

[32] G Eddy, "How long are you going to be here? Developing an understanding of the impact of transience on families in rural/remote Australia" paper presented at '*Changing families, challenging future'*, Sixth Australian Institute of Family Studies Conference, Melbourne, 1998, <http://www.aifs.org.au/institute/afrc6papers/eddy.html> (accessed November 2004).

[33] Submission from Prue Gregory on behalf of the LCRC; Roundtable Consultation, 29 August, 2003; Consultation with Brian Hocking, Matthew Talbot Hostel, November 2003.

generally because of a fear of the system and how it operates".[34] One participant observed:

> *I suppose I haven't really understood the legal system, and I sort of drifted in that time I was homeless. It's also the fear that they are not going to take you seriously, and when you are in that state of mind its hard to go and get someone to talk to you about it.*[35]

A service provider noted:

> *...as other people have said, ... going to [legal services] is really intimidating for these guys. And I guess it's that intimidation from the system that is one of the biggest barriers that people face that we see.*[36]

It is not just courts and other legal processes that homeless people can find formal and intimidating, but also legal services. Workers reported that homeless people were less likely to visit legal offices in formal business districts, and can feel intimidated by the premises, the language used and the requirements to provide and complete documentation.[37] Homeless people can also have difficulties keeping an appointment to see a lawyer in their office. It is noteworthy that these structural barriers to homeless people accessing legal services are similar to those reported to keep Aboriginal people from accessing legal assistance.[38]

Low literacy and education

The heavy reliance of the legal system on documentation and the complexity of legal language were noted as barriers to homeless people accessing legal services. This is particularly problematic, given the relatively low levels

---

[34] Submission from Prue Gregory on behalf of the LCRC.

[35] Interview no. 23.

[36] Roundtable Consultation, 29 August 2003.

[37] E.g. Brian Hocking, Matthew Talbot Hostel, November 2003; Consultation with Phil Lynch, VPILCH HPLC, October 2003.

[38] See NSW Aboriginal Justice Advisory Council, *Where to from Here: 10 Years After the Royal Commission, Some Suggested Directions for Aboriginal Justice Planning,* Discussion Paper, undated, Sydney, <http://www.lawlink.nsw.gov.au/ajac.nsf/pages/discussionpapers> (accessed November 2004).

of literacy and education among homeless people[39] and the tendency of people to want to conceal their difficulties in reading or understanding written material. One service provider indicated:

> *... the clients have no problem telling me about their criminal history, they have no problem telling me about their drug and alcohol issues but the thing they find most shameful, and they will barely whisper it to me, is the fact that they can't read and write. They will do anything to cover up the fact and even ignore things that lead them into jail rather than ask for assistance, because of that shame factor.*[40]

The consultations also indicated that some clients had difficulty understanding legal information and advice given orally: it was not just an issue of literacy, but comprehension.[41] Some workers spoke of clients coming from meetings with solicitors to seek clarification about what they had just been told:

> *... they are so stressed out and they are trying so hard to keep it cool, 'this ain't affecting me one bit' ... and after a couple of hours they will come to me and say, 'What did he say?' It is not only the fact that they can't read but the comprehension levels some times too, especially when with high stress levels, you do not comprehend as much as at other times ... So everything you are telling them is going in one ear and out the other. They are saying, 'Yep, understand it, yep, not a problem.' But you know they are not taking anything in.*[42]

---

[39] Consultations with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004; Sybille Kacorek, Community Development & Research Worker, San Miguel Family Centre, November 2003; Drew Roberts, AHO, December 2003; Richard Ikaafu, WALS, Walgett, May 2004; Jane Sanders, Shopfront, September 2003; NHHIN Forum, Working Group 1; Chung et al; submission from Prue Gregory on behalf of the LCRC.

[40] Consultation with Deb Gardam, Walgett SAAP, February, 2004; see also NHHIN Forum, Working Group 3.

[41] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003.

[42] Consultations with Deb Gardam, Walgett SAAP, February 2004; Doreen Walford, VPS, Walgett, November 2003. It should be noted that this only occurred after people had built up a degree of trust in the service and felt comfortable asking for this type of assistance.

Disability, poor health and addiction

Mental health, alcohol and drug issues, dual diagnosis (mental health and alcohol and drug issues), poor physical health and other complex needs are prevalent among the homeless population, particularly among those entrenched in homelessness.[43] As discussed in Chapter 3, people with these complex needs experience a range of symptoms that can impair their capacity to identify their legal issues, obtain assistance and to comprehend verbal and written information provided.[44] For instance, speaking of poor mental health, Parker et al. suggest:

> *Its various symptoms of paranoia, anxiety, depression, delusions, hallucinations and disordered thoughts may fundamentally affect a person's organisational skills, their relationships with family, flatmates and neighbours, employment opportunities and their ability to maintain tenancy.*[45]

Some participants in this project spoke of the numbing effect of depression on their capacity to seek assistance. One interviewee said:

> *... when you are in a boarding house you are usually very depressed because you have no money and especially when you are in a lifestyle that promotes depression, it sort of makes it hard to even want to access services.*[46]

Another interviewee commented:

> *In the two times I was homeless, it was after bashings. One rape and bashing and one bashing. When you go through something like that it's very emotional. It's a very trying time for yourself. You've got to deal with that yourself. And from that, you let things slide. You let your rent*

---

[43] See Chapter 3 for details. See also Rossiter et al; Select Committee on Mental Health, *Mental Health Services in NSW,* Ch 7; Hodder et al.

[44] AFHO, *Policy Platform: Mental Health and Alcohol and Other Drug Issues As Factors in Homelessness,* AFHO, Canberra, undated, <http://www.afho.org.au/5_policy/Policy_Platform/Mental_Health.pdf> (accessed March 2004).

[45] S Parker, L Limbers & E McKeon, *Homelessness and Accommodation Models for People Living with Mental Health Problems,* 2002, <http://www.mhcc.org.au/projects/homelessness.htm> (accessed November 2004), p. 11.

[46] Interview no. 23.

slide, you let your friends slide, you let your work commitments slide, and it can be very depressing.[47]

The capacity of some homeless people to address legal issues may also be reduced by intellectual disability, intoxication or acquired brain injury. A manager in an inner-city hostel noted:

I would say 80 or 90 per cent of our clientele have got some degree of cognitive impairment. Now that could be because they're presently affected by a substance or they may have brain damage from years of substance abuse ... most of them would have the greatest difficulty filling out your average Legal Aid form or even filling out forms for Centrelink. So ... the majority of them need assistance with those basic things.[48]

Alcohol and other drug dependence raise a number of barriers for homeless people with legal issues. For instance, one interviewee described how the need to satisfy an addiction can override all other priorities:

Problem is, I'm a prostitute, my issue for the day is to make money to support my drug habit. Regardless that I got bashed and raped last night. I've got a fix I've got to have. The fix is more important than anything else you'll go through. Before you know it, you go numb, you don't feel the pain from the rape or the bashing any more. What's important is to keep working, to keep paying your rent, to keep up your drug habit, and to keep up the clothes you have on your back.[49]

Once intoxicated, a person's motivation is generally further reduced:

I do the same thing every day ... Get stoned! I have a smoke. I get up of a morning and have ... a cup of tea or a cup of coffee of a morning then I have a smoke. And we sit down and we chat. I have a sleep or come up here and have a rest of an afternoon.[50]

---

47 Interview no. 25.

48 Roundtable Consultation, 27 August 2003.

49 Interview no. 25.

50 Interview no. 1.

A group of service providers in regional NSW described the impact of memory loss among their homeless clients with a dual diagnosis, with clients forgetting appointments, court dates and the like.[51] One homeless participant with mental health issues talked about the role of alcohol and other drugs in his day-to-day life:

> *Sobriety, straightness, whatever you want to call it, ... reality, it was too much. All reality, the past, was all coming back to me. That's what I was doing. I was hiding everything behind the drugs and alcohol. I've been on mental health services for about the last six years ... The last six years have been really bad. I'm just not dealing with stuff. It was so much easier before ... just go and have a snort and everything's fine.*[52]

In the public consultations for the first stage of the Law and Justice Foundation's Access to Justice Program, the comment was made that people who are both drug-dependent and suffering a mental illness often fall through the 'gaps' between specialist health services because drug assistance services cannot support people with mental health issues and vice versa.[53] People who cannot get support to address their mental health and/or alcohol and drug issues risk remaining isolated from legal support by the symptoms of their illness and dependence.

Lack of awareness of rights

Consultations with homeless people and service providers for this study suggested that many homeless people are not aware of their legal rights. While it could be argued that many in the general population are also unaware of their legal rights, this can be exacerbated for homeless people due to their marginalisation and isolation. A rural service provider observed:

---

[51] NHHIN Forum, Working Group 1.

[52] Interview no. 5.

[53] Law and Justice Foundation of NSW, *Access to Justice and Legal Needs: A Project to Identify Legal Leeds, Pathways and Barriers for Disadvantaged People in NSW. Stage 1: Public Consultations,* Law and Justice Foundation of NSW, Sydney, 2003, p. 53, para. 2.69.

> *Many would just assume that there is nothing they can do, or wouldn't even see that there is a problem or that they have rights.*[54]

The impact of this as a barrier to justice was described by the VPILCH HPLC:

> *A person's ability to access legal services or court or tribunal systems is contingent, at least in part, on that person being aware that they have a 'legal problem' or that they have 'legal rights' that are being infringed. Lack of awareness of legal rights, and a lack of understanding about 'the law', is a significant barrier to many homeless people accessing justice. This lack of awareness or knowledge is particularly evident among young homeless people, homeless people from culturally diverse backgrounds, Aboriginal and Torres Strait Islander homeless people, homeless people experiencing mental illness and homeless people with an intellectual disability.*[55]

One interviewee more succinctly said:

> *... if you don't know your rights, you got none. That's the bottom line.*[56]

A specific example was given in relation to victim's compensation. Stakeholders commented that homeless people who have been the victim of a crime are often unaware that they may have a right to victim's compensation, or that some legal assistance services can help them with a victim's compensation claim.[57]

Accepting legal problems as 'the norm'

> *... often they just accept their problems, saying 'Well that's just the way it is for homeless people.*[58]

---

[54] Consultation with Manager, Centrelink, Walgett, February 2004.

[55] Lynch & Klease, section 5.4.

[56] Interview no. 14.

[57] Consultation with Phil Lynch, VPILCH HPLC, October 2003; Consultation with Grace Abrams, Gender Centre, January 2004.

[58] Jo Hamilton, Convenor, NHHIN, December 2003.

A concerning theme that arose in discussions about barriers to accessing legal assistance was that many of the difficulties faced by people when homeless were simply accepted as 'part of life'. This attitude was raised frequently, and in relation to different types of legal issues, including social security, crime and employment.

> *So a lot of the clients ... kind of accept Centrelink as being sort of like just an act of God. You know what I mean, I got cut off, oh well. You know, like because they don't understand how the processes work and so for them it's like for some arbitrary reason Centrelink has cut me off, and they don't necessarily seek help for a while. And sometimes you only find out by accident that people have been breached. And usually these things can be reversed.*[59]

> *Some legal issues are considered the norm. Some get harassed every day or get asked to move on, but they are not seen as legal issues. Often the reasoning is 'why bother'. They don't conceptualise those incidences as assault or theft.*[60]

> *And the other one is they get work, often part-time or casual work, and then just suddenly for no reason after a month they get the sack ... we'd say you've got certain rights about that, especially if you start quizzing them and it's obvious they haven't been paid correct rates and so on. Very occasionally someone will accept a referral to the [Department of Industrial Relations] or... to have it investigated [but] mostly they just don't want to pursue it. They just write it off as their lot in life, it's just bad luck.*[61]

This 'normalisation' acts as a barrier for homeless people to access legal services, as they simply do not see problems they may encounter as legal issues or as a possible infringement of their rights.[62]

---

[59] Roundtable Consultation, 27 August 2003.

[60] Brian Hockings, Matthew Talbot Hostel, November 2003.

[61] Roundtable Consultation, 27 August 2003.

[62] Consultation with IDRS, October, 2003.

Beliefs about the legal system

In consultations undertaken with homeless people and their advocates in this study, the view was expressed that the legal system could not, or would not, be used in their interest, nor would it find in their favour.[63] For instance:

> *As far as the legal system goes, you know Legal Aid or a government representative body ... well they are not going to fight the government, they are not going to fight the prosecutor, which is the government, well they are not going to fight too hard for you ...*[64]

A belief that the legal system cannot or will not assist them (whether accurate or otherwise) was reported to discourage homeless people from accessing legal services, for criminal, civil and/or family law matters. For instance, a number of interviewees were estranged from their partners and children.[65] While most indicated that they would like contact with their children, they assumed that, given their current circumstances, they would have little hope of a successful legal outcome, and that consequently there was no point in approaching a legal service. The following discussion with a woman recently arrived from New Zealand illustrates the point. She could not afford the $1400 cost of applying for permanent residency and therefore was not entitled to social security. She had casual work in a factory and was living in an inner-city hostel.

> *I've got one more thing I'm concerned about, my daughter, she lives in Perth, I rang up her dad, who she is living with, he's not actually on the birth certificate, he said he would look after her until I got onto my feet, and I rang him up and asked him for my daughter back and he refused to give her back to me.*
>
> [Interviewer]: *Have you seen anyone about this?*
>
> *No, because I don't know how to go about anything like that, and plus because I am at [hostel] I can't do anything about it.*

---

[63] Consultation with IDRS, October, 2003; NHHIN Forum.

[64] Interview no. 10; also interviews nos.15 & 19.

[65] E.g. Interview nos. 1, 2, 5, 8, 19 & 24.

> [Interviewer]: *Has anyone ... provided you with any information?*
>
> *No, I haven't spoken to anyone about it, the thing is I still have to save up for a place. I don't know how to work around it.*[66]

While this woman may have been granted contact with her daughter, she acknowledged that to have some chance of gaining residence of her daughter, she would need to have appropriate accommodation and a means of supporting her child.

A study on domestic violence and homelessness reported a 'recurring theme' among participants "of [a] lack of confidence in the ability of the legal system to ensure the safety of women and children" in domestic violence situations.[67]

It should be noted that, in some cases, people may be correct in their assessment that the legal system cannot assist them in certain situations.

Negative experiences and perceptions of legal processes

Pessimistic views about the law may be a consequence of negative experiences with legal services or authorities in the past, and/or poor outcomes in previous legal matters. For instance, a legal service may not have been able to assist them, they were unhappy with a legal service that was provided (see Chapter 6), or may have had what they perceived to be a poor legal outcome. By way of example, one worker stated:

> *... a lot of the people on the streets will not even approach Legal Aid today because they've been knocked back that many times. They just don't want it. The other stigma attached is 'Oh they're Legal Aid, they're not going to do their best for me.*[68]

As suggested here, negative perceptions of legal services such as legal aid or pro bono services can also arise from a stigma that a 'free' service is a 'second rate' service (see Chapter 6).

---

[66] Interview no. 18.

[67] Chung et al., p. 53.

[68] Roundtable Consultation, 29 August 2003.

Previous experiences and perceptions of police

As will be discussed in Chapter 7, police are a key point of contact between homeless people and the legal system. Street-based homeless people in particular come to the attention of police due to their visibility and occupation of public space.[69] Therefore, the types of interaction homeless people have with police can impact upon homeless people's expectations of the justice system as a whole, and on the actions they take in pursuing their rights.

> *Well, there's been many times like, well once I was mugged and I went to the police and they basically made it out like I was lying .... They basically just kept trying to kick holes in all of my stories and I kept telling them, and they still questioned me like 'we don't believe you'. So I just gave up in the end.*[70]

An Indigenous interviewee described a particular situation, and the impact of this:

> *The last time I was a victim of a crime was about nine months ago ... I stepped in to stop an older fella from being belted up by a younger fella. ... I reported the matter to the police and ...after the police had taken my story I felt more a victim then than what I did when I was getting hit. The police, they come around and they say, 'You know, this young person can come back and counter sue you and say that you assaulted him', but I said, 'I never assaulted him!' ...*
>
> *I mean the thing is, there I was for the first time in my life doing the appropriate thing but I felt like I was given a good kick in the guts off the coppers.*[71]

His caseworker added:

> *I remember that was upsetting Paul* as much as the actual physical things that had gone was the attitude of the police and I can remember*

---

[69] See Chapter 7. See also "Homelessness, Human Rights and the Law", *Parity,* vol. 17, no. 1, 2004.

[70] Interview no. 23.

[71] Interview no 14; also Interview no. 12.

> *Paul* describing it, he said, 'The police looked at me and looked at the other fellow and just because I was Indigenous and I was bigger they automatically started talking about counter-suing.' And of course that discourages people from pursuing their rights.*[72]

Thus, these types of encounters appear to engender a belief that police and, by association, the legal system work against rather than serve homeless people such as themselves.

> *If we believe that the police are the purveyors of justice, and that they don't follow through on that justice, then we have no faith in the justice system any more.*[73]

Some of the positive interactions between homeless people and police are discussed in Chapter 7.

Not knowing where to go for legal assistance

Related to a lack of awareness of their rights was that people simply did not know where to go when things went wrong. As one participant said:

> *I don't know of anywhere—I'll just sort it out myself.*[74]

Reluctance to approach services

Even in situations where a homeless person knows they have a legal problem and is aware of what services are available, they may still be reluctant to access the appropriate service. As Wesley Mission observed:

> *... a defining feature of homeless older people is that they often do not ask for assistance. Either they have the attitude 'I don't deserve help' and see themselves as failures in society or, more commonly, they are so independent, they will not ask for assistance.*[75]

---

[72] Caseworker 2. *Not the interviewee's real name.

[73] Interview no. 25; see also Chung et al., p. 55, and Consultation with Robbie McInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003.

[74] Interview 8; also Interviews 13, 18 & 19.

[75] Hoogland.

In keeping with this, a few of the homeless participants in this study commented that they preferred to handle matters themselves:

> *... housing and things like that, those sort of problems I handle meself ... I don't go to a tribunal or anything else about that ... If I can't get it fixed then I will have to do it the other way but I try and do it me own way first.*[76]

> *I usually try and sort things out myself, unless it involves court matters, then I get lawyers, but I don't like lawyers that much. They cost money.*[77]

One homeless participant reported being suspicious about the intentions of the service provider:

> *I've stood on the street and anyone who comes to me with a social welfare capacity in mind to hand me a piece of paper or something, I'm very suspicious. We wonder, 'What do you want?' We've learned that the only time someone offers you something is if they want something in return.*[78]

A rural service provider said:

> *Women are too embarrassed to go there [a legal service]. Not educated that they need to get a solicitor. If there is an AVO hearing they will just go to court and stand up and take what is coming to them.*[79]

Actively avoiding services

Another concern raised in the consultations for this study was that some homeless people actively avoided using support services, unless there was an urgent need to do so. Parents were reported to fear that their children would be removed from their care if authorities discovered they were homeless or facing other crises (e.g. family breakdown, financial hardship,

[76] Interview no. 10.

[77] Interview no. 15. Similar views were expressed in Interviews 10, 11, 20, 24, 26, 28, 29 & 30.

[78] Interview no. 25.

[79] Consultation with Doreen Walford, Walgett VPS, November 2003.

alcohol- and drug-related issues).[80] In addition, some young homeless people were reported to fear being placed with DoCS. Among the specific examples given at a roundtable discussion were:

> *Young couples that have got children that have been on drugs and substance abuse and trying to make a go of it. They'll come in but you can't get anywhere near them because they don't want to lose their baby.*
>
> *... because young people are aware that mandatory reporting requirements are on us, it's very, very difficult to engage with them. They know that if there's an element of risk we have to report it so therefore quite often we can't even get to meet them ... And they're terribly afraid of being with DoCS. It's just the historical stuff.*[81]

A fear of children being removed from their care is also reported to be one of a number of barriers to seeking help faced by some women escaping domestic violence:

> *Lack of information about how to get help, fear that they will not be believed, fear that their children may be taken from them, shame that they are in the situation and embarrassment over the social stigma attached to naming the violence.*[82]

There may be grounds for women to be concerned about the possibility of DoCS involvement following a report to police about domestic violence. While NSW police are not always legally required to report to DoCS about children who are present at a domestic violence situation they attend, as a matter of policy they do so. This is done in the interests of the children's safety.[83]

---

[80] NHHIN Forum, Working Group 1, February 2004. Also consultation with Phillipa Hall, Director-General and Annie Pfingst, Senior Project Officer, Director-General, NSW Dept for Women, November 2003.

[81] Roundtable Consultation, 29 August 2003. Similar findings were reported in Eddy, *Final Report: Caravan Parks Pilot.*

[82] N Smyth, *Impact 21: Innovative Models Promoting Advanced Concepts Through the 21st Century,* Women's Refuge Resource Centre, Sydney, 2003, p 11.

[83] Consultation with Cath Mackson and Tracey Hales, OPP, NSW Police, April 2004.

One inner-city outreach worker also noted a concern among his clients about privacy when giving personal details to agencies. He cited examples of people avoiding DOH services out of concern that they would be chased for debts and fines if they provided their name and contact details. Supporting this suspicion are requests on DOH forms for people to allow the department to share their personal details with other agencies.[84]

PAVS also noted that some marginal residents of caravan parks 'do not want to be noticed' for fear of being identified by other agencies (e.g. DoCS regarding their children, Centrelink or Housing regarding unpaid debts, police regarding outstanding warrants). They were suspicious of any offers of support, even from tenancy workers.[85]

Conclusion

The experiences of homeless people, and the observations of their advocates and service providers in this study, indicate that homeless people face multiple and substantial barriers in the following:

- identifying their legal problems among the multiple issues they face
- recognising these as legitimate issues that deserve to and can be addressed
- seeking legal assistance to address those issues
- finding time and energy to address those issues.

From the evidence gathered in this study, people who are homeless tend to focus on addressing their immediate needs, such as finding safe accommodation, meeting social security requirements and/or caring for their family. Coupled with limited resources, a fear or lack of knowledge

[84] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

[85] Consultation with Joy Connor, PAVS, March 2004.

of the legal system, a perception that the law would never work in *their* interests, and limited capacity to address issues (e.g. due to limited literacy or education, mental health issues or addiction), legal issues are likely to remain unaddressed.

Services report that when homeless people finally do contact a legal service (if at all), often the issue has usually already reached crisis point. For example, the eviction is imminent, their benefits have been cut off or their court case is tomorrow.[86] One caseworker observed that in some cases it may well be too late to resolve the issue (e.g. the limitation period may have expired) or the issue has become more complex and difficult to address.[87]

The multiple, urgent and interrelated legal problems homeless people have, together with the barriers they face in addressing these issues, have significant implications for the nature and type of legal service delivery that is appropriate for homeless people in NSW.

The following chapter discusses different forms of legal assistance available in NSW and the features of those services that either hinder or facilitate the provision of legal assistance to homeless people.

[86] Consultations with Jane Sanders, Shopfront, September 2003; Natalie Ross, ICLC, December 2003; Interview no. 25. See also MacKenzie & Chamberlain, *Homeless Careers,* p. 37.

[87] Caseworker 2.

6. Legal assistance services in NSW

The discussion to this point has indicated that homeless people in NSW:

- are a diverse, highly mobile group of individuals and families, often with complex needs, living in a range of circumstances statewide (Chapter 3)
- tend to have multiple and interrelated legal issues, including civil, family and criminal issues (Chapter 4)
- face a range of barriers to addressing these issues, which may result in the legal issues remaining unaddressed until multiple issues compound and/or a crisis point is reached (Chapter 5).

These observations have significant implications for the nature and type of legal assistance which is appropriate for homeless people in this State. Accordingly, this chapter discusses three broad topics:

- the legal assistance available to homeless people in NSW
- challenges faced by legal assistance services in helping homeless clients
- features of legal assistance services that can increase their accessibility and utility to homeless people.

What is legal assistance?

Legal assistance describes a range of legal services, from the provision of generic legal information and advice, to representation by a legal professional in court. The definitions and descriptions of different types of legal assistance used in this report are given below. We acknowledge

that, in practice, it can be difficult to differentiate between these different forms of legal assistance.

Plain language legal information

Plain language legal information is generic material presented in non-legal language about legal issues that people might face. It may be information about specific laws, legal problems or legal processes, or about where to get legal advice or representation. It is usually made available in the form of pamphlets, comics,[1] multi-media (e.g. videos, DVDs, audio), by telephone (person-to-person or via recorded information) or on the internet. Legal information may be distributed directly to clients or passed on verbally through support workers. In this report, 'legal information' refers only to the plain language legal information described above, not that found in text books, case law and legislation.

Legal advice

Legal advice involves the application of legal information to the individual circumstances a person is facing. Legal advice may be given face-to face, by telephone or, in some cases, by email. An example of legal advice is when a solicitor advises a client about a particular course of action, after she has received a letter of demand to pay a debt.

Initial legal assistance

Initial legal assistance is when a lawyer advocates or negotiates a matter for a client, without having to lodge formal court proceedings or commence litigation. An example of legal assistance is when a solicitor writes a letter on the client's behalf in response to a demand to pay a debt. The vast majority of legal problems are resolved through initial

[1] Such as those produced by Streetwize covering a range of legal and other issues. See <http://www.streetwize.com.au/publications_legal.html> (accessed November 2004).

legal assistance avenues, by direct negotiations or correspondence from a legal professional to the other party or their representative.[2]

Legal representation

Legal representation covers services provided by legal professionals that go beyond initial legal assistance. These services may include drafting documents (e.g. wills, contracts) and representing a person in a legal matter (e.g. negotiating child residency and contact agreements). Legal representation also includes preparing documents for court appearances (e.g. statements of claim, affidavits) and representing people in court and tribunal processes.

Legal assistance in NSW

The level of legal assistance available to homeless people in NSW depends upon the area of law for which they require assistance, their location, their special needs and/or characteristics (e.g. youth, gender, Aboriginality) and their capacity to overcome the barriers discussed in Chapter 5. This section will discuss the accessibility of different types of legal assistance to homeless people in NSW, and the major legal services providing these forms of assistance. It should be noted that most legal assistance services provide more than one type of assistance (e.g. information and advice, or advice, initial legal assistance and representation). In addition, a great deal of legal information and 'advice' may be provided to homeless people by non-legal workers and agencies. Some of these workers have specialist knowledge (e.g. tenancy workers, financial counsellors, government workers). Others are generalist workers (e.g. caseworkers) and support agencies. Legal assistance provided by these groups is discussed in detail in Chapter 7.

---

[2] Law and Justice Foundation of NSW, *Access to Justice and Legal Needs Program, Background Paper,* 2002, <http://www.lawfoundation.net.au/access/background.html> (accessed November 2004), p. 8.

Plain language legal information

As a form of legal assistance available to homeless people, plain language legal information has a number of benefits. It may, for little or no cost to the user:

- address common or re-occurring legal issues or describe relevant legal processes
- be made immediately available at times and in places where people are experiencing legal crises (e.g. when a person is arrested)
- be made accessible to homeless people orally or in writing and in places they frequent, by telephone or on the internet
- make people aware that there *may be* a legal solution to their problem, and
- direct people to legal advice and assistance services that are available in their area.

In consultations for this study, a youth service provider stressed the need for information to let his clients know "they can do things legally, without taking the law into their own hands".[3]

Legal information is most valuable if it is provided when and where it is pertinent, and in a form that is accessible to clients. One example of the provision of timely legal information that may help prevent homelessness for victims of domestic violence, is when police provide them with information about AVOs, and exclusion orders (see Chapter 4).[4]

Challenges to homeless people using generic legal information

There are a number of factors that reduce the value of plain language legal information as a form of legal assistance to homeless people. First,

[3] Caseworker no. 5.

[4] One study found that a barrier to women applying for exclusion orders (to keep the perpetrator out of the family home) is the invisibility of exclusion orders, and lack of information about them. Edwards, p. 15. See Chapter 4 for information on how exclusion orders can be used to prevent homelessness for victims of domestic violence.

the legal information provided may be too general to be applied in an individual case, without interpretation or support.[5] This is particularly so for homeless people facing multiple or complex legal issues, or who may have a limited capacity to 'interpret' and apply the information to their own situation.

Secondly, accessibility to written legal information by much of this population is limited by poor literacy levels, limited education and lack of access to internet and private telephone services.[6] The LCRC observed among its clients:

> *Often these clients have very poor levels of literacy and have difficulty even understanding pamphlets. They also have a very low level of understanding of what is available to help them. Access to online interactive information is not possible ... These clients are often unaware of legal telephone advisory services and do not have access to internet services.*[7]

It should be noted, however, that the LCRC tends to have older clients who, generally speaking, use the internet less than younger people.[8] Also of note is that there are several projects sponsored by welfare and commercial organisations that aim to increase the access of disadvantaged people, including homeless people, to free or low-cost internet services.[9]

Finally, consultations for this study suggest that, at least in the first instance, homeless people may seek advice about legal problems from a range of sources, including friends and families, welfare agencies and other non-

---

5 See also S Scott & C Sage, *Gateways to the Law: An Exploratory Study of How Non-Profit Agencies Assist Clients with Legal Problems*, Law and Justice Foundation of NSW, Sydney, 2001, p. 18. They report studies indicating that legal information is of limited value by itself, but is useful if complementing other strategies.

6 As discussed in Chapter 5.

7 Submission by Prue Gregory on behalf of the LCRC.

8 ABS, *Use of the Internet by Householders, Australia,* cat. no. 8147.0 Canberra, ABS, 2000.

9 E.g. Salvation Army/Centrelink StreetNet Bus. See M Barton, "Internet bus offers a ticket of hope for young homeless" in *Sydney Morning Herald,* 23 August, 2004, p. 7; on Community Technology Centres see The Smith Family, *Australian State-based Community Technology Centres,* 2004, <http://www.smithfamily.com.au/> (accessed November 2004).

legal services.[10] The quality of the legal information they receive will vary with the capacity of the support person or organisation to provide the information. The role of non-legal agencies, workers and friends in providing legal information to homeless people is discussed in Chapter 7.

Given the complex needs of homeless people, it is reasonable to conclude that they often need more active support than can be provided by generic written legal information alone to recognise and pursue their legal issues.

Major statewide sources of legal information in NSW include Legal Information Access Centres and Chamber Magistrates and other court staff. LawAccess NSW provides both legal information and advice. These are discussed below.

Legal Information Access Centre (LIAC)

LIAC is run by the State Library of NSW and operates through public libraries throughout NSW. While all public libraries have plain language legal information, 76 libraries ('public library LIACs') have additional legal information and staff trained to assist people in accessing legal information. Staff do not provide legal advice.[11]

LIAC can provide information from published works and/or refer clients to particular legal texts or websites or to other experts (e.g. Legal Aid NSW or CLCs).[12] One of the homeless people consulted in the current study spontaneously indicated that he had gone to the library for legal information.[13]

Given their geographic distribution throughout NSW, libraries are valuable sites for written legal information and assistance. However, LIAC is best

[10] See Chapter 7 for examples.

[11] State Library of NSW, LIAC, <http://liac.sl.nsw.gov.au/about>, (accessed July 2004).

[12] LIAC website.

[13] Interview no. 11. This cannot be taken as indicative of the level of library or LIAC usage by homeless people as we did not directly ask whether or not they had used this service.

suited to library users who have the time, capacity and literacy skills to actively address their legal issue. As mentioned in Chapter 5, homeless people are less likely to have these characteristics and therefore to use LIAC services.

Chamber magistrates and other court staff

Chamber magistrates in NSW local courts are another source of legal information for the community. Chamber magistrates provide a free, non-means tested legal information and assistance service in all full-time local courts, as well as outreach services to more than 50 locations. The service provides:

- information about legal processes and court procedures
- information about the options available to assist a person with a legal problem and the possible consequences of taking a particular course of action
- assistance with drafting simple documents used in cases before a local court
- assistance to take out an apprehended, domestic or personal violence order
- referral to an appropriate legal advisory service and to support/ advocacy services.[14]

Chamber magistrates must also remain independent, and are not permitted to provide legal advice or represent people in court.

It would appear from the current study and a previous Foundation study on pathways to legal support[15] that chamber magistrates and other court staff are an important point of contact between the court and court users. In the consultations for the current study, staff from one rural court described

[14] Submission from the NSW Attorney General's Department to the Foundation reported in *Access to Justice and Legal Needs. Stage 1: Public Consultations,* p. 92; *The Law Handbook* p. 112.

[15] Scott & Sage.

how some people with poor literacy in their area would ring or call into the court after receiving a letter with the court's letterhead on it, to ask what the letter was about. The local court Aboriginal Client Service Specialist also told of people stopping him in the street to ask whether their matter was coming up in court in the next few days.[16]

Challenges to homeless people accessing chamber magistrates

Homeless people, like other disadvantaged people may face some barriers in accessing chamber magistrates. For example, barriers that Aboriginal people are reported to face in accessing chamber magistrates include lack of community awareness of the service, the formality of language used, their location in court houses and lack of access to transport to reach the court house.[17] These are similar to the barriers identified in Chapter 5 as facing homeless people accessing legal services.

A court staff member consulted for this project also highlighted the issue of being able to identify a person as homeless. Unless a person self-identifies as homeless, or cannot provide an address for a form, court staff may not be aware that the person has no fixed address.[18]

LawAccess NSW

LawAccess NSW is a legal information, advice and referral service.[19] LawAccess provides legal information by telephone, through LawAccess Online and through LawTalks. LawAccess Online is a web-based search facility that draws together legal information from a range of sources by topic.[20] LawTalks can be accessed through the main telephone number at any time, and is a series of pre-recorded legal information sessions on

---

16 Consultation with Court staff, Walgett, February 2004.

17 NSW Aboriginal Justice Advisory Council, p. 7. This paper also discusses the innovative strategies undertaken by one Chamber Magistrate to address these issues.

18 Consultation with Court staff, Walgett, February 2004.

19 LawAccess can be contacted on a 1300 phone number, at the cost of a local call from fixed line phones within NSW.

20 See <http://www.lawaccess.nsw.gov.au>.

more than 30 topics, including family law, crime, debt, wills, problems with lawyers and information for young people.[21]

However, LawAccess also has qualified solicitors, including crime and family law specialists, who provide free telephone legal advice to anybody with a legal problem in NSW. LawAccess is of particular interest as a potential link to legal support for people at imminent risk of homelessness, homeless people who have no contact with support agencies, and those who are simply unable to reach legal services, through lack of transport, disability or family responsibilities.

LawAccess has a number of features that increase its accessibility and utility to homeless people, including those isolated from legal and other services. First, callers can ring LawAccess with any legal issue. LawAccess notes that callers often have more than one issue, and the staff will assist the person to identify the most urgent legal issue that needs to be addressed.[22] If LawAccess is not the most appropriate service to provide advice, they can 'warm refer' callers to appropriate services. That is, they can contact the appropriate legal service, introduce the client and transfer the call directly.[23]

Secondly, because LawAccess maintains information and databases that are updated with changes to the law, legal processes and legal services, they have the capacity to provide the most up-to-date information, and to make appropriate referrals. For instance, they can transfer a call from a client to a service that has the capacity to assist the client, has the relevant expertise and (where possible) is close to where the client lives. Recognising the limited resources of different services, LawAccess 'filter' clients referred to CLCs, referring only those clients who cannot be supported though alternative legal services (e.g. private solicitors, Legal Aid NSW or other

---

[21] See also Law and Justice Foundation of NSW, *Access to Justice and Legal Needs. Stage 1: Public Consultations,* pp.93–5.

[22] Information session provided by Law Access, 9 June 2004.

[23] Law Access NSW, *Referral of Customers to Specialist Legal Services, Private Solicitors and Other Legal Advice or Related Assistance Services,* <http://info.lawaccess.nsw.gov.au/lawaccess/lawaccess.nsf/pages/legal_specialist> (accessed November 2004).

government services). Clients will be told if there is no legal support available for their particular issue.[24]

Thirdly, if callers who require legal advice ring from a public telephone box or do not have a return telephone number, they will be put straight through to a solicitor, rather than having the solicitor call them back at a later time.

As will be discussed in Chapter 7, homeless people may rely on the support of their caseworkers to address legal issues. While LawAccess prefers to speak with the client directly, with the client's permission they will speak with a caseworker or support worker about the client's legal issue.

Finally, another significant benefit of LawAccess is that it operates from a single telephone number. As such, it is easier to communicate the contact details to homeless people and to the diverse range of people and agencies that support them (see Chapter 7), increasing the potential for a client to reach appropriate legal support more efficiently.

Barriers to homeless people accessing LawAccess

Given the features of LawAccess described above, LawAccess has the potential to link isolated homeless people in NSW with legal assistance. However, homeless people do face some barriers in accessing and using this service. First, LawAccess was not well known among the homeless people and service providers consulted for this project. In order to be a source of legal assistance and referral for this group, LawAccess would need to increase its profile among those supporting homeless people as well as the community generally. Recognising the need to do this, LawAccess staff attend community events and provide information sessions to workers statewide.[25]

---

[24] Law Access NSW, *Referral of Customers.*

[25] LawAccess are also involved in a pilot project where phone calls to Chamber Magistrates at specific local courts are redirected to LawAccess. If further information is required after LawAccess has assisted the client, LawAccess will make an appointment for the client with the Chamber Magistrate. See <http://www.lawfoundation.net.au/information/referral/together.html> (accessed November 2004).

Other barriers homeless people face in using LawAccess and telephone-based services in general, as identified by people interviewed in this study were:

- Homeless people may not have adequate access to a telephone. For instance, people with restricted telephone services (e.g. in boarding houses) may not be able to access 1300 (or 1800) phone numbers. Similarly, people living with family or friends may have the physical access to a phone but not the privacy to make a telephone call about a sensitive legal issue.
- Homeless people who are dependent on mobile phones often have to pay, or pay higher rates, to reach 1300 and 1800 services.[26] This may act as a disincentive to people calling telephone services, particularly if they fear being kept on hold and paying for timed calls.
- People may not like to use or trust telephone advice services. In a discussion about telephone advice services, one Aboriginal service provider said:

  > *A lot of our mob won't use those numbers, for a number of reasons. Largely because it is a really impersonal thing, and sometimes people like to see a face across the table … have more interaction with.*[27]

- People experiencing homelessness tend to have multiple legal and social issues, which are better addressed as part of a comprehensive package of support. While LawAccess can arrange legal support for different legal issues from different legal services, they are not in a position to 'case manage' or coordinate the provision of these services on an ongoing basis.
- Oral advice given over the telephone can be difficult to follow and remember. This is particularly the case for homeless people who may

[26] 1300 numbers are the cost of a local call to the caller from a fixed line phone, but may be charged at higher rates from a mobile phone. 1800 calls are free from most fixed line phones but may be charged at higher rates from mobile phones. See <http://www.telstra.com.au/products/product.cfm?prod_id=2990> (accessed February 2005).

[27] Consultation with Bob Morgan, River Towns Project, February 2004. LawAccess has recently employed two Indigenous Customer Service Officers.

have complex legal issues, mental health issues, poor comprehension, and a lack of capacity to write down what is being said. However, LawAccess staff are trained to support people with complex needs and can refer clients to appropriate face-to-face services.

- LawAccess only operates during business hours. Homeless people may have critical legal issues outside these hours (e.g. criminal issues, domestic violence) or have other priorities during business hours (e.g. finding accommodation, fulfilling Centrelink requirements).

Thus, while LawAccess is a key part of legal assistance services that may be used by homeless people in NSW, some barriers remain to homeless people using this service.

Community Legal Centres (CLCs)

> *CLCs are often the first point of contact for people seeking assistance or their last resort when all other attempts to seek legal assistance have failed.*[28]

CLCs are independent, non-profit community organisations that provide free community legal education, information, advice, referrals and, in some cases, legal representation. At a broader level, they also undertake preventative and capacity building work, including community development, strategic litigation, law reform and policy advocacy. CLCs are staffed by paid and voluntary legal, community education and administrative workers. CLCs assist socially and economically disadvantaged people, some of whom may not be eligible for legal aid for the legal problem they face.

There are 38 CLCs in NSW, including 19 CLCs providing generalist legal support in defined geographic areas (e.g. Marrickville CLC, Northern Rivers CLC). Eleven CLCs are in regional or rural areas and 8 are in

[28] Submission of NACLC, as reported in Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice,* para. 11.3.

metropolitan Sydney. In addition, there are 19 CLCs with expertise in particular areas of law (e.g. NSW Consumer Credit Legal Centre, Tenants Union of NSW) or in the legal needs of particular groups (e.g. WLS, Intellectual Disability Rights Service (IDRS)).[29] Recognising that clients may face multiple legal and non-legal issues, CLCs may also refer clients to other legal and non-legal services for assistance, when the issues cannot be addressed by the service itself.[30]

While no CLCs in NSW specifically target the needs of homeless people, all the CLCs consulted in this study had clients who fall within the broad definition of homelessness outlined in Chapter 1. For example, the Inner City Legal Centre estimates that 10–20% of their ongoing casework relates to the legal needs of homeless people. Indeed, homelessness is one of the factors they consider in the decision whether to take-on a person requesting legal assistance.[31] The Northern Rivers CLC also reported supporting homeless clients with a range of other complex needs, including mental health, alcohol and drug issues.[32]

In discussing CLCs as a source of legal support for homeless people, we have to return to the definition of homelessness. It became very clear in the consultations that many people experiencing homelessness did not see themselves as homeless, even when they fell well within the definition provided in Chapter 1. Those not identifying as homeless included people living temporarily with family and friends, long-term boarding house residents, people in medium-term SAAP accommodation and some people working as prostitutes.[33]

---

[29] See <http://www.nswclc.org.au>.

[30] M Noone, "Comment: The Activist Origins of Australian Community Legal Centres", *Law in Context,* vol. 19, 2001, pp. 128–37; L Schetzer, "Community Legal Centres and the Future of Law Reform", *Alternative Law Journal,* vol. 23, no. 5, 1998, pp. 254–55, 257; NACLC, *Doing Justice.*

[31] Consultation with Natalie Ross, ICLC, September 2003.

[32] Consultation with Steve Bolt, Northern Rivers CLC, December 2003.

[33] Consultations with WLS, November 2003; Grace Abrams, the Gender Centre, January 2004; and Women and Girls Emergency Shelter, February 2004.

The term 'homeless' is often reserved for clients 'sleeping rough'. For instance, in 2002–03, the WLS counted only 26 'activities' (services) carried out for women who were described as 'homeless'. However, if 'activities' for this period are counted using the broader Chamberlain and MacKenzie definition of 'homelessness', then nearly 3000 'activities' were for 'homeless' clients (18% of the total, where accommodation was recorded). The vast majority of this group were women living with family and friends—sometimes described as the 'hidden homeless'. The remaining homeless women were living in boarding houses, women's refuges, and a small number in residential parks.[34]

Thus, while CLCs are an important source of legal assistance to homeless people in NSW, the number of homeless clients currently being assisted by CLCs is not routinely counted and may be underestimated. Accordingly, funding provision is not necessarily made for the level of legal support required by this group of clients. CLCs are now implementing a new national data collection system known as the Community Legal Services Information System. It would be valuable if this system had the capacity for CLCs to record whether clients are 'homeless' within the broader Chamberlain and Mackenzie definition.

Barriers to homeless people using CLCs

Given their geographic distribution, local knowledge and specialist skills in delivering legal services to disadvantaged people, CLCs appear well placed to deliver legal services to people who are homeless and at risk of homelessness throughout NSW. However, CLCs are reported to be 'chronically under-funded',[35] reducing their capacity to provide services, particularly in rural areas.

---

[34] Drawn from data provided by WLS on activities in 2002–03.

[35] See submissions from Law Society of NSW, North and North West CLS, Court Support Scheme and Inner West Tenancy Advice Service together with roundtable consultations cited in Law and Justice Foundation of NSW, *Access to Justice and Legal Needs. Stage 1 Public Consultations*, pp. 7633–6. See also Senate Legal & Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice*.

> *Legal Aid offices and community legal centres exist in some areas of the State, but they are spread too thinly in rural, regional and remote areas. Many services are operating beyond their resource capacity, particularly along the fast growth areas of the coastline where services cannot keep up with the demographic changes. In the more remote parts of each region, there are insufficient workers to cope with the level of demand. Outreach transport costs are high, with travel times making many outreaches unviable.*[36]

Limited resources affect the number of services that can be established statewide and, therefore, the distance that people must travel to access face-to-face legal assistance. Insufficient funding can also affect the level of legal support which can be provided by existing CLCs. In a roundtable discussion for this study, a non-legal service provider suggested:

> *Community legal services ... are very limited in their resourcing. I've sent clients to them. They can get some general advice but the community legal centres will not actually do the legal work for them. The best they can do is to suggest to us and to our clients that we get a list from the Law Society or the Bar Association of the necessary specialists, or people who are prepared to do things pro bono.*[37]

Chronic underfunding may also mean that experienced staff burnout and are not retained by CLCs. The report of the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice noted from a submission by Legal Aid NSW:

> *There is no doubt that the decline in legal aid funding has resulted in stark regional variations in the availability of legal aid, and a corresponding increased burden on CLCs and other community organisations. Burnout is a serious issue for staff. The poor salaries paid to CLC staff, which*

---

[36] Combined Community Legal Centres' Group NSW, *Impact of Current Arrangements Regarding Legal Aid and Access to Justice on NSW CLCs. Submission to the Senate Legal & Constitutional Committee Inquiry into Legal Aid and Access to Justice,* Sydney, 2003, section 5.1; also noted at the NHHIN Forum.

[37] Roundtable Consultation, 27 August 2003. It should be noted that different CLCs have different levels of funding and the services they can provide vary accordingly. Most provide advice and many provide further assistance in appropriate cases.

> *also impacts on the ability of CLCs to retain experienced staff, only exacerbates this situation.*[38]

The decline of funding for legal aid, including CLCs, and the need to redress this was recognised by the Senate Committee.[39]

Related to this is the CLCs' reliance on students and other volunteers. Some experienced solicitors do voluntary work in CLCs. However, student volunteers are often relatively inexperienced in both legal practice and in communicating with and recognising the complex needs of homeless clients. With the movement of volunteers through CLCs, the quality and continuity of service provided may be variable. As one CLC observed:

> *The centre relies on volunteers to answer the phones and take inquiries. If they do not recognise the urgency of the matter and tell the person that they have to wait three weeks for an appointment, then some people may be lost through this process.*[40]

Some non-legal workers consulted for this study, who had referred clients to CLCs, described delays in their clients getting an appointment. One CLC also raised this delay as an issue and noted that some homeless clients had giving up on seeking advice while waiting for the appointment. If people have an urgent matter, which, as highlighted in this report, is often the case with homeless people, the delay in getting appointments with a legal service may mean that assistance will simply come too late.[41]

Aboriginal and Torres Strait Islander Legal Services

As indicated in Chapter 3, Aboriginal people in NSW are over-represented in the homeless population, particularly among those in SAAP

---

[38] Senate Legal & Constitutional Committee, *Inquiry into Legal Aid and Access to Justice*, para 11.17.

[39] Senate Legal & Constitutional Committee, *Inquiry into Legal Aid and Access to Justice,* paras 11.46–11.53.

[40] Consultation with Natalie Ross, ICLC, September 2003; see also Roundtable Consultation, 27 August 2003.

[41] Consultation with Natalie Ross, ICLC, September 2003.

accommodation and those living in improvised dwellings. In addition, Aboriginal people in NSW may move more commonly between homes within their extended family network.[42] However, as discussed in Chapter 1, living temporarily with family and friends is not necessarily considered 'homeless' in this cultural context.[43] Aboriginal people, homeless or otherwise, can access Aboriginal and Torres Strait Islander Legal Services (commonly known in NSW as Aboriginal Legal Services (ALSs)) for legal assistance.

There are six ALSs in NSW, each with a number of offices. ALSs in rural areas also have outreach services to courts throughout their regions. ALSs are staffed by solicitors, field officers and administrative staff. Field officers are usually local Aboriginal people, who, among other tasks, support Aboriginal clients through legal processes.[44] This may include picking up people and driving them to court when their matters are on[45] and supporting people at court.

ALSs mainly provide assistance in criminal matters. Most ALSs also provide at least initial advice and assistance in some family law matters, including child protection applications (though contested family law matters are usually referred to Legal Aid). The Western Aboriginal Legal Service (WALS) also does some debt recovery, bankruptcy, discrimination claims, consumer claims advice and tenancy advice.[46]

Challenges facing ALSs in supporting homeless people

A rural ALS was consulted for this study. Some of the challenges the solicitor reported in providing legal support to his clients included:

---

[42] Chamberlain & MacKenzie, *Counting the Homeless 2001: NSW,* p. 63; see also Memmott et al., p. 13.

[43] See Chapter 1, particularly on Memmott et al., *Final Report;* Consultation with Richard Ikkafu, WALS, Walgett Office May 2004.

[44] See Coalition of Aboriginal Legal Services (COALS) website, <http://www.coalsnsw.com.au>, (accessed February 2005).

[45] Consultation with Richard Ikkafu, Walgett WALS, May 2004.

[46] COALS, *Western Aboriginal Legal Service* at <http://www.coalsnsw.com.au>, (accessed February 2005); also Consultation with Richard Ikkafu, WALS, Walgett Office, May 2004.

- contacting clients who do not have a telephone
- clients not coming to appointments prior to the court day (for a range of reasons, including lack of transport, people having other priorities or not remembering the appointment)
- large work loads on court days, limiting the amount of time available for each client and resulting in matters being rushed
- limited literacy among clients
- getting access to mental health services for court reports and client support, and the cost of these reports.[47]

It should be noted that some of these challenges relate to providing legal services in remote areas and are not particular to 'homelessness'.

Pro bono services

Pro bono legal services are provided by private solicitors, legal firms and barristers free or at a reduced fee to clients who cannot afford the legal assistance that they need. Services can include legal advice, court representation and other legal work, including drafting documents. It may also include community legal education and legal assistance to non-profit organisations.[48] Pro bono services may be provided on a relatively ad hoc basis by individual lawyers or law firms, or in a more coordinated way through the Law Society Pro Bono Scheme, or projects such as the Homeless Persons' Legal Clinics. To be assisted by the Law Society Pro Bono Scheme:

- the client must have been refused legal aid for the relevant proceedings
- a means and merit test is applied

[47] Consultation with Richard Ikkafu, Walgett WALS, May 2004.

[48] National Pro Bono Resource Centre, *About Us,* <http://www.nationalprobono.org.au/about/index.html> (accessed November 2004). See also Law Society of NSW, *Pro Bono Scheme,* <http://www.lawsociety.com.au/page.asp?partID=6744> (accessed November 2004). See Law Society website for eligibility criteria.

- the matter must fall within the scheme's guidelines.[49]

Limitations of pro bono services

Speaking of pro bono services generally, one service provider in this study noted:

> *There is difficulty in finding a solicitor to take things on pro bono. A lot of them will only take a matter pro bono if there's a very high possibility of success. A lot of them will not take a case that's borderline on its merits.*[50]

In its submission to the Senate Inquiry into Legal Aid and Access to Justice, Legal Aid NSW recognised the value of properly administered quality pro bono services, but indicated a concern that pro bono work by lawyers tends to reflect individual solicitors' or firms' priorities and interests, rather than any formal assessment of legal need in the community.[51]

There may be greater scope for pro bono resources to more systematically address the legal needs of disadvantaged people when pro bono services are coordinated to address an identified need, and the impact of these services are evaluated against the needs of the clients. Legal Aid NSW suggests that this involves firms engaging in cooperative planning, delivery and evaluation of services with the government and community sector.[52] Most of the specialist homeless person's legal services discussed below are examples of the coordinated delivery of pro bono services.

Specialist homeless person's legal services and clinics

There are a number of volunteer or pro bono legal services in Sydney specifically established to meet the legal needs of homeless and other

---

[49] Law Society of NSW, *Pro Bono Scheme.*

[50] Roundtable Consultation, 27 August 2003.

[51] Legal Aid Commission of NSW, *Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice*, Sydney, 2003, pp. 41–4. < http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/submissions/sublist.htm> (accessed May 2005).

[52] Legal Aid NSW, submission to the Senate Inquiry, p. 41.

disadvantaged people. Most of these services operate on a part-time basis, mainly providing legal advice and initial legal assistance (see Table 6.1). Where appropriate, clinic staff will refer clients to other services, such as Legal Aid NSW. Only Shopfront is permanently staffed with full-time solicitors and other volunteer staff.

Table 6.1: Specialist legal assistance services for homeless people in NSW

Legal Counselling and Referral Centre (LCRC)

The LCRC is one of a number of social services offered by the St John's Church, Darlinghurst, to homeless and disadvantaged people.

Staffed by volunteer solicitors it runs two legal advice sessions a week. The clinic does some casework but also refers matters to the Inner City Legal Centre. The LCRC has been operating since March 1995, initially as a referral agency only.[53] It can provide legal information, advice, assistance and/or referral for criminal, civil and family law matters. It has also established outreach legal services in the Campbelltown area.

Service statistics for 2003 indicate that two-thirds of the LCRC's 127 clients were male, with most clients aged over 30. Three in four clients were on social security benefits, with nearly 40% on the disability support pension. About 11% of clients were sleeping rough, 13% were living in boarding houses or backpacker hostels and 3% in SAAP accommodation.[54]

Shopfront Youth Legal Centre

Shopfront (assisting young people aged 25 and under) in Darlinghurst is the only full-time legal service specifically established to meet the legal needs of young homeless people in NSW. Started in 1993 in response to the Burdekin report (see Chapter 1), Shopfront "assist[s] clients to see the legal problem in its wider context and to use a legal crisis as a catalyst for change".[55] Shopfront is staffed by the law firm Freehills and run with the Sydney City Mission and the Salvation Army. Shopfront uses its interagency base to address the issues facing young people in a holistic way.

The bulk of Shopfront's practice is criminal work, including both summary and indictable matters. One-third of new matters in 2002–03 involved representing clients in court for criminal matters. A further 30% concerned advice on criminal matters. Shopfront also acts for applicants and respondents in AVO applications and some family law and care proceedings (usually where the parents are young adults). In 2002–03, Shopfront dealt with approximately 600 matters on behalf of its clients.[56]

Pro Bono Clinics at Exodus and Lou's Place

Law firm Blake Dawson Waldron (BDW) funds and operates pro bono legal clinics at two services for homeless and disadvantaged people in Sydney—the Exodus Foundation (Exodus) in Ashfield, a service predominately used by older male clients, and Lou's Place, a

[53] Submission by Prue Gregory on behalf of the LCRC.

[54] 91% provided details of their income. Data provided by the LCRC.

[55] Shopfront, <http://www.theshopfront.org/> (accessed November 2004).

[56] Legal service data provided by Shopfront.

drop in service for women in Kings Cross. BDW's solicitors are seconded to these services for six months, for an afternoon (Lou's Place) or a day (Exodus) a week. Some of the matters require ongoing work that can be taken on by BDW.[57]

In 2003–04, BDW saw 99 clients at Exodus in 312 visits. The legal matters most commonly dealt with at this clinic in this period were crime (29%), family (20%), government and other debt (20%), housing (16%) and personal injury compensation (10%). Approximately 20% of clinic clients were 'homeless' as defined in Chapter 1 and a further 26% were renting public housing. 87% were on social security or had no income.

In 2003–04, BDW saw 49 clients at Lou's Place in 191 visits. Of the 74 matters dealt with for these clients, family law was the single largest area of law dealt with (28%), followed by crime (12%), AVOs (12%) and personal injury compensation (8%). Eight per cent of the matters concerned debt and 6% housing issues. More than 40% of clients seen at Lou's Place were staying in refuges or emergency accommodation.

Homeless Person's Legal Service (HPLS)

In May 2004, the Public Interest Advocacy Centre/Public Interest Law Clearing House NSW (PIAC/PILCH) established the HPLS, with legal clinics in five crisis accommodation and welfare agencies—four in inner-city Sydney and one in Parramatta. At least two lawyers visit each of the five services weekly. The HPLS is staffed on a pro bono basis by lawyers from Henry Davis York, Ebsworth & Ebsworth, Gilbert + Tobin, Clayton Utz, Allens Arthur Robinson and Minter Ellison. The clinics are staffed by a number of PIAC/PILCH member law firms and are modelled on similar services in Victoria and Queensland.

In its first six months of operation, the HPLS assisted 189 clients with 267 legal problems. In this time, 10% of the problems dealt with were criminal law issues, 9% were housing/tenancy issues, 8% were credit/debt matters and a further 8% were family law matters. Seven per cent of matters were fine-related, 6% were civil law matters (including commercial and tax issues) and 5% were each of personal injury matters and social security issues. In this period, 27% of the HPLS's clients were in crisis accommodation, 16% were sleeping rough or squatting, 12% were in a boarding house or private hotel/backpacker hostel and 4% were living with family and friends.[58] Eighty per cent of the clients were male and 60% (of those who stated their age) were between 36 and 55 years old.

The HPLS provides legal assistance for civil, administrative and some summary criminal legal matters.

The types of legal matters dealt with by these specialist services vary. For instance, the bulk of Shopfront's practice is crime, with one-third of new matters in 2002–03 involving their representing young people in court for criminal matters. In contrast, the work of the HPLS has been described as follows:

[57] Consultation with Anne Gregan, BDW, July 2003.

[58] Statistics provided by the PIAC/PILCH HPLS for the period 28 May 2004 to 27 November 2004. Accommodation statistics on the basis of 172 people who indicated where they were living.

> *Legal information, advice and representation is provided in specific identified areas of law, including housing, tenancy and eviction, fines, victim's compensation, debt and consumer credit, social security, mental health, community health orders, guardianship and administration, questions of identity, wills and estates, discrimination and employment law. Assistance by way of information only is provided in criminal, family and immigration law matters and advice on these matters is provided through various specialist law firms, the Legal Aid Commission of NSW, community legal centres and PILCH barristers. Where necessary, assisted referrals will be made to appropriate legal services.*[59]

The types of matters dealt with are likely to reflect a range of influences. These include the needs of the clients or the expertise of the legal staff (e.g. if they are civil law specialists, not family lawyers) and the types of legal assistance already available. For instance, specialist services may not take on a matter for which a client could get a grant of legal aid.

Homeless person's legal services have been specifically designed to meet the needs of this client group. By way of example, PIAC describes the model on which the HPLS are based in the following terms:

> *The service model has been developed to overcome some of the barriers traditionally faced by homeless people in accessing legal services by providing face-to-face legal services with a continuity of legal personnel at locations familiar to and easily accessible by clients. Lawyers have been appropriately trained to work with clients with disabilities and experiencing extreme disadvantage and the legal services are provided in combination with complementary services required by homeless people, such as caseworkers, counseling and accommodation services. The welfare agencies facilitate the provision of the legal services by hosting client consultations with lawyers, providing assistance to support workers and acting as points of contact for clients.*[60]

---

[59] PIAC, *Homeless Person's Legal Service,* <http://piac.asn.au/legal/hpls.html> (accessed November 2004).

[60] PIAC, 2004.

Thus, these services address the particular needs of homeless people by providing face-to-face legal assistance in or near SAAP or other welfare services accessed by this client group (allowing longer appointment times) and by considering the legal issues together with the other issues faced by the client. Services and their lawyers also develop expertise in providing assistance to people with complex needs, and in dealing with the types of legal problems that they commonly face.

Armed with the expertise about the particular legal issues facing homeless people, some specialist homeless person's legal services also play a lobbying role in advocating for the rights of homeless people. This involves lobbying government decision-makers to implement certain human rights as defined in international law into domestic law, as well as lobbying for change to existing Australian law that may adversely or disproportionately affect homeless people.

The coordinator of the NSW HPLS indicated that, given the high level of fear and lack of trust homeless people have of the legal system, another of the lawyers' tasks is to engage in a 'legal dialogue' with clients, to address their fears and misconceptions about legal processes. This may occur informally, while solicitors are at the host welfare agencies, and may be before clients are given any formal legal advice.[61]

A list of features that make legal services more accessible to homeless people is provided later in this chapter. These specialist services demonstrate many of these features.

Limitations of specialist homeless person's legal services and clinics

While presenting a valuable model of legal service delivery to homeless people, specialist homeless person's legal clinics tend to be relatively small-scale services, and may not be able to deal with all the legal matters facing a client. Clients may still need to be referred elsewhere.

[61] Consultation with Emma Golledge, Coordinator, PIAC/PILCH HPLS, February 2005.

Further, most of the specialist homeless person's services in NSW are in the inner-city areas of Sydney, where there are relatively high rates of homelessness, appropriate host agencies and close proximity to law firms with the capacity to provide pro bono assistance on this scale. Hence, due to the size and location of these specialist clinics and services, there are groups of homeless people who are unlikely to use these services. These include:

- people living in suburban, regional and rural areas where there are no available clinics. Pro bono clinics are less feasible in rural and regional locations as local law firms are often not large enough to sustain the level of pro bono commitment these clinics require. As one rural welfare provider observed, "there are only three solicitors in [the locality] and they are all busy with their own practices"[62]
- people who do not access the SAAP services where the clinics are located. This includes people living with family and friends, and people who do not meet the criteria to use SAAP services (e.g. women, when the service is based at a SAAP agency for men)
- people who do not identify themselves as 'homeless', and therefore do not access relevant SAAP or other 'homeless' persons services.[63]

This is not to imply that it is the responsibility of pro bono services to address the needs of those homeless people who cannot access these specialist services. As suggested by some commentators, pro bono services should not be seen as an alternative to properly funded legal aid services:

> *... for most of our clients the community legal centres and the pro bono schemes are not really a substitute for proper legally aided, funded representation.*[64]

---

[62] NHHIN Forum.

[63] Consultation with Phil Lynch, VPILCH HPLC, October 2003.

[64] Roundtable Consultation 27 August 2003; see also Legal Aid NSW, submission to the Senate Inquiry, pp.41–2.

Finally, while pro bono legal services were appreciated, some clients and workers also felt that some of the lawyers placed in legal clinics were junior and/or 'inexperienced' in the types of legal issues faced by homeless clients, and in communicating with these clients.[65]

Legal Aid Commission of NSW

The Legal Aid Commission of NSW (also known as Legal Aid NSW) provides legal representation, legal advice, legal information services and community education to disadvantaged people across NSW. Services are provided through a Sydney head office, 21 regional offices and private practitioners.[66] While the Commission does not collate information specifically on the housing status of their clients, consultations for this study suggest that Legal Aid NSW is a major source of legal assistance, advice and particularly legal representation for homeless people in this State.

This section will focus particularly on the role of Legal Aid NSW in providing legal representation to homeless clients. Representation may be provided through two avenues:

- grants of legal aid for a legal aid lawyer, a private solicitor or a barrister
- duty lawyer schemes to assist people before the courts for criminal matters, and in family law matters in various federal magistrates and family courts in NSW.[67]

These avenues of gaining legal representation and their accessibility to homeless people are discussed below.

---

[65] Roundtable Consultation, 27 August 2003; Consultation with Brian Hocking Matthew Talbot Hostel, November 2003.

[66] See Legal Aid NSW, *Annual Report 2003–2004*, Legal Aid NSW, Sydney, 2004, <http://lacextra.legalaid.nsw.gov.au/internet/ar0304/legalaidannrpt.pdf>, p. 1.

[67] Legal Aid NSW, *Outreach Programs,* <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=68> (accessed November 2004).

Grants of legal aid

> *I've gotta admit, I did have a good lawyer from Legal Aid for my parole hearing, it was a barrister, and he was fantastic. I was knocked back the first time, which is automatic. The second one you go up and get it straight away. I came out about four days later. It makes a big difference having a lawyer represent you at your parole hearing, a barrister preferably. Legal Aid's got a section that just deal with parole hearings.*[68]

A grant of legal aid is when Legal Aid NSW pays a private lawyer or provides a Legal Aid lawyer to help a person with their case. Basically, Legal Aid NSW uses four tests to decide whether a person should be granted legal aid:

Jurisdiction test: Looks at the type of case and the area of law of the matter for which aid is sought and whether it falls within Legal Aid NSW guidelines.

Merit test: Looks at whether the case will succeed and other issues.

Means test: Looks at the income and assets of the person applying for legal aid and usually also the means of any persons providing financial support to them (these are called 'financially associated persons')

Availability of funds test: Legal aid will only be granted if the Commission determines that sufficient funds are available.[69]

Table 6.2 provides information about the types of matters for which legal aid assistance may be granted. It indicates that legal aid is generally available for criminal matters (mainly through the duty lawyer scheme), family law matters relating to children (divorce in certain circumstances and some property matters), and a range of Commonwealth and State civil law matters, including social security, veteran's pensions, migration, consumer protection, discrimination, civil liberties and cases where there is a likelihood that the person will lose their home.

---

[68] Interview no. 15

[69] Legal Aid NSW, *Policies in Brief,* <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=242> (accessed November 2004).

To be eligible for a grant of legal aid in most personal injury, employment law, small debt (less than $3000) and guardianship matters, clients need to meet the criteria for "an unusual or special disadvantage". An applicant at special disadvantage is defined as "a child; or a person having substantial difficulty in dealing with the legal system by reason of a substantial psychiatric condition, developmental disability, intellectual impairment, or physical disability".[70] Thus, homelessness is not of itself an "unusual or special disadvantage" by this definition.

In earlier consultations for the Foundation's Access to Justice and Legal Need research program, Legal Aid NSW reported that there were areas of law where there is a lot of demand for assistance, which it cannot meet either because of Commonwealth restrictions on its funding or because of resource limitations. These areas of law included migration law (particularly refugee matters), employment, motor vehicle accident and property dispute matters and small debts under $3000, particularly arising from credit card payments, utilities debts, mobile and other telephone services.[71]

Table 6.2: Availability of legal aid assistance in NSW by type of legal matter

Type of matter	***Availability of NSW legal aid assistance*** ***Merit and means tests apply below unless otherwise stated***
CIVIL	
Personal Injury	Available where questions of civil liberties are raised, or for people at a special disadvantage[72] in exceptional circumstances.
Debt	Only available where the size of the claim is $3000 or more, unless proceedings are taken by or for the benefit of applicants at a special disadvantage in exceptional circumstances.
Tenancy	Not available for applications to determine fair rental where no point of law is involved.
Employment	Available to applicants at a special disadvantage in limited circumstances.
Discrimination	Available in all State law matters, and in Commonwealth law matters where there are strong prospects of substantial public benefit.

[70] Legal Aid NSW, *Policies in Brief.*

[71] Law and Justice Foundation of NSW, *Access to Justice and Legal Needs. Stage 1: Public Consultations,* p. 39.

[72] An applicant at a special disadvantage is defined as a child, or a person having substantial difficulty in dealing with the legal system by reason of a substantial psychiatric condition, developmental disability, intellectual impairment or physical disability.

Police Practices	Only available in matters involving breach of civil liberties.
Other civil	Available under State law in matters where there is a likelihood that the person will lose their home as a direct result of proceedings; in civil liberties matters; and in certain consumer protection matters.
Guardianship and administration	Available for proceedings in the Guardianship Tribunal only where applicants are at a special disadvantage (merit and means tests do not apply).
Mental health	Available in magistrates' inquiries under the *Mental Health Act 1990* (NSW); most proceedings before the Mental Health Review Tribunal; representation of forensic patients; *Guardianship Act 1987* (NSW) matters and *Protected Estates Act 1983* (NSW) matters. In some instances, merit test and means test do not apply.
Administrative Appeals Tribunal, including social security matters	Representation available if the applicant may incriminate himself or herself; the case is complicated; the applicant cannot adequately prepare or present the case without legal assistance; or the appeal raises important or complex questions of law. Legal aid may be granted to obtain instructions and necessary reports, and prepare submissions for appeals to Administrative Appeals Tribunal if: the case concerns an overpayment over $5000 by Centrelink; the applicant is at significant risk of prosecution; the applicant cannot afford to pay for medical reports; the appeal is about the health of the applicant or of someone for whom the applicant has parental responsibility; the applicant, because of a disability or disadvantage, cannot adequately prepare or present the case without legal assistance; the appeal raises important or complex questions of law.
CRIMINAL	Available for most criminal matters commenced by a police charge: committal proceedings, Drug Court matters (not subject to means test) and applications for an ADVO in most circumstances. Merit test does not apply to criminal law matters (except appeals and Supreme Court bail applications.) Means test does not apply in first appearance bail applications.
FAMILY	
Family law and de facto relationships	Available in most areas of family law, including parenting plans and orders, separate representation of children (merit test does not apply), other orders relating to children and injunctions relating to family violence.
Children	Available in children's criminal matters, including proceedings in the Children's Court (merit and means tests do not apply), all committal proceedings, and children's care matters.

Source: Legal Aid website, particularly section on Legal Aid policies: <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=242> (accessed July 2004).

Barriers to homeless people accessing grants of legal aid

A number of the homeless people interviewed for this study spoke about the difficulties they had experienced in accessing grants of legal aid. One

interviewee who had recently been released from prison and was living in supported accommodation wanted to address discrepancies in the child support he was paying. However, he found he was ineligible for a grant of legal aid under the means test. He stated:

> *The biggest problem that I've found is that, if you're just over the threshold like me, you can't get any legal aid at all. You have to go privately, and you can't afford it half the time. I think the test is at the same level that State Housing's got, and I'm just over the threshold, by about $30. Now I'm losing some of the small cleaning jobs, I might fall below the threshold. So it makes it really hard for people with low wages or who are just over the threshold.*[73]

A community-based worker noted:

> *This week alone, we've had, through our organisation, about nine people going to court. Out of the nine only two happened to just be fortunate enough to get any representation. The criteria with legal aid ... is getting harder to fulfil. The legal aid services [are] getting fewer, quite lacking some sort of funding or whatever, I don't know. But it has become quite critical.*[74]

In a submission to the Foundation early in the Access to Justice and Legal Need research program, the Law Society of NSW indicated:

> *People who would have been eligible for legal aid several years ago would now no longer be able to obtain legal aid. [The means test] has failed to keep pace with inflation and increases in benchmarks such as the Henderson Poverty Line.*[75]

A number of the homeless participants we consulted for this project had been granted legal aid for various matters. On the whole, these people appreciated both the support they were given and the challenges facing the lawyers assisting them. For example:

---

[73] Interview no. 15.

[74] Roundtable Consultation, 27 August 2003.

[75] Law and Justice Foundation of NSW, *Access to Justice Research Program. Stage 1: Public Consultations,* p. 37. The Henderson Poverty Line calculates the amount of money that individuals and families of different sizes need to cover basic living costs.

> *I haven't had any trouble with Legal Aid. They've been really good. No problems whatsoever. Even the people that have come to represent me have all been really good ... Sometimes getting phone calls returned or trying to get onto actual people is a bit hard, but eventually you get through. You've just got to be persistent ... They're working for a lot of other people, so as long as you're persistent, you're right.*[76]

To be granted legal aid, homeless (and other) people need to meet a range of criteria, relating to the type and merit of their matter, their capacity to pay and whether or not they face any 'unusual or special disadvantage' that would increase their need for legal assistance. While homelessness is not, of itself, an 'unusual or special disadvantage', some homeless people may meet the criteria for this classification due to their other complex needs (e.g. substantial psychiatric condition, intellectual impairment, or youth).

Criminal and family law duty lawyer schemes

A number of the homeless people interviewed had used Legal Aid duty lawyer services.[77] Duty lawyers are available at 157 local courts throughout NSW to represent clients in criminal cases.[78] Clients may be directed to the duty lawyer on the day of their matter by a support worker or a court officer, or they may seek out the duty lawyer themselves. According to Legal Aid NSW, most of their contact with street-based homeless clients and some people who live in boarding houses is through this service, when people come to court on the first day that their matter is listed. Initial contact with homeless clients may also occur when the clients are in police custody at the court.[79] For some of the people interviewed in this study, duty lawyers provided the only legal assistance they had received.

Family law duty lawyer services are also available in some family courts and federal magistrates courts to assist clients on list days. The scheme currently operates in the Federal Magistrates Court and Family Courts

[76] Interview no. 20; also Interview nos. 15 & 28.

[77] Interview nos. 8, 10, 11 & 20.

[78] See <http://www.legalaid.nsw.gov.au>

[79] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003.

at Sydney, Parramatta and Newcastle, and will be expanded in 2005 to include four regional centres (Dubbo, Wollongong, Lismore and Coffs Harbour).[80] Family law duty solicitors provide legal advice, assist in negotiating settlements, appear in court to obtain adjournments and other orders, and deal with urgent applications on behalf of self-represented litigants and clients who have not been aware of or able to access legal aid assistance prior to coming to court.

Barriers to using the duty lawyer schemes

In a consultation with Criminal Law Division of Legal Aid NSW, a number of challenges faced by duty lawyers in addressing the multiple legal and other needs of homeless clients were raised. First, duty lawyers have a high volume of clients, particularly on list days. This limits the amount of time they have to spend with each client. This is problematic for homeless clients, who often present with multi-layered legal and other problems, in addition to the criminal or family law issue they are facing in court that day. Given this workload, duty solicitors necessarily have to focus on the legal matter that the client is in court for that day, with little or no opportunity to identify or address other legal issues that may be contributing to a client's homelessness. Furthermore, there is little opportunity to link homeless clients to support for their non-legal needs, which often affect their legal issue.[81]

Secondly, given the prevalence of mental health and other disorders among homeless people, duty lawyers need advanced communication skills to take comprehensive instructions from these clients. It was also reported that because it can take a long time to take instructions from these clients, their matters may be deferred until later on in the day when the solicitor has more time to assist them. This is reported to be frustrating for clients, some of whom will simply leave, rather than waiting all day until they can see the solicitor and have their matter heard.[82]

---

[80] Consultation with Louise Blazejowska, Legal Aid NSW, March 2005.

[81] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003.

[82] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003 (see Chapter 8 for the problems arising from this).

Finally, homeless people and workers consulted in this study reported having to instruct different solicitors each time they came to court.

> *When you go to court you want legal aid representation there—of course you do, you want somebody there. But the trouble with them, is that ... you never get the same solicitor ... someone different each time and they come in there five minutes before you go to court and you have to go through the whole lot and then you have got to go to court and they can't represent you because they don't know the full story ... and when ... you are remanded again and then you get another solicitor and it keeps going like that. At the end you know, you think, 'What the hell.' You know, you can't fight it, you can't beat it. What's the point?*[83]

One worker described a client who had had a different legal aid solicitor on each of the five occasions he went to court. Furthermore, "each time, the solicitor was unprepared", only being briefed by the client immediately before entering court. Based on her long experience working with ex-prisoners, she believed that "people are going to jail because of the process".[84]

Legal Aid NSW is a key legal assistance service to homeless and other disadvantaged people in NSW. However, faced with the types of barriers described above, some clients become cynical about the level of service they can expect from Legal Aid:

> *I honestly don't think they work for us. They work for the government because the government is paying ... I know in one case I had me own private solicitor and I got out of that pretty lightly ... when you are payin' for it [representation] ... it is different.*[85]

A major factor affecting the level of service that Legal Aid NSW can provide is funding. Observations made in this study indicated that the

---

[83] Interview no 10; see also NHHIN Forum, Working Group 1. This was also raised as an issue in the Burdekin report (para. 21.26).

[84] NHHIN Forum, Working Group 1.

[85] Interview no 10; also Interview 19.

demands for legal aid services were greater than its resource capacity.[86] Highlighting the vital role of legal aid, one worker noted:

> *I think there's a major deficiency there. I mean there's no substitute really for a properly funded, properly resourced and comprehensive government provided legal aid scheme.*[87]

In its submission to the Senate Inquiry into Legal Aid and Access to Justice, Legal Aid NSW directly linked the need for increased funding to the complex needs of their client groups. It recommended as follows:

> *Funding for legal aid services needs to take into account the specific resource demands involved in delivering services to socially and economically disadvantaged people.*[88]

Issues related to the decline in real terms of public funding for legal aid were raised in a keynote address by Justice Sackville to a Foundation Access to Justice and Legal Needs workshop, together with submissions to the Foundation and reported in the first stage of the Access to Justice and Legal Needs research program.[89]

Features of accessible legal assistance services

A major focus of this project was on the attributes of legal assistance services that increase accessibility for homeless people. These can be summarised as:

- an accessible location
- a less formal environment

---

[86] E.g. Caseworkers 1 & 2; Interview nos. 6, 7, 10, 15, 25 & 27; see also Law and Justice Foundation of NSW, *Access to Justice and Legal Needs. Stage 1: Public Consultations,* pp. 32–6.

[87] Roundtable Consultation, 27 August 2004.

[88] Legal Aid NSW, 2003, p. 3.

[89] L Schetzer & J Henderson, *Access to Justice and Legal Needs: A Project to Identify Legal Needs and Barriers for Disadvantaged People in NSW*, Public consultations, Law and Justice Foundation of NSW, Sydney, 2003, pp. 36–7.

- longer appointment times
- legal officers skilled in communicating with people with complex needs
- continuity of service
- timely legal assistance
- the capacity to develop and coordinate a response to a range of legal issues (in other words, case management)
- links to non-legal services (e.g. caseworker support, alcohol and drug treatment, housing and accommodation services)
- a focus on assisting and empowering clients to address their legal rights.[90]

Below is a discussion of each of these features and how they may enhance the delivery of legal services for homeless people.

Accessible location of services/outreach services

The coordinator of the VPILCH HPLS argues:

> *... it is crucial that legal assistance for homeless people is accessible at locations that they already frequent for more basic subsistence needs. Such locations include soup kitchens, crisis accommodation facilities, housing services and domestic violence refuges.*[91]

The specialist homeless person's legal services and clinics in NSW are located in, or have very close links with, generalist welfare services. Administrative data provided by the existing homeless person's legal services indicate that homeless clients will access these legal services

[90] Suggestions drawn from consultations with Brian Hocking, Matthew Talbot Hostel, November 2003; Jane Sanders, Shopfront, September 2003; Phil Lynch, VPILCH HPLC, Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003; Natalie Ross, ICLC, September 2003.

[91] Lynch & Klease, section 5.3.

in these locations.[92] Issues related to the co-location of legal and other services are discussed in Chapter 7.

However, the needs of homeless people who do not or cannot access homeless person's services must also be considered. Legal Aid NSW, CLCs, the Chamber Magistrates Service and LawAccess all have a role in reaching homeless and other disadvantaged people statewide. CLCs such as the WLS conduct outreach to health clinics in disadvantaged areas of Sydney as well as outreach in rural areas.[93] Legal Aid NSW also provides a statewide outreach program of legal advice and education to neighbourhood centres, court houses, and some Aboriginal legal services.[94] In 2004, the LCRC started providing a legal clinic through two Community Technology Centres in Western Sydney.[95] Given the numbers of homeless people living with family and friends, in boarding houses and caravan parks around the State, the value of providing legal assistance to homeless people in places that they can comfortably access cannot be underestimated.

Less formality

> *They're almost frightened, very shy of talking to somebody that they think has a law degree or whatever so it's very hard to get them engaged in the first place. And someone really down to earth that is prepared to be a little flexible is really important.*[96]

Some service providers interviewed for this project noted the need for legal services to be 'less formal', so that homeless people are not intimidated and deterred from using these services.[97] To this end, a number of legal

---

92 See Table 6.2, which includes information about the numbers and types of clients accessing these services.

93 Consultation with WLS, November 2003.

94 Legal Aid NSW, *Outreach Programs.*

95 Personal communication, Prue Gregory, LCRC, December 2003.

96 Roundtable Consultation, 27 August, 2003.

97 E.g. Consultation with Brian Hocking, Matthew Talbot Hostel, November 2003.

services for different disadvantaged clients (e.g. homeless people, women, Aboriginal people) aim to provide a less formal atmosphere, in areas and/or services their client groups already visit. For example, the Violence Prevention Service (VPS) in Walgett is a legal and support service for local Aboriginal women, which is provided in a less formal atmosphere. The VPS is under the auspices of the WLS, and staffed by solicitors and court support workers. While the service does not specifically target the homeless, it serves a group of women who are vulnerable to homelessness—that is, women living with, and/or escaping from domestic violence.

One feature of the VPS is that clients can access the service for assistance other than legal advice. For example, the VPS is also an agent for Chrisco[98] and The Smith Family. Women can also simply come in for a chat and a cup of tea. This latter feature is considered particularly important by the service, for women who may be reticent to approach, or be seen to approach, a legal service. As the manager stated:

> *Women feel comfortable to come here. They can talk about any issues. Their kids are welcome. Women appreciate it.*[99]

Time to see clients

A number of legal service providers indicated in consultations for this study that homeless clients with complex needs require longer appointment times with their lawyer. They need time to tell their stories at their own pace and for the lawyer to talk them through their legal options. The LCRC observed:

> *... the lawyers at the LCRC have found that the clients do not have the ability to easily identify an issue. It takes time for the client to tell his or her story and it is only in listening to the entire story that the lawyer can understand the extent of the problem and in doing so put forward a viable solution to the client.*

[98] This is a Christmas savings club.

[99] Consultation with Doreen Walford, VPS, Walgett, November 2003.

> *It would be the submission of the LCRC that for the clients coming to its centre, they require access to lawyers who will have the time to listen to their story. Poor levels of education of these clients combined with poor or no record keeping (their belongings are often carried in one bag) mean that sufficient time must be allocated to each client to be able to clearly ascertain the area of difficulty.*[100]

The need for more time to spend with clients was also raised as an issue for Legal Aid duty lawyers and for ALS solicitors, who represent a list of clients on a court day.[101]

Lawyers with good communication skills

Consultations for this study also suggested that lawyers working with homeless clients require both high-level communication skills and an appreciation of the complex needs of their clients. One SAAP worker suggested that lawyers need to be straight forward with clients and to avoid patronising tones.[102] Lawyers also need to be able to provide advice in language the clients can understand.

> *We have our own solicitors. They are gentle and kind and they speak the lingo in a way the women understand. If the women don't understand they come and ask [other staff].*[103]

Thus, the skill of a lawyer is not just in communicating with clients, but in appreciating the clients other needs and limitations.

> *[We] need lawyers who understand the issues and needs of homeless people, including issues relating to mental health and drug and alcohol misuse. For instance, lawyers need to be aware that someone who is heavily medicated is going to have trouble answering questions.*[104]

---

[100] Submission to the Law and Justice Foundation of NSW by Prue Gregory on behalf of the LCRC.

[101] Consultations with Brian Sandland, Criminal Law Division, Legal Aid NSW, October, 2003; Richard Ikkafu, Walgett WALS, May 2004.

[102] Consultation with Brian Hocking, Matthew Talbot Hostel, November 2003.

[103] Consultation with Doreen Walford, Manager, Walgett VPS, November 2003.

[104] Caseworker 1.

Continuity of service

Together with legal staff skilled in communication is the need for continuity of legal staff—where a client sees one solicitor on an ongoing basis. This issue was raised in the Burdekin Report and, as consultations indicated, remains a need today.[105] The impact of having a different solicitor each time the client went to court was noted in particular, in relation to the duty lawyer scheme for criminal matters. Recognising the need for continuity of staff, the pro bono homeless person's legal services second solicitors to the clinics for six-month blocks of time.

Provision of timely advice

A number of participants in this study have indicated that, in many cases, homeless people may not seek assistance for a legal issue until their matters are at crisis point (if at all).[106] When legal advice is sought, action is often required promptly to avoid harsh consequences or compounding problems. Legal services for homeless people need the capacity to respond accordingly.[107] However, making legal services more accessible to begin with may also encourage clients to access the service before issues compound. Early intervention is discussed in Chapter 7.

A legal case management approach

In consultations for this study, an experienced solicitor working with homeless youth noted: "because of their chaotic lifestyle [homeless people] need an *intense legal case management strategy* which is client based rather than matter based" (emphasis added).[108] Legal case management involves considering all the legal issues facing one particular person and providing a coordinated legal response to those needs. However, based

[105] Burdekin report, pp. 263-4.

[106] Consultations with Jane Sanders, Shopfront, September 2003; Natalie Ross, ICLC, September 2003; Caseworker 2; Interview no. 25. See also MacKenzie & Chamberlain, *Counting the Homeless 2001: NSW,* p. 37.

[107] NHHIN Forum, Working Group 2; Consultation with Natalie Ross, ICLC, September 2003.

[108] Consultation with Jane Sanders, Shopfront, September 2003.

on consultations for this study, the reality is that legal service provision to disadvantaged people in NSW, particularly at the stage of legal assistance and representation, tends to be 'siloed' by matter type. For instance, a Legal Aid duty lawyer will assist with a person's criminal matter; a grant of legal aid may be provided to a private solicitor for a family court matter; a tenancy advice service may support the client with a housing issue and their debt may remain unaddressed. Not only is a person's legal assistance drawn from multiple agencies (or different sections of the same agency), it appears that often there is no communication between, or coordination of, the services provided.

Given that homeless people's problems tends to involve multiple and often interrelated legal and other issues, their needs may not be best served by such a fragmented system. Furthermore, considering the barriers they face in seeking assistance for these problems, ideally contact with a legal assistance service for any one of these issues should lead to assistance for their other legal needs.

Another legal case management issue is that homeless clients may also require ongoing support. This is the type of support provided by Shopfront. As its Principal Solicitor remarked:

> *Because of their associated social problems, the clients are often quite 'hard core', with very few alternative legal services accessible to them. Legal Aid are often unable to provide them with the continuity or individual case support that they need. Shopfront Youth Legal Service works closely with other youth-oriented services to develop effective individual case plans for their clients.*[109]

The development of individual case plans for homeless clients may require increased communication and coordination between legal agencies about the needs of individual clients.

[109] Consultation with Jane Sanders, Shopfront, September, 2003.

Holistic service delivery: coordinating legal and other needs

As discussed above, homeless people and their service providers may benefit from a coordinated approach to legal assistance. However, given their complex lives, homeless people may also benefit from having their legal and other needs addressed in an integrated and holistic manner. As the IDRS noted:

> *There needs to be a holistic service approach to delivery. Homeless people with intellectual disability and mental illnesses are challenged with a multitude of complex issues, and need that extra level of support much more than some short-term legal advocacy help. Even if the law can help a homeless person with a tenancy situation, that tenancy cannot be sustained without adequate community support.*[110]

In its submission to the Foundation during its public consultations in the early stages of the Access to Justice and Legal Need research program, Legal Aid NSW noted:

> *Clients often present to the Commission seeking help for a range of problems, both legal and non-legal. Whilst the Commission endeavors, where possible, to deal with a client's problems in a holistic way, some of the matters for which the person needs help may not be legally aidable. As a result, whilst some of the clients' matters can be taken on by the Commission, clients may need to be referred elsewhere for help with their other non-legally aidable problems. Unless this process is managed well, clients can become confused and may feel that the legal system has failed to deal with them as a 'whole person'.*[111]

While the individual needs of homeless people vary considerably, we found that, generally, this group of people has compounding legal and social issues. Some people will need intensive support for a short time (e.g. to clear debt, find stable accommodation, separate from a partner

[110] Consultation with IDRS, October 2003.

[111] Submission from Legal Aid NSW, reported in Law and Justice Foundation of NSW, *Access to Justice Research Program. Stage 1, Public Consultations,* p. 38.

and/or gain employment), while others, particularly those with disabilities may require longer term support to manage their lives (e.g. to maintain a tenancy, receive alcohol and drug treatment). It would seem from the views expressed by participants in this study that the overall outcome both legally and socially may be enhanced by coordination between legal and other support services. Hence, 'one-stop shop' type models, where people can be assisted with different legal problems, as well as with access to crisis accommodation, Centrelink, health and other services, may best meet the needs of homeless people. The role of non-legal services in supporting homeless people through legal services is discussed further in Chapter 7.

Empowering the client

As described in Chapter 1, services such as the HPLS place their work within a 'rights-based approach'. In terms of legal service delivery, Goldie described this approach as one that places "homeless people at the centre of the processes that develop solutions and in control of decision-making that affects them".[112] With an emphasis on capacity building and skills transfer, the National Association of Community Legal Centres also suggests the participation of community members in the management of legal services and making the lawyer–client 'exchange' an empowering one for the client.[113]

Summary

Legal assistance may take the form of plain language legal information, legal advice, initial legal assistance (such as drafting a letter in response to a claim) and representation in a court or tribunal. In NSW, legal assistance is provided to homeless people by a number of different agencies.

[112] Goldie, *Rights Versus Welfare,* p.133.

[113] NACLC, *Doing Justice.*

It has been argued in this chapter that Legal Aid NSW, CLCs and ALSs are the primary legal service providers to homeless people throughout NSW, even though legal service provision to homeless people (as defined in this report) by these agencies is not separately identified or specifically resourced. LawAccess also appears to have a major role in providing legal assistance to this client group, and in linking isolated homeless people to other legal services.

In addition to these generalist agencies are the specialist legal services and clinics for homeless people: the LCRC, Shopfront, the legal clinics at Lou's Place and Exodus and the PIAC/PILCH HPLS. The model offered by specialist homeless person's legal clinics specifically addresses barriers faced by homeless people in accessing legal services (see list of features below). However, most of these services are pro bono services, which are most viable in city locations where there are high rates of homelessness and where there are law firms with the pro bono capacity to service these clinics. For these reasons, specialist services are best examined for the model of legal service delivery they provide, rather than as a primary source of legal support to homeless people in NSW.

Given the particular legal needs of homeless people and the barriers they face in seeking assistance for those matters, it appears that homeless people benefit from legal services that:

- are located in places that are accessible to homeless people throughout NSW
- have longer appointment times to spend with clients
- are staffed with legal officers who are skilled in communicating with people with complex needs
- can provide continuity of service
- can provide timely legal advice and support
- have the capacity to address or coordinate a response to a range of legal issues

- can be coordinated with the provision of non-legal services (e.g. caseworker support, accommodation services, drug and alcohol treatment)
- assist and empower clients to address their legal rights.

Homeless people also benefit from legal assistance provided as soon as possible after the legal issue has arisen and before it has reached crisis point and affected other areas of their lives. Scope for 'early intervention' is further discussed in Chapter 7.

A final but important point is that, at present, legal service delivery in NSW tends to reflect the separate jurisdictions of the courts and tribunals, and be 'siloed' by the type of legal matter. Thus, one person may see a pro bono service about a debt, get a grant of legal aid for a family law issue and see a Legal Aid duty lawyer for a criminal matter. This partitioning of legal support contrasts to the experience of homeless people, where legal (and social) issues are often intertwined. Recognising these multiple and related needs, we now turn to the key role of community agencies in linking homeless people with legal assistance, and supporting them through the legal process.

7. Assistance by non-legal agencies

> *Well, it's somewhere you can come to get off the street if you need to … You can get the right advice. Instead of asking someone on the street … [The caseworker] here can give you the right people to go and see to start with, help you make phone calls if you need to, and things like that.*[1]

The current and other studies indicate that homeless people are more likely to seek legal assistance from people or services that they are familiar with and already see in their day-to-day life.[2] There are an array of agencies and organisations that specifically assist homeless people, providing food, shelter, medical attention and drug and alcohol treatment. Some of these organisations also provide advocacy, legal information, advice and referral services. There are also many general services accessed by people while homeless (e.g. health services, schools, community centres).

In the current study, nearly half of the homeless participants said that they would go to or had gone to a legal service (usually Legal Aid) if and when they had a legal problem.[3] However, as will be argued in this chapter, many homeless people also turn, at least initially, to non-legal services or workers for advice if facing a legal issue.

This chapter looks at the role that non-legal services play in assisting homeless people with their legal problems or in linking them with legal support. It will examine:

---

1 Interview no. 20.

2 Lynch & Klease, section 5.3; P Crane & J Brannock, *Homelessness Among Young People in Australia: Early Intervention and Prevention. A Report to the National Youth Affairs Research Scheme,* National Clearinghouse for Youth Studies, Hobart, 1996, <http://www.acys.utas.edu.au/nyars/N13.htm> (accessed November 2004), p. viii.

3 E.g. 11 participants had used or approached Legal Aid for assistance, and 2 had gone to other legal services.

- non-legal support and services that are accessed by homeless people in NSW, as possible sites for legal assistance or referral
- what non-legal services do to assist homeless people with legal problems, and the challenges they face in providing this assistance
- how to support non-legal services in addressing their clients' legal needs
- options for coordinating legal and non-legal support to address the needs of homeless people.

Non-legal services accessed by homeless people

The types of services and support networks used by homeless people may differ considerably, depending upon their location, needs, demographic characteristics and how long they have been homeless. For example, Chamberlain and Mackenzie and others report that people at risk of homelessness tend to be in contact with and/or supported by a range of people and agencies: family members, friends, schools, doctors, community health workers, GPs, youth workers, tenancy workers, welfare workers, domestic violence workers, refuge staff, police and housing workers and Centrelink staff. Once people become entrenched in homelessness, their support networks may change. People may lose contact with family, leave school or move away from the local community networks that previously supported them. They may have more contact with police and SAAP services, and maintain contact with Centrelink.[4] These services are considered in this chapter as possible points of intervention for legal support or referral to legal support.

In their work on pathways to homelessness, Chamberlain and Mackenzie concluded that early intervention, that is, providing assistance to people before or as they first become homeless, is easier and is more likely to

[4] MacKenzie & Chamberlain, *Homeless Careers* and other studies as cited in this chapter.

result in better outcomes. As they observe: "once people lose their home, their problems always get worse".[5] The value of early intervention was also stressed as a key message arising out of the 2003 *Beyond the Divide* national conference on homelessness.[6]

Since the mid-90s there has been increasing emphasis by governments on 'early intervention' to reduce homelessness. Two major early intervention programs have attracted Commonwealth and State funding:[7] the FHPP and the Reconnect program.[8] In an interim evaluation report, the FHPP identified so-called 'first to know' agencies:

> *'First to know' agencies include real estate agencies and housing authorities who may be first to know when a current tenancy is at risk. Other 'first to know' agencies include general welfare agencies, schools, and family support agencies.*[9]

Thus, there appears to be an increasing focus on early intervention and the range of people and agencies that may be in a position to provide a point of intervention or referral to people as they become homeless.

In this chapter, consideration is not only given to possible sites for early legal intervention, but also to those services that reach people already entrenched in different forms of homelessness. Table 7.1 provides a summary of the types of non-legal support services identified in this study as being accessed by people who are homeless across different circumstances. Services accessed have been divided into those that people at risk of or entering homelessness tend to be in contact with and those that people entrenched in homelessness are more likely to access.

---

5 MacKenzie, & Chamberlain, *Homeless Careers*, p. 38. See Chapter 3 for more details.

6 *'Beyond the Divide', Summary Report,* p. 26.

7 *'Beyond the Divide', Summary Report,* p. 20.

8 See RPR Consulting, *I'm Looking at the Future: Evaluation Report of Reconnect Final Report,* FaCS, Canberra, 2003, <http://www.facs.gov.au/internet/facsinternet.nsf/VIA/reconnect/$File/ImLookingToTheFuture_FinalReport_30Oct2003.pdf> (accessed November 2004); RPR Consulting, *FHPP Interim Evaluation Report*.

9 RPR Consulting, *FHPP Interim Evaluation Report,* p.29.

Table 7.1: Support and services accessed by homeless people

	Potential links to people at risk of or entering homelessness	***Potential links to people entrenched in homelessness***
Young people	Family and friends	Outreach services
	Schools	SAAP and other homeless person's services
	Local youth services	
	Kids Help Line	Police
Adults – homeless through housing crisis	Family and friends	Centrelink
	Tenancy workers	Court/court support
	Centrelink	Health services, including:
	Early childhood services/schools	• mental health services
	Neighbourhood centres	• alcohol and drug services
	Telephone services (e.g. Lifeline)	• GPs.
Adults – homeless through family breakdown	As above; also:	
	Domestic violence support workers	
	SAAP services (e.g. refuges)	
	Community health services/GPs	
	Counselling services (e.g. Relationships Australia)	
	Court	

Source: Drawn from consultations and relevant literature.

Note that Table 7.1 is only indicative. It provides a framework for discussing the various support services accessed by people experiencing different levels of homelessness, rather than an exhaustive list of support people and agencies. Furthermore, there will be considerable variation in the services accessed by different people at different stages of homelessness. For instance, some people will access SAAP services as they become homeless (e.g. a woman's refuge). Others who are entrenched in homelessness might be supported by or living with family and friends.

These possible points of intervention for legal assistance are discussed below. Some services, particularly those that are not specific to homeless people, may only be potential sites for referring homeless people to legal advice (e.g. with a referral telephone number). Others, such as SAAP services, may provide more comprehensive support. However, all are relevant in some way to helping homeless people address their legal needs.

Family and friends

> *I'm 'the baa baa black sheep' of the family, so my family wouldn't help me.*[10]

Although some homeless people are estranged from family members, for many others, family and friends are a key source of support.

> *A mate of mine got me onto a bloke who worked for Aboriginal Legal Aid ... if I wouldn't have been told by another source, I wouldn't have known, and I would have been up the creek in a barbed wire canoe forkin' money out of me pockets I really couldn't afford.*[11]

Not only are a sizable proportion of the homeless in NSW staying temporarily with family and friends (see Chapter 3), but family and friends are also reported to be a primary source of support for victims of domestic violence and young people, particularly in the early 'in and out' stage of homelessness.[12] This is consistent with a study by Dimopoulas et al. on service provision to people experiencing family violence, which reported: "trusted friends and close family members were often a first point of contact for women [in family violence situations] seeking support".[13]

However, while family and friends may be a key source of support, it cannot be assumed that they are any better informed about legal processes or services than the homeless people they are supporting. They may be best reached by increasing general community awareness of legal assistance services and sites for legal information.

---

[10] Interview no. 8.

[11] Interview no. 14.

[12] MacKenzie & Chamberlain, *Homeless Careers,* p.15.

[13] M Dimopoulas, R Baker, M Sheridan, J Elix, J Lambert, *Mapping Pathways of Service Provision: Enhancement of Family Violence Protocols and Interagency Linkages*, Partnerships Against Domestic Violence, Office of the Status of Women, Canberra, 1999, p. 16.

Schools

In 2001, it was estimated that 42% of homeless youth (aged 12–18 years) in NSW were still at school or TAFE.[14] Furthermore, a nationwide study of homelessness among school students also found that 37% of homeless students had been homeless for six months or more.[15] The following story illustrates the situation of young homeless school students.

> *This boy left home in February 2000, because of domestic violence by his stepfather. His stepfather is extremely physically abusive towards him and his mother was not willing to intervene. He is currently living with friends. At school, he is completing year 12, although he has had many days off school and has wanted to leave on many occasions. Constant counselling and support are provided at school.*[16]

Thus, schools and school counsellors in particular are sites for early intervention to young people (and potentially their families) as they become homeless.[17] Chamberlain and MacKenzie state:

> *We know that most young people have their first experience of homelessness when they are at school. If schools are unaware of these students or do not provide assistance then they drop through the early intervention net. Most join the ranks of the homeless unemployed and some make the transition to chronicity.*[18]

Successful intervention is harder to achieve once young people become chronically homeless, and the pathways to providing legal support change. Young people in this situation are more likely to be in contact with police, government agencies and youth and other SAAP services.

---

[14] C Chamberlain & D MacKenzie, *Youth Homelessness 2001,* Table 4.4, p.25; see also C Chamberlain & D MacKenzie, "How Many Homeless Youth in 2001?", *Youth Studies Australia,* 2003, vol. 22, no. 1, pp.18–24.

[15] Based on 1094 homeless school students identified in case studies provided by schools. MacKenzie & Chamberlain, *Homeless Careers,* p. 20.

[16] Reported in MacKenzie & Chamberlain, *Homeless Careers,* p. 21.

[17] MacKenzie & Chamberlain, *Homeless Careers,* p. 24; Chamberlain & Mackenzie *Youth homelessness, 2001,* p. v. See also Crane & Brannock, p. 79; House of Representatives Standing Committee on Community Affairs, *A Report on Aspects of Youth Homelessness,* AGPS, Canberra, 1995.

[18] Chamberlain & Mackenzie, *Youth Homelessness, 2001,* p. 26; see also MacKenzie & Chamberlain, *Homeless Careers*, p. 25.

Health and community services

General practitioners, alcohol and drug services, mental health services, early childhood centres, neighbourhood centres and generic welfare services may all be accessed by people facing or experiencing homelessness.[19] For example, one interviewee who was not in contact with a SAAP service said:

> *I've just linked back up here now with Redfern Community Health. I've got a really good—I think she's a mental health nurse or something. I see her every couple of weeks.*[20]

A community project coordinator, spoke of his role as a link to other services:

> *I get a couple of people coming into the office (and that is not my function) ... people will come in and say, 'Can I make a call?' or 'Would you make a call for me?'.*[21]

Of note is an increasing focus among health services, particularly in inner-city Sydney on conducting outreach to homeless people in the area, and on linking these initiatives with related services (e.g. Centrelink).[22] While it is not appropriate or feasible to expect health and other workers to take on the task of 'legal assistance' or case management beyond their usual role, there may be benefits to homeless clients if there is scope for referral to local legal services or access to legal outreach from these sites.

Telephone counselling services

Another potential point of contact for homeless people are telephone-based counselling services, such as Lifeline, Relationships Australia, Parent's

---

[19] Dimopoulas et al., p. 16. Interview no. 3.

[20] Interview no. 5.

[21] Consultation with Bob Morgan, River Towns Project, Walgett, February 2004.

[22] South Eastern Sydney Area Health Service, *Homelessness Health Strategic Plan 2004–2009,* 2003, <http://www.sesahs.nsw.gov.au/Homelessness/HomelessHealthStrategicPlan.pdf> (accessed November 2004); A Malcolm, "Providing Primary Health Care to the Homeless", *Parity,* vol. 17, no. 8, 2004, p. 9.

line and Kids Help Line. While homeless people face restricted access to internet and telephone services, data from Kids Help Line indicate that some young people facing homelessness do use internet and telephone support services.[23]

> *Just wanting to know her legal rights ... she is determined to leave home because her mum regularly beats her. [Female caller to Kids Help Line, aged 16.]*[24]

In 2003, Kids Help Line answered nearly 193 500 calls from people 18 years and under in NSW, 45% of whom were from rural areas. Calls most commonly concerned family relationships (16% of all calls), but 4% of calls concerned leaving home or homelessness.[25] The latter group called about issues such as the legal age at which they could leave home, and how to access social security and employment.[26]

Information websites

As reported in Chapter 3, more than one-third of the homeless people in NSW are aged between 12 and 24 years. While a proportion of homeless young people will not have access to or the capacity to use the internet,[27] websites accessed by homeless young people still may be considered as potential avenues to legal information.[28] Some of the limitations of web-based information services for homeless people have already been discussed in Chapter 6.

---

[23] Kids Help Line, *Kids Help Line Infosheet 2004,* 2004, <http://www.kidshelp.com.au/upload/11865.pdf> (accessed October 2004) (based on 1996–97 data)

[24] Kids Help Line, *Infosheet, No. 12: Homelessness,* 2004, <http://www.kidshelp.com.au/upload/1846.pdf> (accessed October 2004).

[25] Kids Help Line, *Infosheet: NSW 2003,* 2004, <http://www.kidshelp.com.au/research/STATES/NSW03.pdf> (accessed 2004).

[26] Kids Help Line, *Infosheet, No. 12: Homelessness* (based on 1997–99 Australia wide data) (accessed October 2004).

[27] For information on internet usage by low-income Australians, see Zappala, *Barriers to Participation,* pp. 64–82.

[28] E.g. <http://www.reachout.com.au> is a web-based service that aims to "improve young people's mental health and well being by providing support information and referrals in a format that appeals to young people". It has the Lifeline and Kids Help Line telephone numbers on its homepage.

Tenancy and housing workers

People who become homeless after losing public housing or private rental accommodation[29] may be in contact with housing workers and tenancy advice and advocacy services (TAAS). In their study of pathways to homelessness, Chamberlain and Mackenzie observed:

> *Many people who lose their employment do not go to an agency for the homeless, but they may contact a housing worker if they are in public housing or generic support workers in community agencies.*[30]

TAAS are independent services providing advice and advocacy in dealing with housing issues. They also issue fact sheets and other publications to tenants and assist with the preparation of submissions to the CTTT.[31] Most are responsible for geographical areas, while others are specialist statewide services such as PAVS, which supports people in residential parks.[32]

Residential park owners

Residential (caravan) park owners are another link to support for residents of their parks. A review of family support programs being run in caravan parks reported:

> *Park operators played a big role in the running of the park community and how people were treated. Where a park operator was supportive this facilitated families' knowledge of and access to services, where negative, services may be actively discouraged from coming onto the park.*[33]

Thus, on the basis of this observation, park owners may have a role in allowing and indeed facilitating the access of support services to residents

---

[29] In 8% of all NSW 'closed support periods' in 2002–03, the client had been accommodated in public or community housing and 14.7% in private rental immediately prior to coming into SAAP (possibly with rental assistance). AIHW, *SAAP 2002–03 NSW Tables,* Table 8.2, p. 31. See Appendix 1 for definitions.

[30] MacKenzie & Chamberlain, *Homeless Careers*, p. 31.

[31] Tenants Union, *About the Tenants Advice and Advocacy Program Services and the Tenants' Union,* <http://www.tenants.org.au/about/> (accessed November 2004).

[32] *Parks and Village Service* <http://www.tenants.org.au/taap/PAVS20001220.html> (accessed November 2004).

[33] Eddy, *Final Report: Caravan Parks Pilot*, p. 32.

of their parks. This is particularly important if residential parks are located away from support services and residents lack access to transport.

Consumer and advocacy bodies

The consultations undertaken for this study indicate that consumer and advocacy groups are another important source of support to homeless people. Relevant groups include BLAG, Homelessness NSW/ACT, Youth Accommodation Association and Shelter NSW. Advocacy services such as PAVS also set up consumer networks among their clients (e.g. within residential parks).

Other groups with members who experience homelessness include the Community Restorative Centre (CRC), Justice Support (supporting prisoners, their families and friends), Sex Worker Outreach Project, NSW Users and Aids Association and The Gender Centre (supporting transgender people). CRC workers, for example, assist people leaving prison to "find housing, address debt, return to work, deal with health issues, and develop the skills they need to live independently".[34] One homeless participant commented:

> *Organisations like Sex Workers Outreach Project or the Prostitutes Collective, if they were better resourced with information about legal services, then maybe we would go to legal services more often. If the information was more readily available in those organisations, you may find the working girls using those services.*[35]

Court support schemes

Court support workers are available in some NSW courts to assist people affected by the court system, including offenders, families of participants and witnesses. Broadly speaking, there are two types of court support schemes: specialist and generalist.

---

[34] E.g. CRC: see <http://www.crcjs.org.au/information.htm> (accessed November 2004).

[35] Interview no. 25.

The Women's Domestic Violence Court Assistance Scheme (WDVCAS), administered by Legal Aid NSW, is a specialist court support scheme. There are 33 WDVCASs operating at 55 local courts throughout NSW. WDVCASs provide women and their children with support, advocacy, referral and information and facilitate their access to appropriate legal representation. They assist women to obtain legal protection from domestic violence and obtain assistance for their other needs such as finding housing and obtaining social security.[36]

Generalist court support workers are generally voluntary, not necessarily legally trained and may work for non-legal agencies, including welfare organisations (e.g. Salvation Army) and specialist support groups[37] (e.g. CRC).[38] To provide an example, CRC provides a network of 'court support' volunteers in local courts throughout metropolitan Sydney and the Family Court at Parramatta. The court support workers are trained to provide information, referral to Legal Aid NSW, and personal support, on a confidential basis.

Centrelink

Centrelink is the Commonwealth agency that administers social security payments in Australia. As such, Centrelink is a key point of contact with homeless people, especially those who have little or no contact with SAAP or other services.[39]

There is some evidence that Centrelink may be the only point of contact that some homeless people have with formal support agencies or government

[36] Legal Aid NSW, *WDVCA Program,* <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=58> (accessed November 2004).

[37] Law and Justice Foundation of NSW, *Access to Justice Research Program, Stage 1 Public Consultations,* p. 175.

[38] The Community Restorative Centre is a support group for prisoners, ex-prisoners and their families and friends: see <http://www.crcjs.org.au> (accessed September 2004).

[39] See Chapter 3 for the proportion of people on income support. See also Chamberlain & MacKenzie, *Counting the Homeless 2001,* pp. 40–1.

bureaucracy.[40] For example, a project examining the needs of families in caravan parks found that "families had little knowledge of and were not accessing services, apart from meeting immediate needs, for example Centrelink".[41] Mackenzie and Chamberlain identify Centrelink as an important site of early intervention for people at risk of homelessness through housing crisis (see Chapter 3), because they are usually in receipt of a government pension, even when they are isolated from other services.[42] Finally, Dimopoulas et al. noted Centrelink as "a significant source of referrals to services which provide assistance to those experiencing family violence".[43] In this context it is notable that Centrelink describes itself as "an entry point or 'gateway' for customers to a wide range of other services in the community".[44] This may be particularly true of rural areas, where other support services are in short supply.

> *Centrelink is different here. We don't have an organisation in town which can give out urgent payments, or food vouchers. People would often come into Centrelink for this sort of assistance because they know that Centrelink in Walgett would help them in this.*[45]

Many of the homeless people we consulted reported mixed success in dealing with Centrelink customer service officers (see Chapter 8). However, Centrelink also employ a range of specialist support officers (e.g. social workers, Indigenous specialist officers, and specialist Youth Servicing Units).[46] One respondent who was supported by a Centrelink

---

[40] Baldry et al. noted of a sample of people released from prison in NSW between mid-2001 and early 2003, "Because there was such reticence to use services other than Centrelink, very few even thought of seeking help or support to claim housing rights." E Baldry, D McDonnell, P Maplestone, M Peeters, "Ex-prisoners, Housing and Social Integration", *Parity,* vol. 16, no. 5, June 2003, pp. 13–15.

[41] Eddy, *Final Report: Caravan Parks Pilot,* p. 32.

[42] MacKenzie & Chamberlain, *Homeless Careers*, p. 37.

[43] Dimopoulas et al., p. 38.

[44] Centrelink, *Annual Report 2002–03,* <http://www.centrelink.gov.au/internet/internet.nsf/ar0203/6_5.htm> (accessed November 2004).

[45] Consultation with Manager, Centrelink Walgett, February 2004. He also reported that there are very few problems with compliance in his area. He suggested that because it is a small community and they know their clients well, they work with the clients to avoid breaches and being cut off.

[46] See <http://www.centrelink.gov.au/internet/internet.nsf/services/homeless.htm> (accessed November 2004).

social worker found this assistance useful.[47] Others indicated that they had been assisted by Centrelink officers who did outreach to the SAAP services they used.[48]

Among other duties, Centrelink social workers "provide counselling, support and referral services to Centrelink customers who are experiencing major changes in their lives or a crisis such as family breakdown or domestic and family violence".[49] As such, these workers would appear well placed to assist homeless clients in addressing their issues with Centrelink in particular, as well as to appropriately refer homeless clients to legal support services. However, the ease or otherwise of accessing these specialist workers is not explored in this study.

While a number of participants reported problems dealing with social security issues, Centrelink could be further explored as a point of referral to legal services for people facing homelessness, who are otherwise out of touch with support services.

Recognising that only a proportion of Centrelink clients will access specialist workers, the Centrelink office could also be considered as a potential site for legal information, making available at least the telephone number for LawAccess and/or local legal advice services. Another option, which to our knowledge has not been explored, might be to provide a 'telephone booth' with direct access to LawAccess and/or other relevant advice services in Centrelink waiting areas. It should be noted that the capacity of Centrelink to assist clients in a proactive way may be more limited when clients are supported by Centrelink agents rather than offices (e.g. in remote locations).

---

[47] Interview no. 30 spoke of the support in dealing with Centrelink, provided by a Centrelink social worker after her mental health issues became apparent.

[48] Interviews nos. 9 & 28. For examples of outreach programs, see Centrelink, *Annual Report 2002–03*.

[49] Centrelink, *Social Workers Factsheet,* <http://www.centrelink.gov.au/internet/internet.nsf/publications/ch003.htm> (accessed November 2004).

Law enforcement officers

Police are usually the first point of contact homeless people have with 'the law' if they are charged with an offence, if they are the victim of a crime, or if they are asked to move on in public space.[50] Police are also often called to deal with people who are violent or exhibiting other difficult behaviour arising from mental health or alcohol and other drug issues.[51] Transit police and local council enforcement officers may also interact with homeless people in similar ways during the course of their duties. Finally, police may be a key source of support in domestic violence situations, significant as family breakdown is a common pathway to homelessness.[52] Thus, police officers in particular have multiple roles in dealing with homeless people: charging and arresting people and providing protection as well as information, advice and referral.

The data collected for the current study indicate that people entrenched in homelessness frequently interact with police, and use police as a source of information about the legal process. One participant who had worked as a prostitute noted:

> *Our space is with the police. When you're standing on a street corner, your most common contact with any legal service is with the police. They are not arresting you every night. One copper ... would assist me wherever he could, and I would assist him where I could, trading information, doing my bit to keep the streets a bit clean from heroin addicts. I would hand him information, he would hand me information when I was in need. He sent me to the Royal Women's Hospital when I was raped. He provided me with the legal services when I was raped.*[53]

Another participant also reported seeking advice from the police:

---

[50] Chung et al., p. 55; discussed by Interview nos. 6, 10, 25, 28 & 29.

[51] Consultations with Cathy Mackson and Tracey Hales, OPP, NSW Police, April 2004; Senior Sergeant Franc Helsen, City Central LAC, NSW Police, May 2004. See also Essential Media Communications, *Mental Health Workers Alliance Worker Survey,* November 2004, Sydney, <http://www.labor.net.au/campaigns/mhwa/background/survey.html>. (accessed November 2004).

[52] See also Chung et al., 2000; Edwards, *Violence Excluded.*

[53] Interview no. 25.

> [Interviewer]: *And did you see a lawyer when you had the AVO taken out?*
>
> *No, I went to the police station and just made a statement and that, and they rang me up and just let me know what was going on … They were good. They gave me information about the AVO and what to expect.*[54]

Another said:

> [Interviewer]: *If you had another legal issue who do you think you would go and see?*
>
> *I don't know, I would go down to the cop station. Just ask them, 'I'm going through this sort of thing, what can I do about it?'*[55]

However, the consultations also revealed a complex relationship between police and homeless people, where police are viewed and experienced as both adversaries and as protectors.

> *It is funny for me to say, because I hate them. But at the moment I have got no trouble with the police. You know, I work in [Sydney] and I have had a few hassles with different people … and the police said to me, 'Look, I will give you my phone number and ring me up any time and we will come and sort it out for you.' … they see me there every day and see me having a go and everything else and so, you know …*[56]
>
> *I don't like them very much. But you know, if I get into trouble, then if my only option is to ask them what should I do about it, then I am going to have to do it, you know what I mean. Regardless of whether I like them or not.*[57]

Some homeless participants in this study reported negative interactions with police, which, in contrast to those quoted above, acted as a barrier to them pursuing legal issues through this avenue (see Chapter 5).

---

[54] Interview no. 29.

[55] Interview no. 28; also Interview no 6.

[56] Interview no. 10.

[57] Interview no. 28.

The police perspective

According to those consulted for this study, police identify different groups of people within the homeless population: the regular 'street livers' who they may be quite familiar with, transient people who they may not have seen before (or at least for a while) and drug user/dealers (who may be regular or transient). Police were also very conscious of the vulnerability of people sleeping in public spaces to becoming the victims of crime.[58]

The official policy approach of NSW Police to homeless people is outlined within the Protocol for Homeless People, a State government interagency agreement.[59] The protocol states that homeless people should be 'left alone' unless they request assistance, they appear to be distressed or in need of assistance, their behaviour threatens their safety or the safety and security of people around them, or their behaviour is likely to result in damage to property or the environment.[60]

A number of other services in the inner city noted the collaboration between police, other service providers and street outreach workers.[61] For instance, police in one area distribute cards with the contact details for outreach services to homeless people. They have also used their radios to find out if beds are available at SAAP services.[62] The officer responsible for liaising with homeless services in this area commented: "when police

---

[58] Consultation with Cathy Mackson and Tracey Hales, OPP, NSW Police, April 2004.

[59] The protocol was developed by the NSW government Partnership Against Homelessness, which is led by DOH and includes NSW Police, the NSW Department of Community Services, State Rail Authority and State Transit Authority, among others.

[60] See DOH, *Protocol for Homeless People: Fact Sheet,* October 2003, <http://www.housing.nsw.gov.au/news_publications/PAH/protocol-for-homeless-people-Fact-Sheet.pdf>. (accessed February 2004).

[61] Consultations with Robbie MacInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003; Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

[62] Consultations with Senior Sergeant Helsen, City Central LAC, NSW Police, May 2004; Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

take the time to work out the person's circumstances, they can do more for the person".[63]

In summary, police interact with homeless people in a range of circumstances: they issue fines; they move people on in public spaces; they assist people who are victims of crime, including domestic violence; they arrest and charge people for criminal offences; and they take or refer people to other services. While, in some instances, these interactions can be negative for the homeless person, police remain a potential pathway to legal information and assistance.

Homeless person's services

The support networks and agencies described above support but do not specifically target homeless people. In contrast, the following services are aimed at the homeless population, providing accommodation, referral and other support services.

Drop in and street outreach

Drop in centres and outreach services generally help homeless people to access accommodation, food services, health care (including mental health care) or assistance with finding longer term housing. In inner-city Sydney there are two major outreach services to homeless people: the City Street Outreach Service, which is provided by the Independent Community Living Association under contract to the City of Sydney, and the NSW government Homelessness Action Team Support and Outreach Services.

Street outreach workers generally support clients who are entrenched in homelessness and have very complex needs, particularly mental health and/or addiction issues. They have a particular role in linking this group of homeless people with services to address these complex needs. In this role, workers report being asked for advice on a range of legal issues. The challenges faced by outreach workers in meeting these advice needs are discussed in greater detail later in this chapter.

[63] Consultation with Senior Sergeant Helsen, City Central LAC, NSW Police, May 2004.

Homeless Persons Information Centre (HPIC)

HPIC, run by City of Sydney Council, is a telephone information and referral service for people who are homeless, or at risk of homelessness in NSW. It provides professional assessments and referrals for clients seeking accommodation and support services throughout the State.[64] In 2002–03, HPIC received nearly 44 000 calls. Of these, approximately 27 000 calls were for accommodation required that night.[65]

SAAP services

As discussed in Chapter 1, nearly 400 SAAP agencies in NSW provide accommodation and other services to homeless people. Nearly half of these agencies target youth (177 agencies) and a further 89 target women escaping domestic violence. Only 25 agencies are specifically for homeless families.

A number of homeless participants in this study described how they used SAAP services as a link to legal and/or advocacy support.

> *Exodus ... have access to everything, all these different organisations from the law onwards, all these contacts ... They give out free lunches, you go into the hall, have lunch, have a chat. If you have a problem you go to the office, you tell them what your problem is at the reception, like, 'I've got a legal issue' and they say, 'Sit down, we'll go and get our legal person on for you.' From there, they refer you either to Legal Aid or somebody else who will tell you what your options are, and you take it from there. Because without the options, where do we go? We're lost.*[66]

The level of assistance SAAP services provide clients with legal problems is evident in their service statistics, displayed in Table 7.2, below.

---

[64] See <http://www.cityofsydney.nsw.gov.au/Community/ServicesAndPrograms/HomelessnessServices/HomelessPersonsInformationCentre.asp>.

[65] Data provided by Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney.

[66] Interview no. 11.

Table 7.2: SAAP support periods: advocacy and selected other services provided to selected clients, NSW, 2002–03[67]

	Male alone 25+	*Female alone 25+*	*Females with children*	*Total support periods*
	N=19 950	*N=4900*	*N=6350*	*N=44 300*
Type of service	*%**	*%**	*%**	*%**
Assistance with legal issues/court support	1.8	14.1	23.7	8.2
Advocacy/liaison on behalf of client	15.4	35.5	50.3	29.0
Assistance to obtain/maintain independent housing	7.0	16.0	32.9	15.3
Assistance to obtain/maintain government payment	3.5	9.5	17.3	8.7
Advice/information	46.7	58.3	70.3	55.9
Assistance with immigration issues	0.1	1.6	1.9	0.6

* Clients can receive multiple services, so percentages do not add up to 100%. Only 3 of 8 subgroups are detailed in this table. See full cited in footnote for information on other groups.

Source: AIHW, *SAAP 2002–03 NSW Tables*. Table 6.3 p. 24.

Table 7.2 shows that 8% of all SAAP 'support periods'[68] completed in the 2002–03 year involved 'assistance with legal issues or court support'. Another 30% of support periods involved 'advocacy or liaison on behalf of the client'. A further 15% of support periods involved 'assistance to obtain or maintain housing', and 9% involved 'assistance to obtain or remain on government benefits'.

As may also be seen on Table 7.2, different groups of clients relied more heavily on SAAP services as a link to legal assistance than others. For example, approximately 24% of support periods to 'females with children', but only 2% of support periods to men over the age of 25, involved assistance with a legal issue/court support. This particular discrepancy may in part reflect the proportion of SAAP services that are women's refuges.

Table 7.3 shows the number of requests made to NSW SAAP services for legal or advocacy related services during 2002–03, and how these requests were responded to.

[67] See Appendix 1 for the definitions of 'support period' and 'closed support period'.

[68] See Appendix 1 for the definition of 'support period'.

Table 7.3: Legal- or advocacy-related SAAP services requested by clients in closed support periods, by provision, NSW, 2002–03

Type of service	*Not provided*	*Referred*	*Provided by SAAP only*	*Provided and referred*	*Total*	*Number*
	%	*%*	*%*	*%*	*%*	
Assist with legal issues/court support	9.1	10.8	56.0	24.1	100	3500
Advocacy/liaison on behalf of client	2.1	0.9	86.7	10.3	100	10 700
Assist to obtain/maintain independent housing	16.1	14.7	49.3	19.9	100	7450
Assist to obtain/maintain government payment	9.0	12.3	56.1	22.7	100	3650
Advice/information	1.1	0.1	92.8	5.9	100	21 750
Assist with immigration issues	5.8	10.9	51.4	30.9	100	250

Source: Drawn from AIHW, SAAP 2002–03 NSW Tables. Table 7.1, p. 26.

As may be seen in Table 7.3, in 2002–03, NSW SAAP services received 3500 requests for legal assistance or court support from clients and 10 700 requests for advocacy or liaison on behalf of clients. This is in addition to more than 11 000 requests for assistance to obtain or maintain housing and/or government payments. Fifty-six per cent of requests for legal assistance resulted in court support or assistance with legal issues being provided solely by the agency, and 35% of such requests involving a referral to another agency. Assistance with legal issues or court support was not provided in 9% of all 'closed support periods' in which it was requested. Generally, 'advocacy support or liaison' and requests for 'advice or information' were handled by the SAAP agencies themselves.

Thus, SAAP services play a key role in providing assistance with legal issues (e.g. information, liaison/advocacy) and in linking their homeless clients with legal assistance services. The specific ways that SAAP and other workers assist their clients with legal problems are outlined in the next section.

It should be noted that, while SAAP services are a key source of support to homeless people in NSW, some homeless people do not access services until well entrenched in homelessness, if at all.

There are also homeless people who cannot access SAAP services. In some cases there are no appropriate SAAP services in their area—there may be a local service for men but not for women or young people. In other cases, as reported by the NSW Ombudsman in a report on SAAP services, some groups of homeless people may be routinely excluded from relevant SAAP services (e.g. if they are using alcohol or drugs, or have a condition the service cannot manage).[69] Finally, some people may not access SAAP services that have a philosophy or practice inconsistent with their beliefs or needs (e.g. a dependent drug user may not approach a service where abstinence is required).

Legal assistance provided by non-legal services

This section explores in more detail the support provided by non-legal workers and agencies to homeless people with legal problems. Support may be in the form of:

- legal information and advice (defined in Chapter 6)
- assessment and referral
- advocacy
- support through the legal process (including court support)
- case management.

Included in the discussion are the challenges faced by non-legal services in providing these types of support to homeless clients. The subsequent section discusses options to address these difficulties.

Legal information and advice

As indicated in the SAAP data referred to above, homeless clients often ask caseworkers for 'information and advice' about 'legal' issues. As well

[69] NSW Ombudsman, *Assisting Homeless People,* p. 8. See Chapter 4 for more detail.

as asking 'What shall I do?', homeless clients ask how particular legal processes work, what sort of things they should expect to happen, what documents they need and how to dress if they have to appear in court.[70] A worker's capacity to answer these questions will depend significantly on their role and area of expertise (e.g. housing workers, financial counsellors, youth workers, general welfare workers).[71] The following section details the challenges reported by non-legal support workers when their homeless clients appeal to them for advice and information about legal issues.

Challenges in providing and 'interpreting' legal information

In consultations for this study, outreach and other workers providing front line support to homeless people reported feeling quite stressed about providing legal information or 'advice' to clients. Some workers felt they were 'running blind' giving advice to people about what to do. They prefered being able to assist their clients directly into legal support.[72] Some described the situation as 'the blind leading the blind'.[73] A few caseworkers reported difficulties in even finding legal information to assist their clients. One stated:

> *I've spent hours on it going to all the legal [internet] sites. I can't find anything. Or what they do is they send you to, give you a whole list of lawyers to look up and access these particulars lawyers in this field. And I think, oh gee we can't afford that.*[74]

Similarly, a report on domestic violence and homelessness noted:

> *In general, participants [workers surveyed] did not speak confidently or appear well informed about the legal rights of women in domestic and family violence situations.*[75]

---

70 NHHIN Forum.

71 Scott & Sage, pp.77–86.

72 Consultations with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

73 NHHIN Forum, Working Group 4.

74 Roundtable Consultation, 27 August 2003.

75 Chung et al., p.53.

One factor which appears to fuel workers' concerns about providing legal information to clients is an inability to delineate between what is 'legal information', 'legal advice' and 'referral': distinctions that are often unclear. Scott and Sage report:

> *The generalist community workers who have received no training in the law were reluctant to provide any form of assistance with the legal aspect of the client's problem. This included a reluctance to provide any form of written legal information to clients or to carry out legal research on their behalf. These participants were fearful of providing wrong or out-of-date information to clients. They saw their primary role in these situations as providing referral to agencies with more specialist legal knowledge.*[76]

Anxiety and a lack of information about the actual responsibilities of non-legal support workers under legislation and agency guidelines (e.g, by privacy legislation, agency procedures and guidelines, insurance issues) were also reported to affect the willingness of some workers to provide 'legal' information.[77] Thus, consultations suggest that the capacity of workers to provide accurate plain language legal information depends on:

- their content knowledge, training and previous experience
- the accuracy and accessibility of the legal resources available to them (including personal contacts)
- the time they have available to consult and comprehend these legal resources
- the complexity of the client's situation and of the legal processes or concepts they are describing to the client
- their understanding of their own legal obligations (e.g. privacy laws, insurance).

The value of 'legal information' to the client depends upon their capacity to understand the information provided and to act on that information. For the many reasons discussed in Chapter 5, homeless people may not be able

[76] Scott & Sage, p. 79.

[77] See sections in this chapter on 'workers' legal obligations and 'legal advice for caseworkers'.

apply non-specific legal information effectively to their own situations. For instance, in this study, a tenancy worker reported that the tenancy laws are often too complicated to explain to tenants over the telephone, particularly when the caller is preoccupied with other issues, such as finding somewhere else to live.[78] In these circumstances, clients require a higher level of support to actively address the legal issue they are facing. This is consistent with previous research that shows generic legal information is of limited value of its own to disadvantaged people, but may be useful when provided in conjunction with other forms of assistance.[79]

Assessment and referral

A key role of homeless person's services is to assess clients' legal and other needs, provide the assistance required or refer them to specialist support. Referral is "the provision of information about another agency, including contacting or negotiating with another agency on the client's behalf".[80] A 'supported referral' involves the referring caseworker or agency preparing information about the client's circumstances for the agency the client is being referred to.

The importance of generalist welfare and support services as a source of referral to legal services is reflected in the referral statistics provided by the homeless person's legal services consulted for this study. Between 75% and 90% of their clients had been referred by the host service or other community organisations.[81]

One worker interviewed for the current study stated: "our role is primarily talking to the client, finding out what the problem is, and making the appropriate referral".[82] Another commented:

---

78 Consultation with Tenant's Union of NSW and tenancy workers, January 2004.

79 Scott & Sage, p. 18.

80 Scott & Sage, p. 7.

81 Statistics provided by the BDW clinics at Exodus and Lou's Place, and the LCRC. Of the 74% of legal clinic clients at Exodus 'referred' by the organisation, 11% had visited after seeing signs up at Exodus.

82 Caseworker 2; Roundtable Consultation, 27 August 2004.

> *Agencies that do proper case management should be identifying legal issues as part of this process.*[83]

Caseworkers we consulted reported often having to actively support clients to follow through a referral. Support included making appointments for clients, actually accompanying people to appointments with their solicitors and assisting clients to obtain documents and complete forms. One homeless participant described this support as follows:

> *... as far as accessing agencies go, [caseworker] does all the accessing for me. That makes life a lot easier for me because I only have to rock up to the meeting with the agency and introduce myself. It's good ... the caseworkers have been a tremendous help and a very good benefit to me in such a situation which I am placed in. Twenty-four years of drug and alcohol abuse doesn't help me much!*[84]

Challenges in providing assessment and referral for legal issues

Successful referral depends upon caseworkers having the capacity to identify legal need and knowing where and how to appropriately refer the client. Consultations suggest that the level of referral to CLCs and Legal Aid by caseworkers and community organisations varies considerably, with some workers and organisations having limited knowledge about who they could refer clients to.[85]

According to Scott and Sage's study,[86] knowledge about who to call for legal information or who to refer a client to seems to depend upon the role, experience and networks of the agency or worker.[87] For instance, two caseworkers interviewed for the current study remarked:

> *I know people at Legal Aid and at Redfern and Kingsford CLCs, that I can ring. As they know me they can help me out even if they are stretched.*[88]

---

[83] Consultation with Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003.

[84] Interview no. 14.

[85] Consultation with Natalie Ross, ICLC, September 2003.

[86] Scott & Sage, p. 82

[87] Consultations with IDRS, October 2003; Natalie Ross, ICLC, September 2003.

[88] Caseworker 1.

> *I've had to make several phones calls. I've been lucky that I've remembered the name and got onto that same person again. You do get a connection there but it is really like pulling something out of a hat. It's the luck of the draw. But I have found if you do get that kind of connection life can be so much easier and it's amazing how these people tend to go that little bit further as well. They do seem to push things that little bit harder for the client which is really, really good. But it's just making that connection.*[89]

However, when referrals are based on personal knowledge and relationships, clients may not get referred to relevant services that are outside the agency or caseworker's usual networks. For example:

> *Workers in the homeless sector may not be aware of the full range of services which fall outside their primary area e.g. may not be aware of the IDRS. The IDRS tends to get referrals from third parties working in the intellectual disability field (e.g. from supported accommodation services). Accessibility hinges on being able to identify someone who has an intellectual disability and referring them through to the IDRS.*[90]

Another issue faced by non-legal services when referring clients is delay in the availability of legal support. This is particularly stressful when the client's legal issue is urgent.

> *Our service to the clients often involves legal issues and ... we need proper legal advice, extra legal advice on tap. I mean we can't wait six months, eight months. Sometimes decisions need to be made and we need advice there and then ...*[91]

If homeless people are referred to legal services that cannot assist the referred client because they lack resources or expertise, the client may remain without legal support. Equally, if clients end up on a 'referral treadmill', where they are referred to one agency only to be referred onto another, they potentially lose interest in pursuing the matter at some point.

---

89 Roundtable Consultation, 27 August 2003.

90 Consultation with IDRS, October 2003.

91 Roundtable Consultation, 27 August 2003.

A study by Pleasence et al. for the British Legal Services Commission describes a phenomenon called 'referral fatigue', where the likelihood of clients obtaining advice from an advisor they have been referred to sharply declined as the number of advisors they visited increased.[92] The authors conclude that there is "a degree of exhaustion among members of the public as a result of being pushed from adviser to adviser".[93]

Facilitating appropriate referrals

The NSW Legal Referral Forum describes 'effective legal referral' as practice that:

- assists the customer to reach a suitable service provider with the least number of referrals
- assists the customer to take appropriate action by providing tools
- carries out the referral in a way that is appropriate to customer needs.[94]

Pleasence et al. also stress:

> *... the importance of equipping those many individuals outside of the recognised advice sector from whom people may initially seek advice (such as health workers, social workers and politicians) with the means to effectively refer them to appropriate advisers if necessary, both through professional education and through making appropriate advisers accessible to those who are referred onto them.*[95]

One way to increase the appropriate referral of homeless people to legal support, is to provide simple, clear community-wide information about where to get legal assistance. This can happen on a local basis (see

---

[92] P Pleasance, A Buck, NJ Balmer, A O'Grady, H Genn, *Causes of Action: Civil Law and Social Justice*, The Stationery Office, London, 2004, pp. 77–8.

[93] Pleasence et al., p. 78.

[94] NSW Legal Referral Forum, *Effective Legal Referral – Draft for Discussion,* <http://www.lawfoundation.net.au/information/referral/effective.html> (accessed November 2004). The forum has also developed a list of competencies of effective referral.

[95] Pleasence et al., p. 78.

discussion on local networks later in this chapter) or statewide. One option for consideration is the wide distribution of the LawAccess contact number, to increase the potential for people at risk of and in the early stages of homelessness to be linked with legal information and advice. LawAccess can provide legal information and advice by telephone, and link people with local face-to-face legal services (see Chapter 6). While there are issues with homeless people accessing telephone based services, some non-legal workers suggested:

> *... so we'll hand them a brochure ... for legal aid or whatever ... where the guy is not going to say to us 'I can't read'. But if we had that outreach component or telephone access, we carry mobiles with each worker where we can just plug it in and say, 'Here you go pal, speak to this person.'* [96]

In summary, evidence from this study suggests that many homeless people initially seek advice or assistance from non-legal services or workers. SAAP services in particular already play a key role in referring clients to legal support. However, there are some difficulties with this process due to the lack of knowledge of legal services among some non-legal service providers and the risk of fatiguing clients with frequent and/or inappropriate referrals. Providing referral information (such as the LawAccess telephone number) to other services accessed by homeless people may increase the referral of homeless people in diverse circumstances to appropriate legal assistance.

Non-legal advocacy

As shown in Tables 7.2 and 7.3, another significant role for generalist caseworkers is advocating on behalf of their clients to government agencies and other services. Advocacy involves the caseworker directly engaging with other service providers on the client's behalf. Some participants felt that the presence of an advocate made a crucial difference to the way they were treated, and consequently helped to resolve issues.

[96] Roundtable Consultation, 29 August 2003.

> *It doesn't matter what your problem is, down there they do not seem to be sympathetic in a lot of cases. I took [caseworker] with me when I was having a problem down at Centrelink and that was unbelievable how quick it got fixed up! Because [the caseworker] was with me!*[97]

This participant's caseworker also observed:

> *They will put something over the clients if clients go there on their own. Just your presence there, even if you don't necessarily have to say anything, just the knowledge that there is some independent person there who is an advocate for that person. They are on their much better behaviour and they will take a somewhat different attitude, even down to their tone of voice. Because a client will go down there on his own and come back in a terrible state the way they have been spoken to and treated and I will go along and it will be a somewhat different story.*[98]

In some cases, the support of the caseworker was reported to be the only thing that keeps the client engaged in the process.

> *We find that sometimes we don't have the manpower to go with somebody to an appointment and they won't sit through that appointment, they'll lose their temper halfway through that appointment. Even if you are just there to say, you know just hear what this person has to say, that can help them too, because they don't really want to walk out of the appointment and they just can't keep it together.*[99]

Challenges in providing advocacy for homeless clients

In a roundtable discussion with non-legal workers for the current study, participants discussed the balance between self-determination and the autonomy of clients, and intervention by caseworkers to assist clients in resolving issues.

> *We take them to Centrelink, we take them to the Department of Housing. We sit down with them and you have to explain to them what the questions are on the Department of Housing form or the Centrelink form or the*

---

97 Interview no. 14.

98 Caseworker 2.

99 Roundtable Consultation, 27 August 2004.

> *Legal Aid form ... I mean some of the underlying principles of SAAP are self-determination and autonomy. I often find that if they were allowed to handle things on their own you would make no progress so you have to strike a balance between being too directive and disempowering and on the other hand just allowing them to flounder ...*[100]

However, the complexity of the legislation, regulations and policies that surround the provision of government services (e.g. Centrelink requirements and DOH policies) can also present a challenge to workers trying to advocate for their clients. Informants in this study suggest that workers benefit from having detailed knowledge of bureaucratic processes to successfully negotiate these services, and to identify when their clients may not have been dealt with appropriately. At one of the roundtable discussions, a group of non-legal workers remarked:

> *... for me the issue is understanding the legal obligations of government departments, and being able to advocate for our clients, being able to get our clients what they are entitled to. I think there needs to be a demystification of the way that all of the sort of government agencies that work with our clients operate.*[101]

> *... when it comes to legislation of all the different departments, we're not quite sure what the legal duties of other departments are.*[102]

Thus, although advocacy by non-legal workers is sometimes pivotal to a homeless client gaining a satisfactory outcome to a legal or bureaucratic problem, the success of such help is quite dependent on the extent of the individual worker's knowledge of the processes in question.

Supporting clients with the legal process

Once a referral has been made to a legal service, a caseworker's involvement may still continue.

---

[100] Roundtable Consultation, 27 August 2003.

[101] Roundtable Consultation, 27 August 2003.

[102] Roundtable Consultation, 27 August 2003.

> *I work in conjunction with [a CLC] so that if I've got a female client who's been sexually assaulted there's no way she wants to tell her story to the male solicitor up there so he's quite agreeable for me to take all the statements, to liaise with the doctor and get everything together and then he submits the case. But I haven't got the resources or time to do it.*[103]
>
> *Because we're looking at 96 per cent of our clientele being drug users, so as a result of that, all the time we're dealing with legal issues with the clients. We do a lot of court support and we do a lot of prison support with that as well.*[104]

One homeless participant described the value of this support to him:

> *I believe if people are given the support from before the time they go to court and during the court hearing itself, it just takes a lot of stress out. Like I have been to court on a number of occasions ... going there has been a bit jittery but when I am there, and I know [caseworker] is there with me, it's like, well I have got someone I know at least, so this is really good, I have got some help.*[105]

In the current study, caseworkers and non-legal agencies reported supporting clients through the legal process by:

- assisting clients to put documentation together
- ensuring clients attend meetings with the solicitor
- explaining the process to the clients
- letting a person know that they were due in court that day and, in some cases, picking the person up and taking them to court
- providing clothing to go to court in
- attending court with the client as a support person and, if necessary, explaining what has happened in court that day
- assisting clients to meet appropriate conditions for bail

---

[103] Roundtable Consultation, 29 August 2003.

[104] Roundtable Consultation, 27 August 2003.

[105] Interview no. 14.

- assisting clients to adhere to legal outcomes.[106]

Consultations for this study suggest that the support offered by caseworkers and non-legal agencies can mean the difference between positive or negative legal outcomes for clients, if for no other reason than the worker can ensure the person attends court. The implications of not attending court are discussed in Chapter 8. Noting that the capacity of a service to provide court support depends upon resources, another welfare agency added:

> *... on a good day we can send someone. On a bad day we can't and that can have an impact on the kind of quality of outcome that the client gets. And we have very little control over that because for us it is a resource issue.*[107]

Supporting homeless clients with bail

Bail is an agreement to attend court to answer a criminal charge. As discussed in Chapter 8, homeless people can have difficulty being granted bail and adhering to bail conditions if bail has been granted. It appears that non-legal support services may assist people to stay out of prison pending a court hearing by providing appropriate accommodation to people on bail. For instance, Legal Aid NSW reported in this study using HPIC to find appropriate accommodation for homeless clients, in order to facilitate bail being granted.[108] Welfare services also provide supervision and assessment and assist clients to comply with other bail conditions such as attending rehabilitation programs.[109]

---

[106] Consultations with Kevin Rizzoli, Haymarket Foundation, October 2003; service providers, Walgett, February, 2004; Richard Ikaafu, WALS, Walgett, March 2004; refer also to Roundtable Consultation, 27 August 2003.

[107] Roundtable Consultation, 27 August 2003.

[108] Consultation with Brian Sandland, Legal Aid NSW, October 2003.

[109] R Johns, *Bail Law and Practice: Recent Developments,* Briefing Paper, No. 15 of 2002, NSW Parliament, Sydney, <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/CAC2CFC74242A44FCA256ECF00095B61> (accessed November 2004).

Case management

The types of support described above have been presented as discrete activities undertaken by non-legal services. However, another valuable role played by non-legal services in supporting homeless clients is that of case management—that is, where the client's legal needs are addressed as part of an holistic program that includes other related support issues. Such processes involve the caseworker assessing the client's legal and other needs, referring clients to legal and other specialist services, coordinating the support of different service providers (e.g. housing, financial counselling, court support, AVOs) and providing advocacy and personal support as required.[110] Research in Queensland highlighted the benefits of 'continually engaging' with homeless young people, rather than providing a series of short one-off periods of support as a young person drifts in and out of homelessness.[111]

Challenges to supporting clients through legal processes

> *All agencies deal with a limited range of issues, even though they recognise that where a range of issues exist, each issue needs to be addressed. Many health and welfare agencies are over-accessed and under-resourced and thus there are time constraints that apply to clients.*[112]

The high level of support required by homeless clients to participate effectively in the legal process, may be beyond the resource capacity of some services to provide. Comments made at one of the roundtable discussions included:

> *Well, we actually keep ourselves short in the office department by sending people out to appointments with Centrelink or legal or any appointment*

---

[110] For case studies that demonstrate the intensive nature of case management and the value of coordinated service delivery from legal and non-legal agencies, see RPR Consulting, *FHPP Interim Evaluation Report*.

[111] *'Beyond the Divide', Summary Report,* p. 19. See also J Day, M Leebeek & L Villanova "Pathways Into and Out of Homelessness (Young People – Points of Intervention)", in *'Beyond the Divide',* <http://www.afho.org.au/4_publications/conference_papers/Summary_Report.pdf>.

[112] Consultation with Grace Abrams, Gender Centre, January 2004.

> *so that's the way to give them their cases, we do the same. We're certainly not funded to do that, we don't have the capacity to do that.*
>
> *And from a service's point of view, it's a bit of a nightmare because I mean you'd understand most of us are community-based, we're really stretched for resources and to send a worker for a whole day to go to court with someone is just a terrible waste of our resources. You know, especially if most of the day is just sitting around waiting for seven hours until the matter [is heard].*[113]

In addition to the legal issues confronting their clients, workers themselves potentially face a number of legal issues relating to the provision of services to homeless people. One manager commented:

> *We need separate legal advice and it takes months to get any legal advice on some very basic issues. And I'm working under a cloud sometimes as a coordinator of a program, and I'm not sure whether I'm working within the law, outside the law. And I can't get any advice.*[114]

Workers interviewed for this study report facing a range of legal obligations, which they do not always fully understand and which affects their capacity to assist clients with legal issues. In the words of one worker interviewed:

> *I've got legal training and I'm not even sure of some of these issues myself. I mean I can see both points of view. I mean duty of care to clients clashing with clients' rights to privacy and confidentiality for example. And statutory obligations to report this to the Commission of Serious Offences and whether in a professional relationship such as we have with our clients, whether those sections of the Crimes Act for example require us to report matters to the police ... And another one that's very important is that some of our clients are so unwell that they're not capable of making rational decisions on their own behalf and then are we under some sort of legal obligation to have them put under the Protective Office, for example. Are we under a duty of care to do that?*[115]

---

[113] Roundtable Consultation, 27 August 2003.

[114] Roundtable Consultation, 27 August 2003.

[115] Roundtable Consultation, 27 August 2003.

In some cases, workers' concerns may be based on misunderstanding about legislation. For example, a government officer described misunderstandings about privacy legislation as follows:

> *Many of the workers believed that the Privacy Act ... prevented them from helping their clients, and thus would not help clients based on their misunderstanding of the Act. In reality, workers can still help clients under the Privacy Act – it is more about knowing about the Act and how it can be used positively. This lack of education leads to confusion, and can lead to inadequate services.*[116]

Other legal issues that workers consulted for this study said that they were unsure about included:

- workers' statutory obligations to report serious offences they become aware of
- workers' obligation to contact the Protective Commissioner when clients do not have the capacity at that point in time to make certain decisions (e.g. if their client suffers an acute psychotic episode)
- statutory restrictions to the assistance a worker can provide a person who may not have a valid visa
- the impact of privacy legislation (the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Act 1998* (NSW)) on the way workers communicate with other agencies about clients
- the difference between legal 'information' and 'advice' and the obligations entailed in each of these.[117]

Thus, while non-legal workers carry out a range of tasks that assist their homeless clients into and through legal processes, they reported a range

[116] Robbie MacInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003.

[117] Roundtable Consultation, 27 August 2003; Consultations with Kevin Rizzoli, Haymarket Foundation, October 2003; Robbie MacInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003; Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

of challenges in undertaking these duties. These difficulties may arise from a lack of adequate resources to undertake these tasks, as well as the workers need for more information about legal processes, services and options. This role becomes more complex when their clients face multiple and interrelated legal issues and if their clients have problems that effect their ability to make decisions about their legal issues. We now turn to strategies raised in consultations to address these concerns.

Supporting non-legal workers to assist homeless clients in legal processes

As indicated above, some caseworkers report feeling overstretched, vulnerable and poorly informed when supporting clients to address their legal needs. In consultations we asked caseworkers what would help them to support their homeless clients to address their legal issues. The following suggestions were offered.

Priority access to legal support

Some workers consulted for this study said that a legal advice 'hotline' would assist them in promptly assisting clients with urgent legal needs.[118] As indicated below, there are some legal advice services available to caseworkers and other community workers. However, in this study we have not examined what proportion of community workers are aware of these services or how useful they find these services.

While CLCs often support non-legal agencies, the NSW Consumer Credit Legal Centre (CCLC) operates a dedicated telephone legal advice line for community workers, financial counsellors and government and community lawyers. Through this service community workers may obtain legal advice on behalf of their clients or guidance so that they can handle

[118] Consultation with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004.

a client's matter through their own service. The centre will also discuss referral options with workers.[119]

The Consumer Credit Legal Centre also provides a fairly formal process of 'cooperative legal assistance to caseworkers'. CCLC:

> *will accept the referral of a client and handle their case exclusively. Often it will be appropriate for a [referring] worker to remain involved. The extent of this involvement may vary from a solicitor in a regional community legal centre who represents a client and obtains some guidance from our centre solicitors, to the situation where we handle the matter but ask the worker to obtain documents and statements from the client according to our instructions.*
>
> *Most commonly, a financial counsellor or community worker may assist a client to self-represent by drafting letters, explaining legal processes and other essential tasks with assistance from Consumer Credit Legal Centre. This assistance may take the form of obtaining telephone advice at appropriate points in the process, and/or using the information and sample forms and letters provided by Consumer Credit Legal Centre.*[120]

For general legal issues caseworkers can also call LawAccess, the statewide telephone legal advice and referral service described in Chapter 6. LawAccess can advise caseworkers on legal issues they face in dealing with their clients and, in certain circumstances, the actual legal issues of their clients. While the LawAccess policy is to speak directly to the client with the legal problem, in situations where the client lacks the capacity to speak directly or understand the advice, LawAccess will, with the permission of the client, talk to their caseworker. A limitation for caseworkers using LawAccess for urgent legal advice is that it operates in business hours only.

One caseworker was not in favour of telephone helplines, as he found the people giving advice over the telephone tended to be non-committal,

---

[119] Consumer Credit Legal Service, *Caseworker Services,* <http://www.cclcnsw.org.au/> (accessed November 2004).

[120] CCLC.

providing only qualified advice.[121] Workers in a regional area were also not in favour of central advice lines, as they felt that these services could not substitute local networking, and that the complexity of issues facing homeless clients means that issues are better addressed by information sharing though interagency forums.[122]

Other workers interviewed for this project preferred to rely on written legal resources such as *The Law Handbook* to guide the information and 'advice' they give. Citing the example of a kit produced by the Protective Commissioner's Office, one worker suggested:

> *... it would be good if somebody could produce very simple, basic information kits, that would be of use to people working in our agencies, that would cover the basic areas of law that we are likely to encounter you know. Clients who are seeking an AVO or who have breached an AVO, what's the procedure, what are their rights.*[123]

'Law for non-lawyers': Training for caseworkers

Noting a lack of familiarity among caseworkers about legal processes and avenues of legal support, several agencies suggested that education and training seminars may be very beneficial.[124] At one of the roundtable discussions, workers stated what they wanted.

> *... education ... to gain the knowledge to support our clients and advocate for them, you know, at a stronger level in legal aspects, really because we're just, you know, in the dark.*
>
> *I agree with what somebody said about if you had a workshop, if somebody would give us a workshop for court procedures for welfare workers and social workers, I'd attend that. And I'd encourage every person that I work with to attend that. I really would.*[125]

---

[121] Caseworker 2. The telephone advice service(s) referred to were not specified.

[122] NHHIN Forum, Working Group 4.

[123] Roundtable Consultation, 27 August 2003.

[124] E.g. Consultations with Brian Hocking, Matthew Talbot Hostel, November 2003; Robbie McInnes, Senior Community Programs Officer, DoCS Metro Central Region Senior Community Programs Officer, October 2003.

[125] Roundtable Consultation, 27 August 2003.

Workers also wanted more information about the bureaucratic processes they support clients through (e.g. dealing with Housing, Centrelink and DoCS), finding previous training very useful.

> *To the great credit of the Department of Housing and Homelessness Action Team, a few years ago they did run some seminars for the NGOs and they did give us some information about their policy criteria which I have found has been immensely helpful in dealing with the Department of Housing, because now when I'm dealing on behalf of a client with that department, I know what their criteria are and I can specifically address that with the department.*[126]

An example of the type of training that non-legal workers appear to be requesting is that provided by Shopfront to youth workers in their area. The Principal Solicitor at Shopfront stated:

> *We can't be everywhere at once, so part of ensuring that homeless young people get good legal support is to train the people who work with them. We are not trying to turn youth workers into lawyers, but aim to give them the ability to recognise a legal problem, make appropriate referrals and support their clients throughout the legal process (e.g. by writing court reports or giving evidence). We also teach youth workers about their obligations in terms of confidentiality, duty of care, reporting child abuse, dealing with the police, etc.*[127]

Most CLCs, ALSs and Legal Aid NSW also undertake community legal education, with some providing specialised training for community workers and agencies working with disadvantaged people.[128] Government agencies such as Centrelink also provide information to community groups and workers.[129] However, the level of awareness among workers about the

---

[126] Roundtable Consultation, 27 August 2003.

[127] Shopfront, *The Shopfront Youth Legal Centre, An Overview,* <http://www.theshopfront.org (accessed 19 November 2004).

[128] E.g. CCLS, *Caseworker Services.* Kingsford Legal Centre, *Kingsford Legal Centre E-Bulletin, 1 May 2005,* no. 22, 2005.

[129] E.g. Centrelink's quarterly magazine *Community Update*, aimed at community groups. See <http://www.centrelink.gov.au/internet/internet.nsf/publications/cm.htm> (accessed November 2004).

availability of different training and community legal education programs and the accessibility and utility of these education programs to community workers were not specifically examined this study.

Conclusion

Non-legal workers can significantly enhance the capacity of homeless clients to identify and address their legal issues. However, workers indicated in this study that they require support in the form of legal information, access to legal advice and further training to perform this role. Legal issues of particular interest to their roles as caseworkers/ community workers include various statutory reporting requirements, the impact of privacy legislation on communication about clients with other agencies, and the limitations and responsibilities on advice given by non-legal practitioners on legal issues. It appears that there are some legal advice services available to caseworkers. However, it also seems, on the basis of our consultations, that the level of awareness of these services among workers is variable.

Another strategy that workers report as highly beneficial to legal and non-legal agencies, staff and homeless clients is increased communication and coordination between legal and non-legal service providers, particularly at the local level. The need to include homeless people and local communities in these networks to ensure that services devised actually respond to the clients needs was also stressed.[130] This involves including homeless people in the planning and ongoing review of services. Coordinating legal and non-legal services is discussed in detail below.

[130] Consultations with Drew Roberts, AHO, December 2003; Robbie MacInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003; Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003; NHHIN Forum; Senior Sergeant Franc Helsen, NSW Police, May 2004.

Bringing legal and non-legal service delivery together

A key message of the 2003 *Beyond the Divide* national conference on homelessness was:

> *Collaboration and integration between stakeholders remains critical to the improvement of services to homeless people, and to bring about the policy and program integration required to prevent and address homelessness.*[131]

Further, the summary report of the conference stated in support of this conclusion:

> *Research presented by Hanover Welfare Services captured the fundamental importance of working across and within service systems to address homelessness by producing powerful evidence to demonstrate that current separate responses to discrete aspects of disadvantage (e.g. income, housing, employment) produce poor outcomes for homeless people aged 18–35.*[132]

The data presented up to this point have demonstrated that legal and other issues homeless people face are often intertwined and not easily resolved by a single agency. As such, the current and other studies suggest that the issues may be best dealt with in a holistic manner, and that this is more feasible if agencies are working in coordination to support the clients. One worker commented:

> *So it's having a central team or information services or something like that, where you're connecting with, where all services are connecting with this, so there's a better understanding of what's happening.*[133]

This is consistent with Scott and Sage, who reported: "working with other agencies emerged as an important factor assisting participants to

---

[131] *'Beyond the Divide', Summary Report,* p. 26.

[132] *'Beyond the Divide', Summary Report,* p. 24.

[133] Roundtable Consultation, 27 August 2003.

deliver services to clients with legal problems".[134] However, coordination between agencies is not without its challenges, particularly with groups with multiple needs such as the homeless.[135]

However, that said, several interagency projects and programs have had positive outcomes for homeless people.[136] In the current study, the following suggestions were provided to increase communication and coordination between legal and non-legal services.

Networking between legal and non-legal agencies

> *The problems [of homeless people] are not just legal—they're massive. I think any legal clinic's got to have the links into all of us [homeless person's services] sitting round the table.*[137]

It was clear from caseworkers and agencies consulted in this project that networking between agencies, particularly at the local level, was highly valued.[138] Suggestions to improve coordination and cooperation between agencies included:

- more formalised communication mechanisms
- agencies working together on projects to address client needs
- establishing networks of homeless service providers in a local area
- shared training and development in legal issues/referrals.[139]

---

[134] Scott & Sage, p. 87

[135] J Western, *National Evaluation of the Supported Accommodation Assistance Program (SAAP III)* FaCS, Social and Economic Research Centre, Australian Housing and Urban Research Institute, University of Queensland, AusInfo, Canberra, 1999, p. 133.

[136] E.g. the FHPP, Reconnect and other programs reported in *'Beyond the Divide', Summary Report.* See also RPR consulting, *FHPP Interim Evaluation Report,* p. 7.

[137] Roundtable Consultation, 29 August 2003.

[138] E.g. Consultations with Sibylle Kaczorek, Community Development & Research Worker, San Miguel Family Centre, November 2003; Senior Sergeant Franc Helsen, NSW Police, May 2004; NHHIN Forum.

[139] Consultation with Robbie MacInnes, Senior Community Programs Officer, DoCS Metro Central Region, October 2003; NHHIN Forum.

Newcastle was one area visited as part of this project where homeless services had formed a network, namely, the Newcastle Hunter Homeless Interagency Network (NHHIN). The network includes accommodation services, welfare agencies, DOH offices, the tenancy service, Centrelink offices, Hunter Community Justice Centre, local councils and mental health and family and community services, among others and since 2004, the Hunter Community Legal Centre. The NHHIN is currently coordinated by the McKenzie Centre, run by Mission Australia.[140] The network has been developing a model that provides outreach to homeless clients and then coordinates service delivery to meet the diverse needs of those clients.[141]

At a broader level, the NSW government's Better Service Delivery Program is another project that aims to improve communication and coordination and facilitate more effective referrals between human service agencies in this State. It includes an online directory of human services, as well as electronic systems and other mechanisms to facilitate and streamline referrals between agencies. The program involves both government and non-government agencies.[142]

Networking and formal liaisons between agencies both at the local level and the State level may facilitate better coordination between legal and non-legal services. At the State level, it appears, however, that legal services in particular are not always included in networks with other human services. For instance, at this stage the BSDP does not appear to involve legal services (such as Legal Aid NSW, the local courts, Chamber Magistrates Service, LawAccess). Further, the Partnership against Homelessness, a partnership of state government agencies to address homelessness in NSW, does not include the Attorney General's Department or its relevant sections (e.g. local courts, LawAccess).

---

[140] See <http://www.wesleymission.org.au/centres/newcastle/mck.asp> (accessed November 2004).

[141] This is the Art of Reaching People (or TARP) model.

[142] NCOSS, *NCOSS Projects, Better Service Delivery Program,* <http://www.ncoss.org.au/projects/bsdp/about.html> (accessed November 2004).

Co-location and coordination of services

A key feature of the specialised homeless persons legal services described in Chapter 6 (e.g. LCRC, HPLS, Shopfront and the legal clinics at Lou's Place and Exodus) is that they are located in or near generalist homeless or other welfare/community services. In addition, Legal Aid and some CLCs provide advice clinics at neighbourhood centres and other outreach locations. Chapter 6 argued that this co-location of legal and other support services improved accessibility to legal assistance for certain sectors of the homeless population. Thus, this model provides another means for improving the coordination of legal and non-legal service delivery.

The evaluation report of the VPILCH HPLC has described the relationship between their legal and the generalist services as follows:

> *The Clinic model relies on collaboration with a number of agencies that work with people affected by homelessness. The vast majority of initial contact by clients with the Clinic is on referral from the agencies, and the agencies host the lawyers at their premises. With variations, agency roles identified during the evaluation included:*
>
> - *hosting the Clinic sessions at the agency;*
> - *promoting the Clinic to possible clients;*
> - *making appointments for clients;*
> - *advising team leaders of client bookings prior to each Clinic session;*
> - *supporting clients to interviews with lawyers, including in some cases, attending the interview with the client;*
> - *follow up and liaison with the team leaders and lawyers on behalf of clients;*
> - *providing feedback about the Clinic;*
> - *participation in the systemic advocacy/law reform work of the Clinic;*
> - *provision of training to Clinic lawyers; and*
> - *participation in education and training opportunities provided by the Clinic.*
>
> *The Clinic could not operate without the agencies.*[143]

[143] C Goldie, *PILCH Homeless Persons' Legal Clinic Evaluation Report,* Gilbert + Tobin Centre for Public Law, University of NSW, 2003, section 4.5.

According to that report, the non-legal agencies that hosted the VPILCH HPLC also considered it a sustainable arrangement and useful means by which they could be involved in law reform processes. They also appreciated the opportunity to facilitate direct contact between their clients and the lawyers. The development of trust and rapport between all parties concerned was also cited as an important benefit. Finally, the fact that the clinic was relatively self-sufficient (and thus not a drain on the agencies' resources) was also cited as a crucial aspect to the success of the collaboration.[144] One limitation raised in the roundtable discussions of placing legal services in welfare services was the potential perception that the legal service may lack independence from the sponsoring welfare agency and concerns about confidentiality arising from this. One worker stated:

> *We have some wonderful NGOs that provide ... legal services and they are fantastic, but a lot of the people that we work with tell us that they won't access those because they are concerned that ... if they go to a [NGO-based] legal service that somehow the [NGO] is going to find out about their legal issues and that may jeopardise their accommodation or their relationship with that service ... we work fairly hard to say, well look, it's staffed by independent solicitors from different services, who won't report back, but it's this big brother mentality that the guys have got, that they're being tracked.*[145]

A perceived lack of independence may also be problematic if the client has a legal issue concerning the host agency. On this point, the evaluation report of the VPILCH HPLC also cautioned:

> *The team acknowledged that, even though they sought the prior permission of the client for the caseworker to sit in on the interviews, the client may not feel completely free to refuse, given that they are usually reliant on the Agency for accessing other services.*[146]

---

[144] Goldie, *PILCH Homeless Persons' Legal Clinic Evaluation Report*, pp. 64–7.

[145] Roundtable Consultation, 29 August 2003.

[146] Goldie, *PILCH Homeless Persons' Legal Clinic Evaluation Report*, p. 71.

Thus, in summary, this 'one-stop shop' model of legal and non-legal services for homeless people addresses a number of the barriers they face in accessing legal and other support. It allows homeless people to access a range of services at one physical location and provides legal service that specifically caters for the complex needs of the client. Co-location also provides scope for a holistic approach to the client's needs, where the legal and non-legal services can work together to address the client's legal and other needs. The early experiences of the HPLSs in Sydney, Melbourne and Brisbane suggest that there may be real benefits to clients of this one-stop shop approach to supporting homeless clients.

Conclusion

Recognising that homeless people live in diverse circumstances and may not approach legal services when they have a legal problem, this chapter has examined the non-legal support and services that are accessed by homeless people in NSW. These services may be viewed as possible sites for legal assistance or referral.

The study found that non-legal service providers, particularly SAAP services, are a key link between people experiencing homelessness and legal assistance services. However, some people who become and remain homeless are isolated from SAAP and other homeless person's services. This group of homeless people may only turn to family and friends or more general services such as Centrelink, doctors or health services or schools for advice. In this context, it was recognised that if these general services are to refer clients to appropriate legal assistance, the message given to these agencies must be made as direct and simple as possible. One option for consideration is the wide distribution of the LawAccess contact number. This involves increasing general community awareness of the service as well as directing information to the types of agencies and services discussed earlier in this chapter. Another option is to consider telephone access points to LawAccess, in places such as Centrelink waiting areas. LawAccess can provide legal information and advice by telephone,

and link people with local face-to-face legal services (see Chapter 6). An added benefit in using LawAccess as a referral point to legal services is that it may cut down the number of times a person is referred from place to place, reducing the prospect of referral fatigue.

This chapter has also highlighted the vital but often overlooked role that non-legal service providers, particularly those in the homeless service sector, often play in assisting homeless clients through legal processes. Non-legal workers may provide legal information and advice about legal processes, assist homeless clients to obtain or complete relevant documentation, refer clients to legal assistance and, when necessary, accompany clients to appointments, explain legal processes or legal advice provided, support clients in court, and assist clients with legal outcomes, such as obtaining and staying on bail. Specialist services such as tenancy services and court support workers also provide skilled, specific advocacy and support services.

As indicated in Chapter 5 and in Chapter 8 following, homeless people require significant support to engage in legal processes and manage the outcomes. Homeless people and other stakeholders consulted in this study reported the benefits of receiving support though legal process from non-legal workers. However, non-legal workers and services need to be resourced and supported to provide this support in a sustainable way. In this study, workers identified a need for access to timely legal information, legal advice and relevant legal 'education'. Workers also stress the significant benefits of interagency collaboration for legal service providers, non-legal service providers and, most importantly, their homeless clients. This is consistent both with the views of legal service providers as found in Chapter 6 as well as directions highlighted in current policy and research: in short, that homeless people benefit from legal and non-legal services that are coordinated, with a focus on clients' total needs.

8. Barriers to participating in the legal system

> *A minority become disillusioned with the complexity of the process and drop out. Others do not complete and submit their application form because they are preoccupied with immediate issues, such as where to stay each night. Another group do not receive official communications because they have moved on.*[1]

Chapter 4 of this report indicated that homeless people often face multiple legal issues, sequentially and concurrently, in areas including family law, housing, debt, crime and social security. However, as also described in previous chapters, homeless people face a range of barriers to identifying and seeking assistance for their legal issues. This chapter discusses the specific challenges facing homeless people in participating in the legal processes relevant to their needs.

Homeless people face barriers throughout the whole legal process. For example, they may encounter difficulties initiating legal processes that involve lodging written applications (e.g. due to literacy problems), or they may have trouble physically attending court (or other legal arenas including tribunals). If they make it to court, homeless people face further hurdles to participating effectively in the process and in the outcome as a result of not understanding the legal process, mental illness and other cognitive impairment and lack of legal representation. As a result, the legal needs of homeless people may remain unresolved, thereby exacerbating the disadvantage they experience and or resulting in further legal problems. For example, not challenging a decision by Centrelink to suspend a payment could result in a person being without income for an extended amount of time, which may lead to a person committing criminal offences.

---

[1] MacKenzie & Chamberlain, *Homeless Careers,* p 37.

For those processes that homeless people are required to participate in, such as the criminal legal process, barriers that prevent them from participating can also have serious consequences. For example, in criminal matters, not turning up at court can result in a warrant being issued for the person's arrest, or receiving a record for failing to appear, making it more difficult for them to be released on bail for subsequent charges. In tenancy matters it may result in eviction orders being made in the person's absence, and their being removed from or losing their only accommodation. Hence, not only is it important that homeless people can access legal advice and representation, but also that they are able to participate in the legal process.

For the purposes of this chapter, 'participation in the legal system' includes participation in courts and tribunals, internal appeal processes of government departments (e.g. Centrelink), alternative dispute resolution, and other complaints processes (e.g. NSW Ombudsman). Homeless people may be involved in the legal system willingly as applicants, or unwillingly as defendants, respondents or victims. This chapter will specifically examine two broad issues:

- barriers impacting on a homeless person's ability to participate in legal processes
- initiatives and features of existing legal processes that can facilitate the active participation of homeless people.

Barriers to participation in the legal process

Homeless people may encounter significant barriers in participating in the legal system. From the data collected for the current study, these barriers tend to fall into two groups: individual barriers (mental illness and other cognitive impairment; lack of awareness; lack of confidence in and fear of the legal system; no stable contact; low literacy; poor understanding of the process) and systemic barriers (cost; rural and regional issues; length and

complexity; formality; lack of legal representation) arising from the nature of the legal system, which particularly disadvantage homeless people. For the purposes of this section, participation includes initiating and getting to the legal process (e.g. lodging an appeal, getting to court) and being involved in the process (e.g. during the court or tribunal process).

Cost

A few homeless participants interviewed for this study reported that the cost of initiating legal proceedings (including the cost of legal representation) was prohibitive. For example, one homeless woman who had been in a de facto relationship reported that she could not afford to take her partner to the Family Court for a financial settlement as she had been extremely financially disadvantaged by the break-up.[2] A caseworker also commented that in family law matters, homeless people on very low incomes may be ineligible for legal aid but also unable to afford to pursue a matter through other means.[3]

One caseworker was of the opinion that homeless men were being financially disadvantaged by child support payments and unable to afford an appeal to the Child Support Agency. Low-income earners are not always eligible for legal aid to lodge an appeal and if they do lodge an appeal, they have to pay the set amount of child support until the appeal is heard.[4] He noted that this can also push men into homelessness.[5]

Lack of awareness

Stakeholders reported that homeless people, like many others in the community, have a limited awareness of available legal processes. Information about these processes may not be well communicated to

---

2 Interview no. 17.

3 Caseworker 2. It should be noted that a duty lawyer scheme is in operation at Parramatta, Sydney and Newcastle Family Courts, with a view to being extended to other courts statewide.

4 They might not have passed the means or merit test applied to legal aid eligibility.

5 Caseworker 2.

homeless people. For example, people may not be aware of their rights to appeal a Centrelink or DOH decision:

> *In the refusal letters that you get from Centrelink or Department of Housing or wherever there is a paragraph towards the end of the letter, 'If you are dissatisfied with this decision within a certain timeframe you can apply for a review', etc. But it's not particularly well highlighted and not very well explained to anybody so taking into account the issues that our client group have got, you can imagine that very, very few of them can understand that, and even if they did understand that they had a right to appeal, they don't know how to go about it.*[6]

Another example was given in relation to victim's compensation. As noted in Chapter 4, a very high proportion of homeless people have been the victim of a crime. Stakeholders commented that homeless people who have been the victim of a crime are often unaware that they may have a right to victim's compensation, or that there are services (e.g. Legal Aid, CLCs, homeless person's clinics) that can assist them with a victim's compensation claim.[7]

Lack of awareness of legal processes may also be compounded by literacy problems experienced by many homeless people (see below).

Lack of confidence in and fear of the legal system

Many homeless people have had negative experiences with the legal system.[8] As a result, people are frightened of or cynical about what the legal system can deliver and are therefore reluctant to participate in it. For example, fear of being jailed can lead to a fear of the court process in general.[9] People are in many circumstances unaware that the legal system can be used to protect their rights.[10]

---

6 Roundtable Consultation, 27 August, 2003.

7 Consultations with Phil Lynch, VPILCH HPLC, October 2003; Grace Abrams, The Gender Centre, January 2004.

8 Consultation with Phil Lynch, VPILCH HPLC, October 2003.

9 Consultation with Jane Sanders, Shopfront, September 2003.

10 Consultation with IDRS, October 2003.

One specialist CLC observed:

> *It is often very difficult for homeless people to identify that a legal right is being infringed, or even that there are options available to them to remedy this. This is a huge issue, as for most homeless people, contact with the law usually has been negative, and they therefore would not have the awareness that the legal system can actually intervene and help to enforce their rights.*[11]

Negative perceptions of the justice system can result in their refusal to access the legal system at all.[12] For example, caseworkers reported that even where they have been advised of an avenue of appeal (e.g. against a DOH or Centrelink decision), some homeless people are reluctant to appeal because they don't believe that it will make any difference to their situation.[13]

In its submission to the Foundation during Stage 1 of the Access to Justice and Legal Need program, the LCRC stated that lack of confidence in the legal system and a belief that their rights will not be recognised present major barriers to homeless people participating effectively in the legal system.

> *Before the clients coming to the LCRC will participate in the legal system, they will need to feel confidence in that legal system, confidence that their rights will be recognised and respected. To these clients being homeless and out of work equate with a lack of respect for them and for their legal rights.*[14]

A caseworker working with homeless men noted in relation to family law:

> *People feel that they are second-class citizens. They expect the worst. They do not expect to be treated fairly and in my experience, in 90 per cent of cases, they are right.*[15]

---

[11] Consultation with IDRS, October 2003; NHHIN Forum.

[12] NHHIN Forum, Working Group 2.

[13] NHHIN Forum, Working Group 3.

[14] Law and Justice Foundation of NSW, *Access to Justice and Legal Needs. Stage 1: Public Consultations,* p.173.

[15] Caseworker 1.

In some matters, negative perceptions of the legal system led to several participants deciding to plead guilty rather than defend themselves. Several interviewees reported that they pleaded guilty, despite wanting to plead not guilty and defend the matter.[16] For instance, one interviewee who pleaded guilty to assault said:

> *I decided to plead guilty and received a 12-month good behaviour bond. It was the only option I could do. I was angry because I knew I wasn't guilty, but what can you do, you can't beat the police when you've got a record. The way the magistrate put it to me was that if I didn't plead guilty I would be looking at heaps of time, so I thought, why should I go to jail for something that I didn't do. Sometimes you have to do that, be humble, or your pride will destroy you.*[17]

Another example is in the area of victim's compensation. In most circumstances, when people want to make a claim for victim's compensation, the applicant has to have reported the crime to the police.[18] However, a couple of caseworkers reported that homeless people are sometimes reluctant to approach the police to report or disclose a crime because they have had past negative experiences with police and perceive that police will not take them seriously.[19]

> *And particularly when you're used to having negative interactions with the police. You know you need to be very, very well supported, etc. to feel comfortable pressing charges when you've had previous interactions with the same police who are probably going to start off with a negative view of you and are not used to dealing with you as a complainant.*[20]

---

[16] Interview nos. 6, 7, 8, 13 & 28. See also Law Council of Australia, *Erosion of Legal Representation in the Australian Justice System*, Law Council of Australia, 2004.

[17] Interview no. 8.

[18] Victims need to have reported a crime to the police within a reasonable amount of time. However, late applications may be accepted by the tribunal if the matter was not reported to the police within a reasonable time, in some circumstances. A number of factors such as the age and mental health of the victim, the nature of the injury and whether the victim felt discouraged from reporting to the police will be taken into account in determining whether an application should proceed. *The Law Handbook* pp. 1082–83.

[19] Consultation with Grace Abrams, Gender Centre, January 2004; Roundtable Consultation, 27 August 2003.

[20] Roundtable Consultation, 27 August 2003.

Young people in general are particularly reluctant to approach the police, due to a general distrust of authority.[21] Stakeholders interviewed for this study reported that if young homeless people were assaulted on the streets, they preferred to deal with it in their own way.

> *Especially with young people who've been involved in violence ... young people are getting rolled all the time on the trains. That sort of stuff. Quite often ... young people will come into us and say ... this kid has bashed me and stolen my wallet and done this and this and this is like, well, you know, you can charge them. Charge them? No, I'll just get my mate to go round and bash them.*[22]

Mental Illness or other cognitive impairment

As noted in Chapters 3 and 5, many homeless people (particularly street-based homeless people) have mental health and drug and alcohol issues. This can impact on a person's capacity to engage in legal processes, particularly when they are complex and lengthy.

> *I was living in private rented accommodation. But it was three-bedroom and so was too expensive, and I had other people move in and not pay rent and I ended up really far in debt. I wasn't well enough at the time to keep going through the system and get the money that they owed me.*[23]

Mental illness and other cognitive impairment including memory loss and drug and alcohol use were also identified by stakeholders in this study as significant barriers to attending court or a tribunal. These disabilities can lead to people having difficulties in organising their lives and thus remembering and making necessary arrangements for their court dates.[24]

---

[21] A Neame & M Heenan, *What Lies Behind the Hidden Figure of Sexual Assault? Issues of Prevalence and Disclosure,* Briefing Paper 1, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, 2003, <http://www.aifs.gov.au/acssa/pubs/briefing/acssa_briefing1.pdf> (accessed February 2004), p. 11.

[22] Roundtable Consultation, 27 August. 2003.

[23] Interview no. 29, young woman with a mental illness.

[24] NHHIN Forum, Working Group 1.

A study by McConnell et al. on parents who have a disability and their experience of the NSW Children's Court suggests that parents with a mental illness do not cope particularly well in care proceedings. This study concludes that parents, particularly those with a disability, experience a great degree of tension and stress during Care proceedings held at the Children's Court and, once stressed and angry, may exhibit these behaviours in court.[25] Several of the participants in the current study who had had their children removed from their care had a mental illness.

No stable contact

A number of examples were given by participants in the current study where not having a stable contact address or telephone number created difficulties for them in actively participating in the legal process. For example, consultations with homeless people who had had their children removed by DoCS revealed that difficulties in contacting DoCS are exacerbated by not having a telephone number or address from which to call.[26] One caseworker stated:

> *We've got a client who we're working with at the moment. She's about 22, she's got an intellectual disability as well as suspected mental health issues and she's had a small baby, who is in DoCS care and is in foster care. But she's been ringing regularly but not regularly enough for them in terms of making contact, and the DoCS worker who has been working with her was kind of putting all the requirements on her. If you want to see this baby you must ring us once a week and tell us where you are. Now this woman is not only homeless, she's street homeless, she's not living in emergency accommodation. She's actually street living and she's only periodically able to get access to phones to call DoCS. And I don't know if you've ever tried to call DoCS workers, but how often are they in their offices or able to be accessed. And so she keeps breaching these requirements that DoCS are putting on her and the more she does that the more she comes up against these kinds of threats of 'you will*

[25] D McConnell, G Llewellyn and L Ferronato, *Parents with a Disability and the NSW Children's Court,* Family Support and Services Project, University of Sydney, Sydney, 2000, p. 54.

[26] Interviews nos. 22 & 28.

> *never see your baby again because you're not complying with what we consider is appropriate'.*[27]

Lack of a postal address can result in people not receiving notification to appear before a court or tribunal. Further, without an appropriate contact, legal service providers can also have difficulty in contacting people about their need to attend court, or to keep them informed about how their matter is progressing:

> *People will come in and go, "I think I'm meant to be in court today". And they don't know which court. They're very unclear about it, you know, the paperwork has gotten lost along the way.*[28]

For example, a woman who had fled domestic violence and was living in a refuge with her children did not receive notification that her husband had filed an application in the family court requesting access to the children. Because she did not receive notice she did not turn up to court. As a result an ex parte order was made in favour of her husband.[29]

In the CTTT, tenancy workers report that many tenants fail to turn up to hearings.[30] In some cases, tenants fail to turn up because they have not been informed by DOH or their landlord that they have had an application made against them. The CTTT will send them a notice informing them of hearing dates but people may not receive this if they are homeless and do not have a postal address. According to tenancy workers, the CTTT very rarely grants a re-hearing if a person does not turn up. An example given by a legal service provider was that for hearings in the CTTT, if a tenant does not turn up, the hearing may proceed in the absence of the person, which can result in a decision in favour of the landlord and/or an eviction order being made.[31]

---

[27] Roundtable Consultation, 27 August 2003.

[28] Roundtable Consultation, 27 August 2003.

[29] NHHIN Forum, Working Group 1.

[30] Consultation with Tenants Union, tenancy workers and BLAG, January 2004.

[31] Consultations with Paul Robinson, North & North West Community Legal Service, December 2003; Tenants Union, tenancy workers and BLAG, January 2004. See also CTTT, *Chairperson's Directions on Adjournment Requests,* 2004, <http://www.fairtrading.nsw.gov.au/corporate/cttt/hearinginformation.html> (accessed April 2005).

Brian Sandland of Legal Aid NSW summarised the particular difficulties homeless people have in getting bail as a result of not having a stable contact or address as follows:[32]

- To be granted bail, defendants usually require accommodation. As a result, magistrates are reluctant to grant bail to homeless clients. Sandland noted that those clients with drug and/or alcohol issues (who thus had more problems accessing accommodation) were the most likely to breach their bail.
- Because many homeless people appearing on criminal matters have a history of 'fail to appears', bail is less likely to be granted to these clients.

The disadvantage encountered by homeless people in relation to being granted bail was also identified by HREOC as an issue for homeless children.

> *Their lack of a stable address or family support means they are likely to be refused bail and remanded in custody before and during trial, even for the relatively minor offences typically committed by children.*[33]

In July 2002, the *Bail Amendment (Repeat Offenders) Act 2002* (NSW) amended the *Bail Act 1976* (NSW). These amendments, including the removal of the presumption in favour of bail for 'repeat offenders', appear to make it even harder for homeless people to be granted bail.[34] Repeat offenders includes those "persons accused of an offence who have a previous conviction for failing to appear before a court in accordance with the person's bail undertaking" (s 51). Because of their criminal histories, homeless people are particularly affected by the amendments.

---

[32] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003. See also Burdekin report, p. 261; J Popovich, "Homelessness and the Law – A View from the Bench", *Parity,* vol. 17, no. 1, 2004, p. 56. (See Chapter 7 for definition of bail.)

[33] Burdekin report, p. 261.

[34] J Fitzgerald & D Weatherburn, "The Impact of the Bail Amendment (Repeat Offenders) Act 2002", *Crime and Justice Bulletin,* no. 83, 2004, <http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB83.pdf/$file/CJB83.pdf> (accessed November 2004).

One aim of the Act was to increase access to bail by providing supervised bail accommodation in bail hostels.[35] Supervised bail accommodation offers an alternative to remand imprisonment and has particular relevance to homeless people.[36] However, at the time of the Act's commencement, there were no bail hostels for adults in NSW, and only one bail hostel for Aboriginal juveniles, which held only six to eight beds.[37] This means courts are restricted to referring defendants to SAAP services or not to grant bail at all.

Consultation with homeless agencies in Sydney for the current study revealed that even if homeless people are granted bail, lack of a stable address can still impact on homeless people's ability to comply with their bail conditions.[38] For example:

- A condition of bail may be to not reside in the city. However, it may be that the only emergency beds available are in the city. Limited availablity of accommodation may result in a person staying in the city and needing to commute to the outer suburbs to report to the police. People can have difficulties complying with their bail conditions if they have to travel so far every day to report to the police.
- A person may be bailed to a particular SAAP agency. If there are no beds at this agency, the person is in breach of their bail conditions. This also puts an obligation on the service to accommodation, even when there are no beds available.
- Bail conditions for sex offenders to not reside within a specified distance of a park. However, the only available beds may be at an accommodation service near a park.

---

35 *Bail Act 1978* (NSW), s. 36(2B).

36 Johns, *Bail Law and Practice.*

37 The Hon. Dr Arthur Chesterfield-Evans, *Bail Amendment (Repeat Offenders) Act 2002 (NSW), Second Reading Speech,* Hansard, 2004, p. 1888; NSW Legislative Council Select Committee on the Increase in Prisoner Population, *Interim Report: Issues Relating to Women,* Sydney, 2000, para. 6.16.

38 Consultations with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carole Basile, Homeless Brokerage Program, YWCA, January 2004.

All of the above examples demonstrate that homeless people may be particularly disadvantaged in meeting bail requirements because of their extremely limited options for accommodation.

Literacy

The relatively low levels of literacy and education among homeless people can act as a significant barrier to this group participating in a system that rests heavily on the written word.[39] In addition, people tend not to disclose difficulties they face in reading or understanding written material, which can inhibit recognition of their literacy problems.[40] The consultations also indicated that some clients had difficulty understanding legal information and advice given orally: it was not just an issue of literacy, but comprehension.[41]

In the consultations for this study, examples were given of homeless people:

- signing documents without being fully aware of what they were agreeing to
- being unaware of their right to appeal particular decisions (where information is provided with a letter from, for example, Centrelink)
- failing to respond to requirements detailed in letters or documents provided to them
- not being able to fill out application forms (e.g. fine repayments, victim's compensation)

---

[39] Consultations with Felicity Reynolds, Senior Project Coordinator, Homelessness, City of Sydney; Kaylean Smith, HPIC; Keiran Booth, City Street Outreach Service, Independent Community Living Association; and Carol Basile, Coordinator, Homelessness Brokerage Program, YWCA, January 2004; Sybille Kacorek, Community Development & Research Worker, San Miguel Family Centre, November, 2003; Drew Roberts, AHO, December 2003; Richard Ikaafu, WALS, Walgett, May 2004; Deb Gardam, Walgett SAAP, February 2004; Jane Sanders, Shopfront, September 2003; NHHIN Forum, Working Group 1; Chung et al; Submission from Prue Gregory on behalf of the LCRC.

[40] See Chapter 5.

[41] See Chapter 6.

- missing their court dates because they cannot read the notice informing them to attend court. This was identified as a particular issue for Aboriginal young people.[42]

In public consultations conducted during Stage 1 of the Foundation's Access to Justice Program, community legal centre roundtable participants stated that many tribunal procedures, particularly those of HREOC and the Anti-Discrimination Board, require written applications and correspondence, which is problematic for people with low levels of literacy and education.[43] Given their relatively low levels of literacy and education, this is an issue for homeless people. Some tribunals also discourage or prohibit the presence of an advocate or support person. For example, at the CTTT, where a disputed amount is under $10 000, a party is not entitled to legal representation except in special circumstances.[44] This is problematic for homeless people who benefit from advocacy and support.

Rural and regional issues

> *The location and accessibility of courts and tribunals is also an important factor in determining whether people experiencing homelessness can access justice.*[45]

As discussed in Chapter 3, a large number of homeless people live in rural and regional areas of NSW. Stage 1 of the Access to Justice Program found that lack of access to courts was the most common barrier to participating in the legal process reported for disadvantaged people in general living in rural and regional areas. Although local courts in NSW are found in most regional areas, other courts and tribunals (such as the Family Court and the CTTT), are only found in capital cities or larger regional centres. The

---

[42] Examples given in NHHIN, Working Groups 1 & 3; Consultations with Deb Gardam, Walgett SAAP, February 2004 and Jane Sanders, Shopfront, September 2003.

[43] Law and Justice Foundation of New South Wales, *Access to Justice Research Program. Stage 1 Public Consultations,* p. 144.

[44] *Consumer, Trader and Tenancy Tribunal Act 2001* (NSW), s. 36(3).

[45] Lynch & Klease, p. 34.

Family Court conducts 'circuits' (where the court travels to regional and rural areas), although in Stage 1 of the Access to Justice Program it was reported that these circuits had been reduced in recent years. Concern was also expressed about infrequent visits by tribunals to regional and rural areas.[46] Not only does this reduce access to such tribunals, but also the lack of visibility may serve to entrench ignorance about the existence of these processes.

Workers in Newcastle also raised the issue that many homeless people in rural and regional areas do not have ready access to transport to get to courts and tribunals.[47] This may be because they are unable to afford public transport or there is no public transport in their area and they do not have access to private transport.[48] The issue of accessibility and location of courts and tribunals in rural and regional areas is also a particular concern for young people as they are not able to legally drive.

> *Kids know that they need to get to court, [they] just have no way of getting in there.*[49]

Length and complexity of process

The length and complexity of a legal process can significantly deter people from participating in the process or make it harder for people to continue through to completion.

> *The legal process is so long that people are gone or are busy dealing with another issue.*[50]

In its submission to this report, the LCRC reported that court or tribunal matters that involved a number of hearings (e.g. due to adjournments), can

---

[46] Law and Justice Foundation of NSW, *Access to Justice Research Program. Stage 1 Public Consultations,* p.165–7.

[47] NHHIN Forum, Working Group 4.

[48] NHHIN Forum, Working Group 1 & 4. See also Law and Justice Foundation of NSW *Access to Justice Research Program. Stage 1 Public Consultations,* p. 166.

[49] Consultation with Bernard Kelly-Edwards, Hebersham Aboriginal Youth Service, March 2004.

[50] Consultation with Drew Roberts, AHO, December 2003.

cause particular problems for homeless people, who in facing a number of barriers preventing them from getting to the process in the first place, are even less likely to turn up to subsequent court or tribunal dates.

> *Steps must be taken to reduce the delays experienced in having matters finalised in the local courts. The clients have difficulty understanding and accepting the failure of the police to have their briefs of evidence finalised, leading inevitably to numerous adjournments. The stress on the clients on having matters unresolved, of having to turn up again in four weeks' time increases the likelihood of these clients not turning up at all.*[51]

Brian Sandland also referred to the issue of delays at court. He noted that when matters are stood down in the morning and people have to wait around all day for matters to be heard, this can be a problem for clients with complex needs (e.g. people with mental illness, intellectual disability, drug and alcohol issues), who can become frustrated and leave before the matter is heard.[52] This can have serious consequences for the person's eligibility for bail. Given that some homeless people have complex needs (particularly street-based homeless people), delays at court may also lead to homeless people leaving court before their matter is heard.

Multi-tiered processes

Some legal processes are multi-tiered and complex and may involve several legal forums (e.g. a government department or a court or tribunal). For example, to appeal a decision made by Centrelink, the first level of appeal is to Centrelink itself, the second to the Social Security Appeals Tribunal and the third to the Administrative Appeals Tribunal. While multi-tiered processes promote accountability and review, their lengthiness and complexity make it more difficult for homeless people to see such a legal process through to completion. In addition to the social security appeals process, the DOH appeals process and the process of appealing

[51] Submission by Prue Gregory on behalf of LCRC, 21 September 2002. See also Law and Justice Foundation of NSW, *Access to Justice Research Program. Stage 1 Public Consultations,* pp. 135–7.

[52] Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003.

against a fine were also identified by stakeholders as difficult processes for homeless people to engage in.

DOH appeals process

DOH officers can be asked to review decisions relating to housing eligibility and priority housing applications by lodging an appeal within three months of the original decision being made. The decision is reviewed by an officer senior to the person who originally made the decision. The tenant or applicant is informed of the outcome by post.[53] A person not satisfied with the decision made by the reviewing officer can make a second appeal to the Housing Appeals Committee (HAC) within three months of the internal review decision being made. The HAC is an independent agency that reviews decisions made by DOH relating to public housing eligibility, eligibility for emergency temporary accommodation and removal from the waiting list.[54] Clients must have already had an internal review before they can apply for a decision to be reviewed by the HAC.[55]

The HAC can recommend to DOH that a decision be overturned. However they are not binding recommendations.[56] If a recommendation made by the HAC is not implemented by DOH, the next level of appeal is to the Administrative Law list in the Supreme Court. There is no capacity to take an administrative decision made by DOH to the Administrative Decisions Tribunal, a far more cost-effective process.[57] This is a significant barrier to homeless people appealing DOH decisions as they are unlikely to have the capacity to take an appeal to the Supreme Court. Although legal aid is available to appellants who are at a special disadvantage, the formality of procedure at the Supreme Court could act as a deterrent to people who are homeless appealing at this level.

---

53 See <http://www.housing.nsw.gov.au/> (accessed 2 September 2004).

54 HAC, "Decisions That Can Be Appealed", <www.hac.nsw.gov.au/appeal/appealable.html> (accessed November 2004).

55 See <www.hac.nsw.gov.au> (accessed March 2004).

56 See <www.hac.nsw.gov.au> (accessed March 2004).

57 Consultation with Emma Golledge, Coordinator, PIAC/PILCH HPLS, August 2004.

Stakeholders raised a number of concerns about the DOH review process. These included:

- the complexity of DOH forms (both applications for appeal and for housing). Caseworkers have indicated that forms are very difficult for clients to correctly fill out without assistance. This deters people from appealing a decision[58]
- the process of applying for housing or appealing a decision made by the Department can be lengthy.[59] As noted above, many homeless people have competing priorities that are far more immediate
- a concern with the HAC process raised in consultations was that the HAC can only make 'recommendations', which are not binding on DOH. Tenancy workers believed that DOH quite often declines to follow the HAC's recommendation.[60]

Centrelink processes

Nearly all homeless participants in this study were on Centrelink benefits and most had experienced problems with Centrelink. Customers who are unhappy about a decision made by a Centrelink officer (e.g. a decision to breach a customer) have the right to appeal the decision. Again, this is a multi-tiered process. If a person wishes to appeal an actual decision made against them, in practice they must first appeal to the original decision-maker.[61] Following this they can then appeal to an Authorised Review Officer (ARO). This is a free service and may be initiated in writing, by telephone or, in some circumstances, in person. However, if a customer is seeking back pay, they must challenge within three months of the original decision being made. The customer's payment will continue until the appeal is decided.[62] The decision made by the Authorised Review Officer will be sent by mail.[63]

---

58 NHHIN Forum, Working Group 1.

59 Consultation with Emma Golledge, Coordinator, PIAC/PILCH HPLS, August 2004.

60 Consultation with Tenants Union, tenancy workers and BLAG, January 2004.

61 Pearce et al.paras 8.6–8.8.

62 This excludes where the customer has failed to enter into a 'preparing for work agreement'.

63 National Welfare Rights Network, *Appeals – How to Appeal Against a Centrelink Decision,* 2004, <http://www.welfarerights.org.au/factsheets/fs_appeal.doc> (accessed November 2004).

If a Centrelink customer is still not happy with a decision made by the Authorised Review Officer, they can appeal for free to the Social Security Appeals Tribunal (SSAT) and then to the Administrative Appeals Tribunal (AAT).

The first problem with this process is that people may be deterred from making an appeal if they are required to appeal to the original decision-maker. Pearce et al. have observed:

> *Substantial weaknesses exist ... in relation to internal Centrelink reviews. The greatest problem is that a general practice has developed within Centrelink of requiring jobseekers to return to the original decision-maker for reconsideration of the decision before being allowed to approach an authorised review officer. This practice has no statutory justification; indeed, it is clearly inconsistent with the statutory right to proceed directly to the authorised review officer.*[64]

Young people in particular are more inclined to accept a decision than appeal it.[65] People under the age of 30 account for nearly 71% of all activity test breaches and 76% of all administrative breaches, but they are the least likely to make a complaint or appeal a decision made by Centrelink.[66]

The second barrier is the length of the appeal process.[67] Each review can take up to 8 weeks. Consequently, a matter can take up to 24 weeks before reaching the SSAT, with another 8 weeks before reaching the AAT.[68] This process is not conducive to the needs of homeless people who may not possess the capacity to participate in such a lengthy process. As Pearce et al. have observed:

---

[64] Pearce et al., para. 8.8.

[65] Rossiter & Sutton, p.27.

[66] AFHO, "Preventing Centrelink Applied Breaches Among Young People (and Others) – Utilising SAAP and Other Non-Government Services", *Parity,* vol. 14, no. 7, 2001, p. 17.

[67] Interview no. 2; Consultation with Emma Golledge, Coordinator, PIAC/PILCH HPLS, August 2004. See also P Horbury, "Social Security Law and Homelessness", *Parity,* vol. 17, no. 1, 2004, pp. 46–8

[68] Horbury, p. 46.

In general, reviews by the SSAT and subsequent reviews operate satisfactorily for those jobseekers who have the determination and resources to access them.[69]

Fines

The imposition and payment of fines is a significant issue for homeless people. The complex process of enforcing fines and the number of discrete agencies involved contribute to these difficulties. While a fine or penalty notice is issued by the 'issuing authority' (such as the council or police), the Infringements Processing Bureau (IPB) has the responsibility for processing and collecting the payment.[70] If a person does not pay the fine within the specified time and they do not elect to have the matter heard at Court, a penalty reminder notice will be issued by the IPB. If, 28 days later, the fine remains unpaid, it will be referred by the IPB to the State Debt Recovery Office (SDRO) for enforcement.

Importantly, the IPB does not have the power to allow payment by instalments or extensions of time to pay. The person fined must wait until the fine is referred to the SDRO before they can make an application to pay by instalments.[71] However, unpaid fines referred to the SDRO attract an additional processing fee of $50.[72] This issue was raised in the consultations.

One client told us that she got a fine for putting her feet on the seat. She rang IPB to see if they would accept payments by instalment. They said, no, she had to wait until she had received a reminder notice from IPB and then it had gone to the SDRO. The debt has to reach the SDRO before a repayment plan can be considered. By the time it gets to the SDRO an additional penalty is included.[73]

---

69 Pearce et al., para 8.8.

70 ICLC & Redfern Legal Centre, *Fined Out*, 2004, p. 4, <http://www.iclc.org.au/fined_out/> (accessed November 2004).

71 V Ford, *Penalties and Fines on CityRail Trains and Property*, Youth Action Policy Association fact sheet, 2003, p.3, <http://www.yapa.org.au/facts/trainfines.pdf> (accessed November 2004).

72 See *Fines Act* 1996 (NSW), s. 63(2); *Fines Regulation* 1997 (NSW), r 13.

73 Caseworker 4.

Furthermore, once the fine has been referred to the SDRO, it is not possible for a person to dispute their liability for the fine itself. However, the person can apply to the SDRO for any of the following:

- waiver of the fine
- annulment of the penalty notice enforcement order
- extension of time to pay
- permission to enter into a 'pay by instalment' agreement
- a stay on collection and enforcement procedures.[74]

While the fines system makes some provision for the particular circumstances of disadvantaged people, it is difficult to negotiate the system effectively without competent assistance.[75] For example, all of the applications referred to above must be in writing, and many require detailed supporting documentation, such as doctor's certificates, affidavits of financial circumstances, and bank statements.[76] As described earlier, maintaining good paper records is particularly challenging for homeless people. Even where the applicant has access to the assistance of an advocate, the success of an application for waiver of a fine based on hardship is hampered by the fact that there is no public access to the guidelines as to how the SDRO should determine such applications.[77]

Formality and understanding the process

> *I mean me meself I have had a pretty good education but there are words that I don't understand. They were putting it over me by using words I never understood … I think, where's me thesaurus when I need it!! That's where I seem to think they get ya. Speaking over ya. To me it seems to be a way of belittling you also when they are doing it … and that's a big disadvantage.*[78]

---

74 *Fines Act 1996* (NSW), ss. 48, 49, 100, 101.

75 Sanders, *Fines and Young People,* p.1.

76 See ICLC & Redfern Legal Centre, *Fined Out,* pp. 20–5.

77 *Fines Act 1996* (NSW), s. 120(2).

78 Interview no. 14.

Given the educational and literacy levels of the homeless population (as described in Chapter 3), the formality of language and jargon used in legal and bureaucratic processes can be intimidating and can significantly reduce the capacity of homeless people to understand what is going on in the courtroom or tribunal. As stated by one stakeholder:

> *On the day of court, they are scared. They're not ready to listen and they're not taking anything in.*[79]

Like many people who are not legally trained, homeless people possess little understanding of what actually goes on in a court or tribunal, what the role of the magistrate is, what they have to bring, what they need to say and what is likely to happen on the day. A roundtable participant stated:

> *And I suppose basically even down to the legal language. Sometimes I've had to read through an order. Clients come in to us all the time with something they've been given and say like, 'What does this mean? What's going to happen to me?' So this is just down to even understanding, you know, they might not even realise what they've been charged for.*[80]

Jane Sanders of Shopfront highlighted some of the issues facing her clients.[81] These included:

- ignorance of the courtroom process (e.g. not knowing the role of the magistrate)
- not knowing how to behave in court
- finding the courtroom setting alienating and frightening.[82]

Another caseworker stated:

> *Not understanding how to behave in the court ... often they end up in [a] worse struggle having gone into court ... because they've*

---

[79] Consultation with Deb Gardam, Walgett SAAP, February 2004.

[80] Roundtable Consultation, 27 August 2003.

[81] Consultation with Jane Sanders, Shopfront, September 2003.

[82] See Law and Justice Foundation of NSW, *Access to Justice Research Program. Stage 1 Public Consultations*, pp. 135–6.

> *gone off. They need to have someone to go into court with them and explain to them.*[83]

This view has also been expressed in previous research.[84] For example, a recent report investigating the link between domestic violence and homelessness noted:

> *It was commonly agreed that women had little information about what they could do legally when experiencing domestic and family violence and that the court experience when orders were applied for was often very lonely, frightening and bewildering. Language difficulties faced by many women from non-English speaking backgrounds and Indigenous women compounded their problems.*[85]

Legal representation

The impact of not being familiar with nor understanding the legal process is compounded when people are unrepresented through the legal process. The Australian Law Reform Commission's report into the federal civil justice system found that self-represented litigants find court processes confusing and intimidating.[86] As reported in Chapters 5–7, homeless people can benefit greatly from both legal and non-legal advocacy and representation. In the current study, caseworkers report that homeless

---

[83] Roundtable Consultation, 27 August, 2003

[84] Law Council of Australia; Australian Law Reform Commission (ALRC), *Managing Justice – A Review of the Federal Civil Justice System,* Report No. 89, ALRC, 2000, <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>. Studies focusing specifically on young people include: NSW Parliament Legislative Council Standing Committee on Social Issues, *Inquiry into Children's Advocacy*, NSW Parliament, Sydney, 1996, <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/c91ccf757cb06189ca256e500038888d/01da900109670cd5ca256f27000afb95!OpenDocument>; NSW Parliament Legislative Committee on Social Issues, *Juvenile Justice in NSW, Final Report,* No. 4, NSW Parliament, Sydney, 1992 <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/c91ccf757cb06189ca256e500038888d/3e98b5a8616d0640ca256f2b00088473!OpenDocument> (accessed February 2005); ALRC & HREOC, *Seen and Heard: Priority for Children in the Legal Process,* 84, AGPS, Sydney, 1997; Youth Justice Coalition (NSW), *Kids in Justice: A Blueprint for the Nineties. Overview and Full Reports of the Youth Justice Project,* Youth Justice Coalition, Sydney, 1990.

[85] Chung et al., p. 3.

[86] ALRC, para. 5.209.

people are particularly vulnerable to poor outcomes in the legal process without legal representation.

> *And we're sure that some of our clients get worse outcomes than they would have had if they had someone with them, just because clients with limited education, clients with mental health issues, the whole court process, a lot of them are unfamiliar with even the real basics of how it works and appropriate behaviour for the courtroom, things like that.*[87]

Homeless people do not necessarily fare better in non-adversarial jurisdictions. For example, at the CTTT, people have to get leave to allow another person or tenant advocate to represent them in proceedings. Despite this, tenancy workers report that real estate agents are allowed to represent landlords at the tribunal,[88] while DOH has its own representatives who appear before the tribunal. Hence although landlords and DOH appear legally 'unrepresented', their agents are likely to possess a much higher level of expertise than unrepresented tenants, who have little or no experience of appearing before the CTTT.[89] It is no surprise then that tenancy workers from the Tenants Union of NSW, Redfern Legal Centre and BLAG report that tenants do not fare well in the tribunal.[90]

It would also appear that even in negotiation with other parties, without support, homeless people may be at a disadvantage. For example, in care and protection matters, many parents are intimidated by their interaction with DoCS, which can affect their ability to negotiate effectively with DoCS. One caseworker interviewed for this study observed that the presence of a caseworker or social worker at a 'case conference', where parents are required to negotiate a 'care plan' for their children, can greatly assist in redressing this imbalance.[91]

---

87 Roundtable Consultation, 27 August 2003.

88 Tenants Union, *Tenants Rights Fact Sheet No. 11: Consumer, Trader and Tenancy Union,* 2004, <http://www.tenants.org.au/factsheet/28.html> (accessed November 2004).

89 Consultation with Tenants Union, tenancy workers and BLAG, January 2004.

90 Consultation with Tenants Union, tenancy workers and BLAG, January 2004.

91 Roundtable Consultation, 29 August 2003.

People who have high levels of debt can also benefit greatly from assistance in negotiating with creditors. In its submission to the Foundation, the LCRC stated:

> *The accumulation of fines, arrears on contract repayments, Centrelink repayments and repayments to pawn brokers mean these clients need someone to advocate on their behalf [to] (i) negotiate and implement a system of payment by instalments; or (ii) to reduce amounts being unfairly claimed by creditors.*[92]

Lack of suitable and effective legal representation can also act as a barrier to homeless people participating effectively in legal processes. The effectiveness of legal representation depends on the availability and quality of legal service and its suitability for homeless people.[93] Consultations with stakeholders and participants indicate that there is a distinct shortage of appropriate legal representation for all disadvantaged people, including homeless people.[94] For example, Commonwealth reductions in the level of funding to Legal Aid NSW since 1997, restrictions imposed by Commonwealth guidelines on the availability of legal aid in Commonwealth matters and the restrictive nature of the means test have impacted upon the ability of Legal Aid NSW to maintain its programs and address emerging legal needs. Further, as described in Chapter 6, duty lawyers have limited time to take instructions from clients who have complex needs.[95] CLCs, pro bono lawyers and legal clinics that provide services specifically to homeless people are not always able to provide legal representation to people for the range of legal issues they face.

---

92 Submission from Prue Gregory on behalf of the LCRC.

93 Burdekin report, section 21.14.

94 Interview nos. 10 & 15; Roundtable Consultation, 27 August 2003; Roundtable Consultation, 29 August 2003; NHHIN Forum, Working Group 1.

95 Consultation with Brian Sandland, Criminal Law Division, Legal Aid NSW, October 2003.

Features of existing legal processes which increase participation of homeless people

A number of legal processes and programs exist with features that increase accessibility for homeless people. These will be described in the following section.

Flexible service delivery

There are a number of existing legal processes that attend to the legal needs of homeless people in a more flexible and accessible manner than those processes described in the previous section. These include the HAC, the SSAT and the NSW Ombudsman. These bodies are aware of and cater to the particular needs of the people who use them, for example, by providing services over the telephone, adopting more flexible and less formal procedures, and providing outreach services to remote and rural communities. Despite this, it is important to note that these facilities were seldom referred to either by workers or homeless people consulted for the current study. It is not clear, however, why this is the case. Nonetheless, below is a description of the way in which people may seek legal redress that avoids some of the problems identified in the previous section.

Housing Appeals Committee (HAC)

As noted above, the HAC is an independent agency that reviews decisions made by DOH and Community Housing relating to public housing eligibility, eligibility for emergency temporary accommodation and removal from the waiting list.[96] A client may appeal to the HAC after an internal review decision has been made by DOH or Community Housing. The HAC will then apply to the service provider for the client's file and, once received, set a date for appeal (usually within four weeks of receipt of the file). Appeal hearings can be conducted by telephone interview

[96] HAC, "Decisions That Can Be Appealed".

or face-to-face interview and usually take under an hour. Hearings are informal and the housing service provider is not present. If information is needed from the provider they will be contacted prior to or after the meeting. Clients may, without applying for special leave, bring an advocate but not a lawyer.

Social Security Appeals Tribunal (SSAT)

The SSAT hears appeals relating to decisions made by Centrelink about social security payments. Appeals may be lodged to the SSAT in person, in writing or by telephone.[97] The first step in the process after lodgment involves the client attending a hearing. This is a meeting between the customer and the SSAT members and no one from Centrelink is present at the hearing. The client can bring a friend or advocate. The SSAT will have a copy of the client's file, which means that there is less pressure on complainants to bring all the necessary documents with them. The SSAT conducts hearings in rural areas, and will pay all the complainant's reasonable travel expenses. Hearings may also be conducted over the phone as well. One stakeholder that had had experience of SSAT proceedings commented:

> *The tribunal has been very fair, and I have only been brought in where I've done a lot of the probation work, you know, the chronology, etc. The client does most of the talking, which is great, even though the client initially might have been very anxious about doing it and desperately taking me along to do all the talking. The tribunal member has always insisted the client present their case and the client will get over their nervousness. It's very soft, caring, certainly not threatening in any way.*[98]

NSW Ombudsman (Community Service Division)

The NSW Ombudsman's Community Service Division (CSD) receives complaints regarding treatment by DoCS. The division also takes

[97] National Welfare Rights Network, *Appeals – How to Appeal Against a Centrelink Decision.*

[98] Roundtable Consultation, 29 August 2003.

complaints about SAAP services, and is therefore particularly relevant to homeless people.

The division appears to have developed processes that increase its accessibility to clients with complex needs. For instance, complaints about DoCS or a SAAP service may be made by a free telephone call or orally to a complaints officer. This is in contrast to the usual procedure whereby complaints are made to the Ombudsman in writing (although Ombudsman staff will assist people in doing so). The customer service officer assigned to a complainant will provide advice on what action needs to be taken (such as an investigation or encouraging the person to make a direct complaint to DoCS). Priority is given to those complaints made by children and people with disabilities.[99]

Problem-solving courts and lists

In the last 10 years, a concept that has gained momentum in the United States is the 'problem-solving court'. These courts rely heavily on the theory of 'therapeutic jurisprudence', a school of social inquiry that has emerged from the study of mental health law and seeks "to reshape law and legal processes in ways that can improve the psychological functioning and emotional well-being of those affected".[100]

This type of court encourages partnership with local communities, government, and non-government service providers to develop new solutions to criminal and community legal matters. The California Homeless Court and the Red Hook Community Justice Center are examples of this type of court. There are a number of programs in Australia that appear to be modelled on the 'therapeutic jurisprudence model'.[101] These include:

[99] NSW Ombudsman, "Complaints and Investigations", <http://www.ombo.nsw.gov.au/complaints/index.html> (accessed November 2004).

[100] BJ Winick, *Therapeutic Jurisprudence Defined,* undated, <http://www.brucewinick.com/Therapeutic%20Jurisprudence.htm> (accessed January 2005).

[101] M Shanahan et al., "Cost-Effectiveness Analysis of the NSW Adult Drug Court Program", *Evaluation Review,* vol. 28, no. 1, 2004.

- the NSW Drug and Youth Drug Courts
- the Magistrates Early Referral into Treatment (MERIT) Program (in NSW)
- the Enforcement Review Pilot Program (Special Circumstances List) (in Victoria).[102]

While not all of these programs are specifically focused on homeless people, they are good examples of the ways in which the criminal legal process can support and better involve people with complex needs in the legal process. The features of these programs are that they can be less formal, more interventionist and they attempt to better involve the offender in the process. Each of the programs are discussed below.

Australian initiatives

NSW Drug Court

Drug courts are specialist courts that deal with offenders who are dependent on drugs. They emerged as a result of growing disenchantment with the ability of traditional criminal justice approaches to provide long-term solutions to the cycle of drug use and crime. Drug courts aim to assist drug-dependent offenders to overcome both their drug dependence and their criminal offending.[103]

The New South Wales Drug Court is a pilot program which commenced in 1999. Currently, it is restricted to people living in Western Sydney. The aim of the program is to reduce drug dependency, promote re-integration of drug-dependent people into the community and reduce the need for drug-dependent persons to resort to criminal activity.[104] If an offender is

[102] The Enforcement Review Pilot Program is a specialist list in the Victorian Magistrates Court. Specialist lists are 'lists' of specific matters heard within one court. The Victorian Deputy Chief Magistrate, Jelena Popovic, has argued that specialist lists such as these are more effective than specialist courts, usually geographically limited usually to inner-city or metropolitan locations: Consultation with Jelena Popovic, Magistrates Court of Victoria, November 2003. The program has been included in this report because of its particular relevance to homeless people and because there is no current NSW equivalent.

[103] Consultation with Chris Grant, NSW Drug Court, October 2003.

[104] *Drug Court Act* 1998 (NSW), s. 3; Consultation with Chris Grant, NSW Drug Court, October 2003.

eligible, they will be remanded for detoxification and assessment at the Drug Court clinic. Their sentence will be suspended on condition that they adhere to the requirements under their treatment plan. This plan will require participants to enter a residential rehabilitation centre or live in accommodation approved by the court.[105]

The court uses conventional physical court settings; however, the proceedings are more informal, with the judge engaging directly with the offender (in a less formal manner) rather than solely through a barrister or solicitor.[106]

To be eligible for the Drug Court a person must:

- have indicated their guilt
- be highly likely to be sentenced to full time imprisonment
- live in the Western Sydney area
- be willing to participate.

Finally, because there is usually more demand than places for the program, a weekly random selection process occurs to determine which applicant is assigned to each available place.[107]

The following issues are associated with homeless people using the Drug Court:

- Eligibility requires that applicants must reside in appropriate accommodation. The accommodation is not deemed suitable if it is occupied, or frequented, by people who appear to abuse drugs and alcohol or who *reasonably* appear to engage in criminal activity and who are not prepared to cooperate with the Drug Court team.[108] By definition, homeless people do not reside in stable accommodation,

[105] Consultation with Chris Grant, NSW Drug Court, October 2003.

[106] Consultation with Chris Grant, NSW Drug Court, October 2003.

[107] Consultation with Chris Grant, NSW Drug Court, October 2003.

[108] S Taplin, *Process Evaluation of the NSW Drug Court: A Qualitative Study,* NSW Bureau of Crime Statistics and Research, Sydney, 2001, p. 30.

which may affect their eligibility for the program. For example, boarding house accommodation may not be considered appropriate for this reason.

- To be eligible for the program, homeless people would have to be in appropriate supported accommodation or reside with a family member who lives in the area.[109]

In response to the need for participants to have access to housing, the Victorian Drug Court Pilot set up the Drug Court Homelessness Assistance Program, which offers transitional housing accommodation and support to Drug Court participants.[110]

NSW Youth Drug Court (YDC)

The YDC was implemented after a recommendation following the NSW Drug Summit in 1999, which recommended that the current adult drug court trial be extended to include the establishment of a Youth Drug Court. The YDC pilot program began operating on 31 July 2000 in two children's courts in Western and South Western Sydney (Cobham Children's Court on Monday and Campbelltown Children's Court on Thursday). The pilot program was to originally run for two years, but has now been extended for a further two years.[111]

To be eligible for the Youth Drug Court a young person must:

- be charged with an offence that is normally dealt with by the Children's Court
- plead guilty
- reside in the areas that feed into the relevant children's courts (however, this is quite flexible and the scope of the boundaries will be extended in the near future).

[109] Consultation with Chris Grant, NSW Drug Court, October 2003.

[110] M Schirmer & J Riddle, "Department of Justice Purchased SAAP Services: Drug Court Homelessness Assistance Program", in *Beyond the Divide,* <http://www.afho.org.au/4_publications/conference_papers/Mackenzie.pdf> (accessed November 2004), p. 4.

[111] Consultation with Matthew Greenaway, Legal Aid NSW, Youth Drug Court, October 2003.

Once the young person is accepted to the program, their needs are assessed and an individual treatment plan covering education, life skills, housing, employment, health and other social needs is developed.[112]

Although the court has operational guidelines, there are no legislative provisions per se that govern the formal running of the court as there are for the adult Drug Court. Hence, the court is more flexible than the adult Drug Court. Legal Aid NSW reports that the court process itself is very informal and relaxed with everyone sitting at the same table, in casual clothes.[113] The young person is well supported by Legal Aid NSW and representatives from DoCS, NSW Health, the Department of Juvenile Justice and the Department of Education and Training.[114]

Being homeless is not a barrier to a young person being eligible for the Youth Drug Court. In fact, the court can resolve homelessness for the young person, by ordering that the young person reside in a place specified by the court for the duration of the program. Upon completion of the program, the young person will be assisted into finding independent accommodation. The program also aims to rehabilitate young people into education and employment.[115]

One problem identified with the Youth Drug Court is that there is a shortage of suitable accommodation available in NSW for young people participating in the program. As a result, a young person may be placed in custody until appropriate accommodation is found.[116] This may be a particular problem for homeless young people, who by definition do not have suitable accommodation. Furthermore, the program is not available in rural areas and in many parts of Sydney.

---

[112] Consultation with Matthew Greenaway, Legal Aid NSW, Youth Drug Court, October 2003.

[113] Consultation with Matthew Greenaway, Legal Aid NSW, Youth Drug Court, October 2003.

[114] Consultation with Matthew Greenaway, Legal Aid NSW, Youth Drug Court, October 2003.

[115] Consultation with Matthew Greenaway, Legal Aid NSW, Youth Drug Court, October 2003.

[116] K Wong, *The Youth Drug Court: Diverting and Rehabilitating. Do Practice and Theory Reflect the Principles of the Children's Court?*, University of NSW, Sydney, 2004, p. 25.

Magistrates Early Referral into Treatment (MERIT) Program

The MERIT program is a NSW local court-based diversion program for adult offenders with substance abuse problems. The aim of the program is to address people's substance abuse that is associated with criminal behaviour. Whereas the NSW Drug Court targets offenders who have committed more serious offences, the MERIT program is aimed at those offenders who are eligible for bail. Indeed, the program may be undertaken as part of a person's bail conditions, and an admission of guilt is not required. The program may involve counselling, detoxification, methadone treatment, residential rehabilitation and case management, depending on the needs of the defendant. The person's matter will be adjourned until the defendant has completed the program. It is only then that the outstanding matter is heard and sentencing occurs. Offenders who have committed an offence of a sexual or violent nature are not eligible for the program.[117]

Unlike the NSW Drug Court, homelessness does not appear to be a barrier to eligibility for the MERIT program. However the 2002 MERIT annual review reported that there was a relationship between accommodation type and completion status. Completers were more likely to be living in privately owned accommodation with their parents.[118] Thus, while homeless people are not prevented from participating, there would appear to be something about their status that compromises their outcomes on the program.

Enforcement Review Pilot Program (Special Circumstances List)

The Special Circumstances List was established in June 2002, at the Magistrates Court of Victoria. Its role is to assist people with 'special circumstances' who have incurred multiple fines that are at the enforcement

[117] NSW Attorney General's Department, *Magistrates Early Referral into Treatment Program,* <http://www.lawlink.nsw.gov.au/cpd/merit.nsf/pages/index> (accessed September 2004).

[118] NSW Attorney General's Department, *Magistrates Early Referral into Treatment Program, Annual Report 2002,* NSW Attorney General's Department, Crime Prevention Division, 2003, http://www.lawlink.nsw.gov.au/cpd%5Cmerit.nsf/pages/Annual%20Report (accessed September 2004).

stage. 'Special circumstances' include diagnosed mental illness, acquired brain injury, intellectual disability and physical disability.[119] Homelessness alone is not considered a 'special circumstance', although many homeless people qualify to appear based on the criteria mentioned above.[120]

In order to have a matter listed, a social worker, case manager, legal representative or the client themselves identifies that a person with multiple fines has a 'special circumstance' and submits an application to the court. The application, plus any medical evidence, is forwarded to the Penalty Enforcement Registration of Infringement Notices Court for determination by a registrar. The registrar may refer the matter back to the magistrates court on the list days if they are satisfied that the matter would be more appropriately dealt with by the court.[121] The magistrate will take into account the special circumstances of the client and tailor a sentencing order to their needs. For example:

> *A magistrate presiding on the list recently ordered that a homeless alcoholic man who had accrued more than $50 000 of fines for drinking intoxicating liquor in public attend a residential rehabilitation unit for two months. At the completion of the residency the magistrate dismissed all of the fines.*[122]

Defendants may also be referred to other support services (e.g. mental health services, accommodation services) at this point. However, the Special Circumstances List is not without its limitations in that it only applies to fines, it only applies post-plea, and it still operates within a formal court setting.[123] Despite this, the Special Circumstances List is an example of the way in which the criminal courts can assist offenders in

---

[119] Consultation with Jelena Popovic, Magistrates Court of Victoria, November 2003.

[120] Lynch & Klease, p.36.

[121] Consultation with Jelena Popovic, Magistrates Court of Victoria, November 2003.

[122] Lynch & Klease, p. 35.

[123] In Victoria, the processing and enforcement of fines is managed entirely by the Penalty Enforcement Registration of Infringement Notices Court. In comparison, the NSW fines system involves three separate agencies (the IPB, the SDRO and the local court). To implement a "special circumstances" list in NSW changes would need to be made to the Fines Act. Changes should enable an application to be made to the SDRO for the unpaid fine/penalty notice to be referred back to the local court, to be heard in a "special circumstances list".

addressing the underlying behaviour and circumstances contributing to their offence.

Other initiatives of the Victorian Magistrates Court

The Victorian Magistrates Court has implemented a number of other programs adopting a therapeutic approach that might alleviate some of the problems homeless people encounter in the mainstream legal system.[124] These include:

- the Bail Advocacy Program. This program provides appropriate accommodation, supervision and access to medical treatment to ensure that people are more likely to successfully complete their bail period
- the Street Sex Worker Court Attendance Program. Under the program, charges of prostitution and associated offences are listed for hearing at the Melbourne Magistrates Court once a month. Legal Aid Victoria and St Kilda Legal Service are in attendance to represent the defendants. Organisations that provide support to street sex workers are also in attendance to offer services
- the Mental Impairment List. This is the court diversion list, where a defendant identified as having a mental impairment is incorporated. Matters are dealt with by diversion or in open court utilising existing sentencing options such as deferred sentencing.

International initiatives

As already mentioned, international examples of legal processes that incorporate therapeutic jurisprudence into their processes include two initiatives in the United States, the Red Hook Community Justice Center and the California Homeless Court.

Red Hook Community Justice Center

The Red Hook Community Justice Center in Brooklyn, New York, is a problem-solving court that responds to the way homeless people and other

[124] Consultation with Jelena Popovic, Magistrates Court of Victoria, November 2003.

severely disadvantaged people experience legal and other problems. The Justice Center grew out of community consultation and development over an eight-year period, and "seeks to solve neighbourhood problems like drugs, crime, domestic violence and landlord–tenant disputes".[125] An important feature of the Justice Center is that a single judge handles cases that under ordinary circumstances would be handled by three different courts: civil, family and criminal. This is particularly applicable to homeless people who typically experience multiple legal issues. Further, the judge can choose from a range of sentencing and diversionary options, including "community restitution projects, on-site job training, drug treatment and mental health counselling".[126]

The Red Hook Community Justice Center appears to utilise more informal approaches and maintains strong links with the community. For example, it operates out of what was previously the local school building, and hosts a number of other services, such as mediation, community service projects and a youth court. The Justice Center also offers on-site domestic violence counselling, health care and job training. These services are also accessible to the wider community—that is, individuals do not have to be charged or processed through the court to get access to the services. In this sense, the Justice Center is not necessarily limited to crisis intervention, but also has an early intervention component.

California Homeless Courts

Special homeless court sessions were first established in San Diego in 1997 and are now operating in various counties throughout California. Sessions are held in local homeless shelters or other community sites for homeless citizens to resolve 'misdemeanour criminal warrants' such as disorderly conduct, public drunkenness and sleeping on the sidewalk. Clearly, such an approach addresses homeless people's fears and difficulties regarding the formality and inaccessibility of mainstream legal processes.

[125] Centre for Court Innovation, *Red Hook Community Justice Centre New York,* http://www.courtinnovation.org/demo_09rhcjc.html (Accessed 23 November 2004).

[126] Centre for Court Innovation, *Red Hook Community Justice Centre New York.*

Outstanding warrants may also be processed in these courts, which, if left unaddressed, can have an impact on people being able to apply for jobs, apply for drivers' licences and enter into rental agreements.[127]

Phillip Lynch and Carla Klease, of the VPILCH and QPILCH HPLCs respectively, have summarised the advantages and benefits of the Homeless Person's Court model as follows:

> *... seeks to identify and address the causes of a homeless person's 'offending behaviour' by linking misdemeanour adjudication with social service intervention. A person who is homeless and pleads guilty to an offence may be referred to the court for 'sentencing'. The focus of sentencing is rehabilitation and restoration. Only persons who make the commitment to taking the long road to putting their lives back on track are eligible for referral to the court. Thus, rather than fining or incarcerating homeless offenders, the court refers them to an appropriate service provider to obtain vocational training, health care, housing, drug and alcohol treatment, family counselling or gambling support as necessary.*[128]

Summary

There are a number of barriers preventing homeless people from participating effectively in the legal system. These include:

- lack of awareness and understanding of the legal process
- mental illness and other cognitive impairment
- lack of confidence in and fear of the legal system
- lack of contact details
- literacy
- complicated and lengthy processes

---

[127] Collaborative Justice Courts Advisory Committee, *Homeless Courts,* http://www.courtinfo.ca.gov/programs/collab/homeless.htm (Accessed 26 November 2004).

[128] Lynch & Klease, pp. 34–5.

- lack of legal representation
- isolation (for people living in rural and regional areas)
- formality of legal proceedings
- reliance on written documentation and applications
- cost.

Homeless people are assisted greatly during the legal process by effective and appropriate legal representation. It is also suggested that homeless people perform more effectively in legal processes that are more accessible and that offer more flexible service delivery, such as the SSAT, the NSW Ombudsman (Community Service Division) and the HAC. However, getting to these arenas can be a problem, particularly when the process is lengthy and multi-levelled. It appears from our investigations that often homeless people simply do not last the distance. Furthermore, court and bureaucratic appeal forms are too complicated for people who, in many instances, have comprehension and literacy problems.

Special courts, special lists and programs, although not specifically focused at homeless people, attempt to address legal need in a more flexible and supportive environment. Examples discussed here include the Red Hook Community Justice Center (New York), the California Homeless Court, the NSW Drug Courts, the MERIT program and the Victorian Special Circumstances List. The features of these which increase participation for homeless people include:

- legal processes that attempt to involve the offender in the process and outcome
- better understanding of the complex needs of the offender as they attempt to address the underlying causes of the offending behaviour
- links to services that address their other complex social needs
- less formality and greater support for the homeless person's needs.

However, even when processes are simplified, the complexity of homeless people's legal issues, the inevitable power imbalance between them and those they face in courts and tribunals, and the multiple barriers they face in accessing these arenas highlight the importance of ongoing advocacy and support for this client group.

9. Conclusion

> *... we end up taking alternative actions to fix these problems, rather than take legal steps, because the law doesn't service us.*[1]

Homelessness is often indicative of complex legal and other needs. Things have gone astray, safety nets have failed. As a result, people have lost their accommodation or are caught in marginal accommodation. Commonly they have debts, may be dealing with family law issues, have been victims of crime, accumulated fines and/or are facing criminal charges. And yet homeless people can rarely focus on resolving their legal needs. They are often preoccupied with other issues, such as finding somewhere to stay, dealing with social security issues, caring for family, keeping safe or dealing with immediate crises. Mental health and other disabilities, alcohol and other drug abuse, poor literacy and limited resources can also contribute to a situation where legal issues compound, spiralling people into or further entrenching them in homelessness. Add to this the prevalent feeling among homeless people that the system does not work in their interest, and you have a situation where people may need legal support but lack the capacity and confidence to locate and use legal assistance services or legal processes that may assist them.

Ideally, legal service provision to homeless people needs to recognise this situation. It needs to be accessible to people from the places that they frequent, to have the time and skills to assess the total legal needs of the clients and to be part of a coordinated response to those needs. 'Coordination' may involve having different legal services, as well as legal and non-legal service providers working together with a focus on the client (rather than individual legal problems), to address the often complex needs facing homeless people. In this regard, the role that non-

[1] Interview no. 25.

legal service providers play in assisting homeless people to access and use legal assistance services and to participate in legal processes cannot be underestimated.

Homelessness in NSW

This study used a broad definition of homelessness that consists of three main categories:

- primary homelessness, which includes sleeping 'rough', in cars, on trains and in squats
- secondary homelessness, in which people move frequently from one form of temporary shelter or accommodation to another, including emergency accommodation and family and friends
- tertiary homelessness, which in this study includes people who live in boarding houses on a medium- to long-term basis and marginal residents of residential or caravan parks.

While homelessness has been categorised in this way, it has been conceptualised as a process, rather than a static state. Some people are homeless for a short time before regaining housing, while others become entrenched in homelessness, or move in and out of homelessness, or between different forms of accommodation on a regular basis.

On Census night 2001, an estimated 33 500 people in NSW were homeless by this definition. However, in contrast to the traditional view of homelessness as an inner-city problem, nearly half of the homeless people in NSW live outside the Greater Sydney area. While the concentration of homeless people living in the inner city is one of the highest in the State, some regional areas, in particular coastal NSW, also have very high rates of homelessness.

The homeless population also has a diverse demographic profile. An estimated 43% of homeless people are under the age of 25.[2] These young

[2] This excludes marginal residents of caravan parks. 34% of the general population are under 25 years old.

people tend to be fairly transient, moving between refuges, transitional housing and friends and families. Forty per cent of the homeless in NSW are female, with the proportion of the homeless who are women highest in the younger age groups. Data also indicate that there are increasing numbers of families experiencing homelessness. As might be expected, the vast majority of homeless people have no income, are on social security or have a very low income.

Also disproportionately represented in the NSW homeless population are Aboriginal people, people recently released from prison, people who have at some time been placed in state care, transgender people and people recently arrived from overseas. Finally, mental illness, alcohol and other drug abuse and histories of trauma and abuse are more common among some sectors of the homeless population than in the general population, particularly those living at primary levels of homelessness.

Thus, in addition to people living on the streets in inner-city areas, homeless people are also found in suburban, regional and rural areas. They are not just older men or 'street kids'; they also include women and families who may be escaping domestic violence and family breakdown, young people living with family and friends, and people living in boarding houses and caravan parks. The discussion in this report about legal issues, barriers to justice and legal service delivery to homeless people strongly reflects this broader conceptualisation of homelessness.

Legal issues facing homeless people in NSW

A salient theme concerning legal issues identified in this report is that, at any one time, homeless people tend to have multiple and interrelated legal problems, which if left unaddressed can further exacerbate homelessness. That said, the range of legal issues people face may vary as they move through homelessness. First, it appears that the incidents leading to homelessness often have, at least in part, legal implications. These may include:

- family law issues reflecting family breakdown
- domestic violence
- housing-related legal issues, including housing debt, eviction and problems re-entering housing due to being placed on residential tenancy databases
- outstanding debt-related legal issues reflecting financial disadvantage and chaotic lives
- unlawful discrimination preventing people from maintaining financial and accommodation security.

Indeed, for some people, the path into homelessness is the product of a number of compounding incidents, such as an injury or illness, loss of work, loss of income, debt, family breakdown and, finally, losing housing. Thus, legal assistance when these events occur may in fact prevent or reduce the risk of people becoming homeless.

Secondly, homelessness itself also places people at risk of experiencing particular legal issues. In turn, these issues can exacerbate the experience of homelessness and make it harder for people to regain housing. These issues include:

- problems complying with social security requirements
- vulnerability to crime victimisation as a result of a lack of secure housing
- legal issues related to their accommodation in boarding houses and caravan parks
- debt accumulated from fines
- being moved on by police, transit officers and council rangers as a result of their greater visibility and occupation of public space
- criminal law problems, including those relating to alcohol and other drug abuse.

It also seems to be the case that there are certain laws, policies, legal processes and practices that may aggravate homelessness or leave people vulnerable to it. Those identified in the current study include:

- the limited use of exclusion orders by local courts in AVO applications. Exclusion orders enable victims of domestic violence to remain in their home while excluding their violent partners
- the recent introduction of renewable tenancy agreements and acceptable behaviour agreements, which allow DOH to evict people on the basis of 'anti-social' behaviour. These amendments may potentially increase the risk of homelessness for public housing tenants with complex needs (e.g. people with a mental illness or families with children with behavioural or other disabilities)
- the use and structure of residential tenancy databases. Unregulated until very recently, numerous stakeholders noted the impact of residential tenancy databases on homeless people trying to re-access the rental market. New regulations do not prohibit the use of these databases, but do allow some protection against their arbitrary and unfair use by landlords and real estate agents
- the lack of tenancy protection for boarders and lodgers and limited protection to marginal residents of caravan parks under the *Residential Tenancies Act 1987* (NSW), which leave these groups vulnerable to arbitrary eviction and unsanitary and dangerous living conditions. As boarding houses and caravan parks close down, there is an increasing shortage of available accommodation. People report not complaining about sub-standard accommodation as they may have no alternatives if they are evicted as a result of the complaint
- Due to their public visibility, many homeless people, particularly young homeless people often receive multiple fines for offences such as littering, transport fines and other offensive behaviour. They also have difficulty negotiating the multi-agency process (e.g. the IPB, the SDRO and the Roads and Traffic Authority) to pay or challenge these fines. Consequently, people can accrue significant debts, which

hinder their ability to exit homelessness. The link between non-traffic related fines (e.g. littering) and the suspension of driver licences and/or the cancellation of car registration also leaves people vulnerable to further offending (e.g. driving without a licence).

While legal assistance can help homeless people to address their legal issues, this study has found that homeless people face a number of barriers in gaining access to legal assistance.

Barriers to homeless people accessing legal assistance

Barriers identified in the current study that can prevent homeless people from gaining access to legal assistance include:

- limited personal resources and lack of stable accommodation
- isolation from services or not knowing where to go
- low levels of literacy and education, disability, poor health and alcohol and other drug addiction
- having other essential priorities and feeling overwhelmed by the many issues they face
- feeling intimidated by the legal system, which they do not believe will work in their interests
- lack of awareness of their legal rights.

Some of these barriers arise directly from the state of homelessness (e.g. not having a stable address, having other immediate priorities) while others may be the manifestation of other issues common in the homeless population (e.g. lack of personal resources, low literacy levels). Over-representation of disadvantaged sub-groups and multiple membership of marginalised groups within the homeless population also contribute to the barriers faced by this population.

These many difficulties compound to keep homeless people from legal assistance. Thus, on a day-to-day basis, a homeless person may be too busy looking for accommodation, meeting Centrelink requirements, or caring for family to address a legal issue. That person's capacity to seek assistance may also be compromised by mental health or alcohol and other drug issues. Coupled with limited resources, a sense of hopelessness, a lack of knowledge of legal options and a feeling that the law would never work in their interests, legal issues are likely to remain unaddressed. Services report that when homeless people finally do contact a legal service (if at all), the issue has usually already reached crisis point: the eviction is imminent; their benefits have been cut off; the court case is tomorrow. In some cases, it may be too late to resolve the issue (e.g. the limitation or appeal period may have expired) or the issue has become more complex and difficult to address. It has therefore been argued in this report that the multiple, urgent and interrelated legal and other problems homeless people have, together with the compounding barriers they face in addressing these issues, have significant implications for the nature and type of legal service delivery which is appropriate for homeless people in this state.

Legal assistance for homeless people in NSW

Generally speaking, legal assistance may be provided in the form of plain language legal information, legal advice, initial legal assistance (such as drafting a letter in response to a claim) and representation in a court or tribunal. In NSW, legal assistance is provided to homeless people by a number of different agencies.

Legal Aid NSW, CLSs and ALSs are the primary legal service providers to homeless people throughout NSW, even though, generally speaking, legal service provision to homeless people by these agencies is not separately identified or specifically resourced. It has been argued in this report that LawAccess also has a major role in providing legal assistance to this client group and in linking isolated homeless people to other legal services.

In addition to these generalist agencies are the specialist legal services and clinics for homeless people: the LCRC, the HPLS, Shopfront and the legal clinics at the Exodus Foundation and Lou's Place. These specialist services have been established to addresses many of the barriers faced by homeless people in accessing legal services (and include many features listed below). However, the majority of these services are pro bono services, which are most viable in city locations where there are high rates of homelessness and where there are law firms with the pro bono capacity to service these clinics. Specialist services are best examined as models of legal service delivery, rather than as the primary sources of legal support to homeless people in this State.

Given the particular legal needs of homeless people and the barriers they face in seeking assistance for those needs, it appears that homeless people benefit from legal assistance services that:

- are located in places frequented by or accessible to homeless people throughout NSW
- are in or have a less formal environment
- have longer appointment times to spend with clients
- are staffed with legal officers who are skilled in communicating with people with complex needs
- can provide continuity of service
- can provide timely legal advice and support (i.e. less waiting time for an appointment)
- have the capacity to address or coordinate a response to a range of legal issues
- can be coordinated with the provision of non-legal services (e.g. caseworker support, accommodation services, alcohol and other drug treatment)
- can assist and empower clients to address their legal rights.

Homeless people also benefit from early legal intervention, that is, legal assistance that is provided as soon as possible after the legal issue has arisen and before it has reached crisis point and affected other areas of their lives.

A structural feature of legal service delivery in NSW that seems to present difficulties for homeless and other disadvantaged people is that different legal issues tend to be separately dealt with by different legal services or practitioners. For instance, a duty lawyer may assist in a criminal matter, a grant of legal aid may be provided for a family law issue, a community legal centre may assist with a debt matter, and the Chamber Magistrate, the police or the Women's Domestic Violence Court Assistance Scheme may assist with an AVO. This separation of legal service delivery is in contrast to the multiple and interrelated nature of the legal and other issues confronting homeless people. Not only must a homeless person potentially access a number of different legal assistance services, but the legal services provided are less likely to be coordinated. Each time the homeless person needs to access another legal service they are again potentially faced with the issues of cost, transport, finding documentation, overcoming their fear or lack of faith in the system and telling their story yet again to another busy service provider, who may only be able to deal with one of their legal issues. Thus, a system that offers separate legal services for different issues and lacks coordination between these services can, in and of itself, present a barrier to homeless people effectively addressing their legal needs.

In addition, while individual legal services may have relationships with local welfare and other services, legal services appear not to be routinely included in some 'human service' networks (which include community services, housing, welfare agencies), particularly at the planning/policy level. This again contrasts significantly to the experience of homeless people, where legal and social issues are usually intertwined. The separation of legal services from other human services, and the 'siloing' of legal matters within the legal services, makes it difficult to take a holistic 'case management' approach to clients. A 'case management' approach

involves addressing the a client's many complex needs as a package. To facilitate this, closer links need to be made between different legal services providers and between legal and non-legal services for homeless people.

Non-legal assistance in legal processes

A few of the homeless participants in this study said that if they had a legal problem, they would go directly to Legal Aid NSW or to another legal service they were familiar with. However, this and other studies suggest that homeless people are, at least initially, more likely to turn to non-legal services or workers for advice when they have a legal problem. Consultations and SAAP data indicate that homeless person's services, particularly SAAP services, are a key link between their clients and legal assistance. As well as providing food, shelter and medical attention, some of these organisations also provide advocacy and legal information, advice and referral services. In this study, caseworkers and service providers were found to play a vital role in assisting homeless clients to identify their legal issues, obtain legal assistance, engage in legal processes and manage the outcomes. Specific tasks included referring clients to legal services and, in some cases, accompanying them to appointments, 'interpreting' the advice provided by lawyers, assisting clients to gather relevant documentation, assisting people with clothing for court, providing court support, explaining court processes, and providing accommodation so people could be released on bail.

To assist caseworkers in adequately supporting homeless clients with legal problems, service providers in the current study said that they wanted access to timely legal information, legal advice and relevant legal 'education'. The aim would not be to equip these workers to 'advise' clients, but to support clients into and through legal processes. Workers also stressed the significant benefits of interagency collaboration for legal service providers, non-legal service providers and, most importantly, their homeless clients. This is consistent with directions highlighted in current policy and research.

However, some homeless people have no contact with SAAP services. This group may rely on family and friends or more general services such as doctors or health services, schools, tenancy/housing workers or Centrelink for support. Given this, if these general services are to be equipped to appropriately refer clients to legal assistance services, the message given to these agencies must be as direct and simple as possible. One option for consideration is the wide distribution of the LawAccess contact telephone number. This involves increasing general community awareness of the service as well as directing information to the types of agencies and services discussed in chapter 7. Another option is to consider telephone access points to LawAccess, in places such as Centrelink waiting areas. LawAccess can provide legal information and advice by telephone, and link people with local face-to-face legal services. An added benefit in using LawAccess as a referral point to legal services is that it may cut down the number of times a person is referred from place to place, reducing the prospect of referral fatigue.

Participation in the legal system

The last step in addressing legal need involves facilitating effective participation in the legal system, with the aim of improving the prospect of better legal outcomes for homeless people. This project found that, in spite of their many legal needs, there was relatively little evidence of the participation of homeless people in legal processes. Given the range of barriers they face, it appears that homeless people simply do not get this far into the process. Indeed, it appears that many homeless people resolve (or do not resolve) their legal issues in other ways. For example, people reported simply moving elsewhere when evicted rather than challenging the eviction, not seeking access to their children, or accepting a decision even if they did not agree with it.

Even when homeless people are compelled to participate (e.g. in a criminal procedure), they may fail to participate effectively or fail to do so at all (leading to further legal consequences). Stakeholders and interviewees

reported that homeless people face particular difficulties in doing what is required of them in legal processes (e.g. attending court, providing documentation) to obtain the best possible outcome. Factors which were identified as contributing to these difficulties included:

- limited motivation to pursue their legal issues, together with a fear of or lack of confidence in the legal system. Many homeless people lack faith that the legal system can deliver favourable outcomes to people in their situation
- a lack of awareness of their legal rights, options for legal redress and which legal process to follow. This extends to people not being aware of the right or process to appeal decisions made by government departments such as Centrelink and DOH. This can be exacerbated by mental illness or other cognitive impairment
- not having a stable address or contact details at which to receive notification of hearing dates. This is a particular issue in relation to criminal matters. Not having a stable address can also impact on the ability of people to be granted bail
- the complexity of legal processes, which can be multi-tiered and lengthy (e.g. the fine enforcement system and the social security appeals process)
- the formality of legal proceedings, which people report finding intimidating
- the reliance in legal processes on written documentation and applications, which presents difficulties for people with poor literacy or comprehension
- the cost and limited availability of legal representation for some legal matters.

Non-legal workers and advocates, together with the legal assistance services detailed above, all assist homeless people to overcome these barriers. In addition, some legal processes, such as the SSAT, the HAC

and the NSW Ombudsman, provide a much more flexible service delivery, which may increase accessibility of their processes to homeless people.

In many instances, by the time a homeless person gets to court or a tribunal, they have reached a point of crisis and have multiple legal and social needs. Unlike the traditional justice model approach, a therapeutic jurisprudence approach uses the law to address the social and legal needs of people that can contribute to their homelessness. The Red Hook Community Justice Center (New York), the California Homeless Courts, the NSW Drug Courts and the MERIT program are all examples of attempts to apply a therapeutic jurisprudence approach to the legal process. These are examples of the way in which courts and tribunals can be used as a point of intervention and referral to other services to address the non-legal needs of homeless people. Another example of a program that has a more direct focus on homeless people is the Special Circumstances List at the Magistrates Court of Victoria. This program links people appearing before the court back to social services, addressing their legal and social needs at the one time. This is factored into the court outcome for the defendant.

Homelessness and the law: bridging disparate worlds

The aim of this project has been to document the access to justice issues facing homeless people in NSW. It has documented the legal issues commonly faced by people as they move through homelessness, the barriers they face in obtaining assistance for these problems, the factors prohibiting them from participating effectively in legal processes and the legal and other services that work to bridge this gap.

A major observation that may be drawn from this report concerns the intrinsic relationship between homelessness and the law. First, complex legal need appears to be a feature of homelessness. Secondly, homelessness itself can hinder the resolution of those issues. Thirdly, where homeless people are supported to engage in legal processes, the law can provide

solutions to these issues, and provide pathways out of homelessness. A challenge for those providing legal assistance to this group is to bridge the considerable gap between the chaotic world in which homeless people inhabit, and the formality and structure of the legal system.

The capacity of legal assistance services and the legal system itself to meet the needs of homeless people rest on a number of factors. First, recognition of the considerable diversity among homeless people in NSW. This has implications for identifying where homeless people are situated, what their differing legal issues are and what particular constraints they face in addressing these issues. Second, the capacity of services to address the barriers that prevent homeless people from accessing legal services and engaging in legal processes. Third, recognising the key role that non-legal service providers can play in assisting homeless people in legal processes, and the support and information they require to fulfil this role. Finally, homeless people benefit from legal services that work with other agencies to provide a client focused, rather than a problem-focused approach to meeting their complex needs.

This report has discussed a range of strategies that can and are being taken to more constructively engage homeless people in legal processes and to facilitate better outcomes for this group. The consequences of these actions will be far reaching. Not only will addressing these barriers alleviate the daily experience of having unresolved legal issues; they can also alleviate and prevent people from becoming homeless.

The ideas and discussion presented in this report are those of the legal professionals, caseworkers, service providers and, most importantly, the homeless people consulted for this study. It is they who best understand the legal needs and access to justice issues facing homeless people in this State. It is they who must be engaged in structuring legal service delivery to best meet the complex needs of homeless people in NSW.

Appendix 1

SAAP definitions

Supported Accommodation Assistance Program (SAAP)

SAAP is a joint program of the Commonwealth and the States that funds non-government organisations to provide 'a safety net' of services to people who are homeless or at risk of homelessness. SAAP services include homeless persons' hostels, women's refuges and youth crisis accommodation. The following definitions are drawn from the glossary provided in AIHW's National Data Collection annual reports on homeless people in SAAP.[1]

'SAAP client'

A person aged 18 years or older, or a person of any age not accompanied by a parent or guardian, who:

- receives support or assistance from a SAAP agency which entails generally 1 hour or more of a worker's time, either with that client directly or on behalf of that client, on a given day; or
- is accommodated by a SAAP agency; or
- enters into an ongoing support relationship with a SAAP agency.

'SAAP support period'

A support period commences when a client begins to receive support and/or supported accommodation from a SAAP agency. The support period is considered to finish when:

---

[1] E.g. AIHW, Homeless People in SAAP.

- the client ends the relationship with the agency; or
- the agency ends the relationship with the client.

If it is not clear whether the agency or the client has ended the relationship, the support period is assumed to have ended if no assistance has been provided to the client for a period of one month. In such a case, the date the support period ended is one month after the last contact with the client.

'Accompanying child'

A person aged under 18 years who accompanies a client to a SAAP agency during a support period or who requires and/or receives assistance from a SAAP agency as a result of their parent or guardian being a client of the same agency. An accompanying child may or may not require or receive assistance.

Appendix 2

Legal and tenancy services

- Blake Dawson Waldron
- Hunter Legal Centre (as part of the NHHIN forum)
- Inner City Legal Centre
- Redfern Legal Centre
- Intellectual Disability Rights Service
- UTS Community Law Centre
- Legal Aid Commission of NSW
- North/North West Community Legal Centre
- Northern Rivers Community Legal Centre
- PIAC/PILCH HPLS (NSW)
- Parks and Village Service
- QPILCH HPLC
- St John's Darlinghurst, Legal Counselling and Referral Centre
- Tenants Union of NSW
- Shopfront Youth Legal Centre (Freehills)
- VPILCH HPLC
- Violence Prevention Unit, Walgett
- WALS, Walgett Office
- Women's Legal Services
- Aboriginal Tenancy Information

- Boarders and Lodgers Action Group
- Legal Aid (Victoria)
- Liz Dowling & Associates, Melbourne
- Law Access

Non-legal services

- Haymarket Foundation
- Matthew Talbot Hostel
- Foster House – Salvation Army
- The Smith Family
- Just Enough Faith
- Exodus Foundation
- Shelter NSW
- The Big Issue Australia
- Newcastle Homeless Interagency Network
- St Vincent's de Paul
- Mission Australia
- Women and Girls Emergency Service
- Edward Eagar House (Wesley Mission)
- Vincentian Village
- Don Boscoe House (Youth Off the Streets)
- Lou's Place
- St Miguel Family Centre, Boystown
- Homelessness Action Team Support and Outreach Service
- Wallamulla Aboriginal Community Centre, Redfern

- Centrecare Youth Accommodation Service, Newcastle
- Hebersham Aboriginal Youth Service
- The Gender Centre (NSW)
- Youth Accommodation Association
- River Towns project, Walgett
- Twenty10
- Independent Community Living Association – City Street Outreach Service
- Homeless Brokerage program, YWCA
- Homeless Person's Information Centre
- Family Action Centre – University of Newcastle
- Walgett SAAP service

Government

- Centrelink (Walgett)
- NSW Department of Community Services (South East Region Homelessness Unit)
- NSW Department of Housing (Housing, Policy and Programs, Housing Systems)
- NSW Department for Women
- NSW Ombudsman (Community Service Division)
- NSW Police Force (Operational Policy and Programs; City Central local area command)
- Sydney City Council (Homeless Services)
- Attorney General's Department (Criminal Law Division)
- Office of Fair Trading – Aboriginal Tenancy Information Service

- Department of Justice (Victoria)
- NSW Aboriginal Housing Office

Courts/tribunals

- Judge Jennifer Coate, President, Victorian Children's Court
- Drug Clinic Program, Victoria
- Drug Court NSW
- Jelena Popovic, Deputy Chief Magistrate, Magistrates Court of Victoria
- Walgett Local Court

Homeless participants were contacted through the following services:

- Matthew Talbot Hostel
- The Big Issue
- Salvation Army, outreach
- Women and Girls Emergency Shelter
- Walgett Violence Prevention Unit
- Centacare, Newcastle
- The Gender Centre, Sydney

Appendix 3

Focus group (roundtable) questions

1. What is your organisation's charter?
2. What services does your organisation provide to homeless people (e.g. casework, outreach)?
3. Who are your clients?
4. What are some of the challenges your organisation faces when working with homeless people?
5. How have you tried to overcome these challenges?
6. In particular, what initiatives (if any) have you developed for working effectively with homeless people from particular demographic groups (e.g. Indigenous and young people)?
7. In your experience, what are some of the more effective initiatives that have been implemented in delivering services to homeless people?
8. What type of relationship does your organisation have with legal organisations that deal with homeless people?
9. Can you suggest ways in which this relationship can be improved?
10. What legal services are you aware of that provide legal assistance to homeless persons and where are they located?
11. What kind of legal assistance do they offer (e.g. information, advice, representation)?
12. Who of your clients accesses those legal services?

13. What is your understanding of homeless people's experiences:
    (i) in accessing; and
    (ii) using legal services?
14. What are some of the legal issues that face homeless people?
15. What barriers do homeless people face in accessing and using legal services?
16. What gaps (if any) are there in relation to providing legal services to homeless people?
17. What comments (if any) do you have about appropriate models for providing legal services to homeless people?
18. What features exist within the court/tribunal/ ADR framework that operate to present barriers to homeless people?
19. Which of the existing mechanisms are working well in seeking to overcome these barriers?
20. What innovative solutions could be adopted to deal with these barriers?
21. What sort of law reform work (if any) do you engage in?
22. How do you involve your clients in law reform work?

Appendix 4

Newcastle Hunter Homeless Interagency Network (NHHIN) Annual Forum, 27 February 2004

- Lower Hunter Community Health Service
- Newcastle Mental Health
- Dungog Shire Council
- Newcastle City Council – Councillor
- LEAF Reconnect
- Maitland Neighbourhood Centre
- Singleton Tenants
- Richmond Fellowship of NSW
- Hunter Mental Health – James Fletcher Hospital
- Newcastle City Council
- Family and Community Services
- St Vincent de Paul
- Westlake Macquarie Youth Accommodation Project
- Hunter Region No Interest Loans Scheme
- Baptist Community Services
- Centrelink – Maitland
- McKenzie Centre
- Newcastle City Mission
- Department of Housing – Raymond Terrace

- Department of Housing – Charlestown
- Department of Housing – Toronto
- Department of Housing – Newcastle
- Department of Housing – Regional Office
- Department of Housing – Maitland
- Department of Housing – Mayfield
- Department of Housing – Muswellbrook
- Mission Australia
- Salvation Army
- Salvation Army – The Ark
- Samaritans
- Samaritans – Friendship House
- Samaritans Youth Services
- Raymond Terrace Neighbourhood Centre
- Community Restorative Centre, Hunter
- Hunter Community Legal Centre
- Hunter Council of Social Services
- Premiers Department
- Hunter Mental Health
- Hunter Tenancy Advice and Advocacy Service
- Department of Community Services

Appendix 5

A2J CONSUMER INTERVIEW SCHEDULE

Introduction

Hi, thanks for agreeing to chat with me. I really appreciate your time.

I'm _____. What is your name?

I work at a place called the Law and Justice Foundation. This is an independent organisation that is doing research about people's access to legal information and legal services.

Go to participant information and consent form.

This must be signed by both the interviewer and participant before continuing.

1. To start off with, it would be great if you could tell me what life is like for you on a regular day. What you do on a regular day?

2. *(if any of the following are mentioned)* So where do you go to:

   Find a bed for the night/ accommodation

   Get something to eat

   Work/Find work

   Get medical help/methadone/needles

   Feel safe /Get support for your family

3. So who (else) helps you out around here?

4. Are they helpful? What do you like about going there?

I would like to ask you a bit about your circumstances and issues you might be facing. These issues may be related to getting benefits, with employment, paying a debt, staying in housing, family, police or whether you have been a victim of crime.

5. So thinking about life recently, has there been a particular problem or issue you have had to deal with?

6. So when … happened, what did you do?

If nothing/nowhere – go to Q8

7. a. Did …help you?

   b. *if yes*, how?

   c. *if not*, what was the problem there?

8. *If did nothing/nowhere* – Why was that? *(prompt for other reasons)*

9. Has the problem been sorted/resolved? How?

10. Has there been any other major issue you have faced recently — perhaps where you think a lawyer may have been able to help you out? *(If yes, Q5–9 again)*

11. *If there was a legal issue* — did you end up getting any advice from a lawyer on this issue? If no, why was that?

12. *If no legal problem mentioned* — If you did have a legal problem, where do you think you might go for help?

If the issue has been addressed above, skip any repetitive questions below

I want to ask you about other aspects of your life at the moment, starting with … housing and accommodation issues.

HOUSING

13. What types of places have you lived in the last three months?

14. Have you had any problems staying in your accommodation in the last three months? (e.g. rent increases, eviction, disputes with the landlord)

If there was a problem —

15. a. What happened?

    b. What did you do about it/where did you go?

c. *If nothing*, why was that?

d. *If something*, did they/that help?

e. Was it sorted out/is it still an issue for you?

16. If you did have a problem with housing, where would you go for help with that?

EMPLOYMENT AND INCOME

17. What has been your major source of income in the last three months?

    Work (what type?)

    Benefits/payments (What type? *Go to Q22*)

    Other

18. *If benefits* – Have you had any problems with your government benefit in the last three months? (e.g. eligibility, calculation of benefit level, breaches, review of change of circumstances, allegation of fraud)

19. *If ceased work in last three months* – What happened there?

20. *If no government benefit is mentioned* – Have you applied for any benefits in the last three months?

21. *If no other income* – Why not?

22. If you did have a problem with your pension/at work, where could you go for help?

23. Have you had any major problems with people chasing you up for debts or unpaid fines?

If there was a problem —

24. a. What happened?

    b. What did you do about it/where did you go?

    c. *If nothing*, why was that?

    d. *If something*, did they/that help?

    e. Was it sorted out/is it still an issue for you?

    f. If you did have a legal problem with a debt, where could you go for help with that?

FAMILY

25. Have you been married/de facto?

26. Do you have kids?

If never married/de facto and no kids – go to Q30

27. Have you had any legal problems related to your family—divorce, custody, problems with paying or receiving child support? (dispute over matrimonial property (e.g. division of money, superannuation or property on divorce/separation); problem about receipt or payment of child support; Child(ren) taken into care or placed on Child Protection Register; Problem about fostering, adoption or legal guardianship)

If there was a problem –

28. a. What happened?

    b. What did you do about it?

    c. *If nothing*, why was that?

    d. *If something*, did they/that help?

    e. Was it sorted/is it still an issue for you?

Before I move on, I just want to remind you that this is confidential and we will not be identifying any one in the report.

VICTIM OF CRIME/POLICE ISSUES

29a. Have you been the victim of a crime in the last three months (e.g. assault, robbery, stealing)?

If yes to assault –

29b. Was that by:

A family member

Some one else you know

Another person

30. Did you report that to the police? (if no, go to Q32)

31. What happened then?

32. Have you had any contact with the police in the last three months?

33. *If yes* – What type of contact have you had with the police?

    Reported a crime

    Been asked to 'move on' by police

    Charged with a criminal offence

    Been taken somewhere by the police

34. Have you had any contact with –

    Council rangers?

    Transit police?

    Private security guards?

35. *If yes* – What happened?

    If relevant – When they ask you to move on, what do you do?

36. Have you had any fines – say, for fare evasion or littering in the last three months?

37. Have you had particular problems with police or the law?

    A problem about unfair treatment by the police (e.g. harassment, assault, false imprisonment, wrongful arrest, malicious prosecution, searches)

    A problem with bail or remand

    Police failing to respond or investigate a crime

    Police not identifying/catching/arresting someone who committed a crime against you

If a problem –

38. a. What happened?

    b. What did you do about it?

    c. *If nothing*, why was that?

    d. *If something*, did they/that help?

    e. Was it sorted/is it still an issue for you?

    f. If you did have a problem with the law or police, who would you go to for help?

YOUR HEALTH

39. Have you had any injuries or accidents in the last 12 months? (an injury caused by a car accident, a work-related injury, an injury caused by something else occurring outside the home)

If an injury –

40. a. What happened?

    b. What did you do about it?

    c. *If nothing*, why was that?

    d. *If something*, did they/that help?

    e. Was it sorted/ is it still an issue for you?

41. Are you Aboriginal or a Torres Strait Islander?

42. *Record gender*

43. *Record age*

    25 or less

    Over 25

Record any communication issues

That is all I wanted to ask you. Are there any other particular legal issues that we may have missed?

Thanks very much for talking with me about your experiences.

References

Access Economics, *The Cost of Domestic Violence to the Australian Economy: Part 1*, Partnerships against Domestic Violence, Office of the Status of Women, Canberra, 2004.

Access Economics, *The Cost of Domestic Violence to the Australian Economy: Part 11*, Partnerships against Domestic Violence, Office of the Status of Women, Canberra, 2004.

Access Economics, "People Homeless Due to Domestic Violence", in *The Cost of Domestic Violence to the Australian Economy: Part 11*, Canberra, 2004.

Adkins, B, Barnett, K, Greenhalgh, E & Heffernan, M, "Women and Homelessness: Innovative Practice and Exit Pathways", in AFHO, *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, Canberra, 2003, <http://www.afho.org.au/4_publications/conference_papers/Adkins.pdf>.

Adkins, B, Barnett, K, Jerome, K, Heffernan, M & Minnery, J, *Women, Housing and Transitions Out of Homelessness*, Australian Housing and Urban Research Institute Queensland Research Centre, Brisbane, 2003.

Alexander, P, "Great Expectations: In Pursuit of Legislative Reform for Boarders in NSW", *Parity*, vol. 17, no. 1, 2004, pp. 76–8.

Antonetti, E & Horn, M, *Gambling the Home Away: A Study of the Impact of Gambling on Homelessness*, Hanover, Melbourne, 2001.

Australian Bureau of Statistics, *Use of the Internet by Householders*, Australia, cat. no. 8147.0, Canberra, 2000.

Australian Bureau of Statistics, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, cat. no. 4704.0, ABS and Australian Institute of Health and Welfare (AIHW), Canberra, 2001.

Australian Bureau of Statistics, *2001 Census Basic Community Profile and Snapshot: New South Wales*, Canberra, 2002.

Australian Federation of Homelessness Organisations, "Preventing Centrelink Applied Breaches Among Young People (and Others) – Utilising SAAP and Other Non-Government Services", *Parity*, vol. 14, no. 7, 2001.

Australian Federation of Homelessness Organisations, Summary Report, *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, Canberra, 2003, <http://www.afho.org.au/4_publications/conference_papers/Summary_Report.pdf>.

Australian Federation of Homelessness Organisations, *Policy Platform. Homelessness and Employment, Education and Training*, AFHO, Canberra, undated, <http://www.afho.org.au/5_policy/Policy_Platform/Emp_Ed_Train.pdf>.

Australian Federation of Homelessness Organisations, *Policy Platform: Mental Health and Alcohol and Other Drug Issues as Factors in Homelessness*, AFHO, Canberra, undated, <http://www.afho.org.au/5_policy/Policy_Platform/Mental_Health.pdf>.

Australian Institute of Health and Welfare, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2002–03 [Homeless People in SAAP], New South Wales Supplementary Tables [SAAP 2002–03 NSW Tables]*, SAAP NDCA Report Series 8, AIHW cat. no. HOU 91, AIHW, Canberra, 2003.

Australian Institute of Health and Welfare, *Children Accompanying Homeless Clients 2002–03: A Report from the SAAP National Data Collection*, AIHW, Canberra, 2004, <http://www.aihw.gov.au/publications/hou/cahc02-03/cahc02-03.pdf>.

Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No. 89, ALRC, Canberra, 2000, <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>.

Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No. 84, AGPS, Sydney, 1997.

Bail Amendment (Repeat Offenders) Act 2002 (NSW).

Bailey, N, Vale Z, & Gronda H, "Crisis Accommodation and the Law", *Parity*, vol. 17, no. 1, 2004, pp. 84–5.

Baldry, E, McDonnell, Maplestone, P, & Peeters, M, "Ex-prisoners and Homelessness", in *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, Canberra, 2003, <http://www.afho.org.au/4_publications/conference_papers/Baldry.pdf>.

Baldry, E, McDonnell, Maplestone, P, & Peeters, M, *Ex-prisoners and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration for Ex-prisoners? Final Report*, Australian Housing and Urban Research Institute, Melbourne, 2003, <http://www.ahuri.edu.au/global/docs/70068_final_exprisoners.pdf>.

Baldry, E, McDonnell, D, Maplestone, P, Peeters, M, "Ex-prisoners, Housing and Social Integration", *Parity*, vol. 16, no. 5, June, 2003, pp. 13–15.

Bartholomew, T, "Family Homelessness: Evolving Understandings, but Static Responses", *Parity*, vol. 15, no. 10, 2002, pp. 12–13.

Barton, M, "Internet bus offers a ticket of hope for young homeless" in *Sydney Morning Herald*, Sydney, August 23, 2004, p. 7.

Boarders and Lodgers Action Group, *BLAG Campaign Kit*, 2004, Tenants Union of NSW, North Sydney, 2004, <http://www.tenants.org.au/member/publications/campaign_Kit_2.pdf>.

Buhrich, N, Hodder T & Teesson M, "Schizophrenia Among Homeless People in Inner Sydney: Current Prevalence and Historical Trends", *Journal of Mental Health*, vol. 12, no. 1, 2003, pp. 51–7.

Burdekin report – see Human Rights and Equal Opportunity Commission, *Our Homeless Children.*

Business Agents Amendment (Tenants Databases) Regulation 2004 (NSW).

Centre for Court Innovation, *Red Hook Community Justice Centre New York*, <http://www.courtinnovation.org/demo_09rhcjc.html>.

Centrelink, *Social Workers Factsheet*, <http://www.centrelink.gov.au/internet/internet.nsf/publications/ch003.htm>.

Centrelink, *Annual Report 2002–2003*, 2003, <http://www.centrelink.gov.au/internet/internet.nsf/ar0203/6_5.htm>.

Centrelink, *Community Update*, 2004, <http://www.centrelink.gov.au/internet/internet.nsf/publications/cm.htm>.

Centrelink, *Newstart Allowance Payments*, 2005, <http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_nsa.htm>.

Chamberlain, C & MacKenzie, D, *Youth Homelessness, 2001. A Research Program Funded by All State and Territory Governments and the Salvation Army*, RMIT University, Melbourne, 2002, <http://www.countingthehomeless.com.au/CTHRPT01.pdf>.

Chamberlain, C & MacKenzie, D, *Counting the Homeless 2001*, cat. no. 2050.0, Australian Census Analytic Program, Australian Bureau of Statistics, Canberra, 2003.

Chamberlain, C & MacKenzie, D, *Counting the Homeless 2001: New South Wales*, Swinburne and RMIT Universities, Hawthorn, 2003, <http://www.countingthehomeless.com.au/SWI002%20NSW_reportFA.pdf>.

Chamberlain, C & MacKenzie, D, "How Many Homeless Youth in 2001?", *Youth Studies Australia*, vol. 22, no. 1, 2003, pp. 18–24.

Chesterfield-Evans, Hon. Dr Arthur, *Bail Amendment (Repeat Offenders) Act 2002 (NSW)*, Second Reading Speech, Hansard, 2004.

Children and Young Persons (Care and Protection) Act 1998 (NSW).

Chung, D, Kennedy, R, O'Brien, B, & Wendt, S, *Home Safe Home: The Link Between Domestic and Family Violence and Women's Homelessness*, Social Policy Research Group, University of South Australia, Partnerships Against Domestic Violence, Office of the Status of Women, Canberra, 2000.

Collaborative Justice Courts, *Advisory Committee, Homeless Courts*, <http://www.courtinfo.ca.gov/programs/collab/homeless.htm>.

Combined Community Legal Centres Group NSW, *Impact of Current Arrangements Regarding Legal Aid and Access to Justice on NSW CLCs. Submission to the Senate Legal & Constitutional Committee Inquiry into Legal Aid and Access to Justice*, section 5.1, Sydney, 2003.

Commission of Inquiry into Poverty, *Homeless People and the Law*, Report for the Law and Poverty series (Professor R. Sackville, Chairman), AGPS, Canberra, 1976.

Community Restorative Centre, *Community Restorative Centre Information*, undated, <http://www.crcjs.org.au/information.htm>.

Consumer Credit Legal Centre, *Caseworker Services*, undated, <http://www.cclcnsw.org.au/>.

Consumer Trader & Tenancy Tribunal, *Chairperson's Directions on Adjournment Requests*, 2004, <http://www.fairtrading.nsw.gov.au/corporate/cttt/hearinginformation.html>.

Consumer, Trader and Tenancy Tribunal Act 2001 (NSW).

Council to Homeless Persons, *An Overview of Homelessness*, <http://www.chp.org.au/public_library/policy_homelessness.chtml>.

Crane, P & Brannock, J, *Homelessness Among Young People in Australia: Early Intervention and Prevention. A Report to the National Youth Affairs Research Scheme*, National Clearinghouse for Youth Studies, Hobart, 1996, <http://www.acys.utas.edu.au/nyars/N13.htm>.

Day, J, Leebeek M & Villanova, L, "Pathways Into and Out of Homelessness (Young People – Points of Intervention)", in AFHO, *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, Canberra, 2003 <http://www.afho.org.au/4_publications/conference_papers/Day.pdf>.

Department of Fair Trading, *Application of Residential Park Laws*, <http://www.fairtrading.nsw.gov.au/realestaterenting/parksvillages/applicationofresidentialparklaws.html>.

Department of Family and Community Services, SAAP – *The Supported Accommodation Assistance Program*, <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-saap_nav.htm#saap4>.

Department of Immigration and Multicultural and Indigenous Affairs, *Temporary Protection Visas*, 2003, <http://www.immi.gov.au/facts/64protection.htm>.

Department of Immigration and Multicultural and Indigenous Affairs, *New Zealanders in Australia*, 2004, <http://www.immi.gov.au/facts/17nz.htm>.

Dimopoulas, M, Baker, R, Sheridan, M, Elix, J, Lambert, J, *Mapping Pathways of Service Provision: Enhancement of Family Violence Protocols and Interagency Linkages*, Partnerships Against Domestic Violence, Office of the Status of Women, Canberra, 1999.

Drug Court Act 1998 (NSW).

Eddy, G, "How long are you going to be here? Developing an understanding of the impact of transience on families in rural/remote Australia" paper presented at *'Changing families, challenging future'*, Sixth Australian Institute of Family Studies Conference, Melbourne, 1998, <http://www.aifs.org.au/institute/afrc6papers/eddy.html>.

Eddy, G, *Final Report: Caravan Parks Pilot Family Crisis Child Care Program. Period March 2001–January 2003*, Commonwealth Department of Family and Community Services, 2003, <http://www.facs.gov.au/internet/facsinternet.nsf/VIA/homelessness/$File/Family_Caravan_Parks_Pilot.pdf>.

Edwards, R, *Violence Excluded: A Study into Exclusion Orders in South East Sydney*, Violence Against Women Specialist Unit, Attorney General's Department of NSW, Sydney, 2004, <http://www.agd.nsw.gov.au/cpd.nsf/files/ViolenceExcluded.pdf/$FILE/ViolenceExcluded.pdf>.

Essential Media Communications, *Mental Health Workers Alliance Worker Survey*, November 2004, Sydney, <http://www.labor.net.au/campaigns/mhwa/background/survey.html>.

Evans, J, "The work of FEANTSA" in *National Conference on Homelessness: Homelessness in the Lucky Country 1996–2000: How Will We Meet the Challenge?*, Melbourne, 1996.

Fernandes, K, "Reclaiming Housing Rights: Homeless Peoples' Participation is Essential", *Parity*, vol. 17, no. 1, 2004, pp. 17–8.

Fines Act 1996 (NSW).

Fines Regulation 1997 (NSW).

Fitzgerald, J & Weatherburn, D, "The Impact of the Bail Amendment (Repeat Offenders) Act 2002", *Crime and Justice Bulletin*, no. 83, 2004, <http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB83.pdf/$file/CJB83.pdf>.

Foley, P & Beer, A, *Housing Need and Provision for Recently Arrived Refugees in Australia*, Australian Housing and Urban Research Institute, Southern Research Centre, Canberra, 2003.

Fopp, R, "After Burdekin: A Brief Evaluation 14 years on", *Parity*, vol. 16, no. 7, 2003, pp. 13–14.

Ford, V, *Penalties and Fines on CityRail Trains and Property*, 2003, <http://www.yapa.org.au/youth/cop/trainfines.pdf>.

Goldie, C, *PILCH Homeless Persons' Legal Clinic: Evaluation Report*, Gilbert + Tobin Centre for Public Law, University of NSW, 2003.

Goldie, C, "Rights Versus Welfare", *Alternative Law Journal*, vol. 28, no. 3, 2003, pp. 132–35.

Hodder, T, Teesson M & Buhrich, N, *Down and Out in Sydney: Prevalence of Mental Disorders, Disability and Health Service Use Among Homeless People in Inner Sydney*, Sydney, 1998, <http://www.wesleymission.org.au/publications/r&d/Down%20and%20Out%20in%20Sydney.doc>.

"Homelessness, Human Rights and the Law", *Parity*, vol. 17, no. 1, 2004, p. 4.

Hoogland, S, *The Faces of Homelessness*, undated, <http://www.wesleymission.org.au/publications/homeless/>.

Horbury, P, "Social Security Law and Homelessness", *Parity*, vol. 17, no. 1, 2004, pp. 468.

House of Representatives Standing Committee on Community Affairs, *A Report on Aspects of Youth Homelessness*, AGPS, Canberra, 1995.

Housing Appeals Committee, *Decisions That Can Be Appealed*, <http://www.hac.nsw.gov.au/appeal/appealable.shtml>.

Human Rights and Equal Opportunity Commission, *Our Homeless Children: Report of the National Inquiry into Homeless Children* (Chair: Mr Brian Burdekin), Parliamentary Paper No. 125 of 1989, AGP, Canberra, 1989.

Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Straight Islander Children from their Families*, HREOC, Sydney, 1997.

Inner City and Redfern Legal Centres, *Fined Out*, 2004, <http://www.iclc.org.au/fined_out/>.

Irwin, J, Winter, B, Gregoric, M & Watts, S, *"As Long As I Have Got My Doona", a report on lesbian and gay youth homelessness*, Australian Centre for Lesbian and Gay Research, University of Sydney, Sydney, 1995.

Johns, R, *Bail law and practice: recent developments*, Briefing Paper, No. 15 of 2002, NSW Parliament, Sydney, 2002, <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/CAC2CFC74242A44FCA256ECF00095B61>.

Keys Young, *Homelessness in the Aboriginal and Torres Strait Islander Context and Its Possible Implications for the Supported Accommodation Assistance Program (SAAP)*, FACS, Canberra, 1998, <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-newsaap_keys.htm>.

Kids' Help Line, *Infosheet, No 12: Homelessness*, 2004, <http://www.kidshelp.com.au/template/tipsheetList.aspx?s=155>.

Kids' Help Line, *Infosheet: New South Wales 2003*, 2004, <http://www.kidshelp.com.au/research/STATES/NSW03.pdf>.

Kids' Help Line, *Kids' Help Line Infosheet 2004*, 2004, <http://www.kidshelp.com.au/upload/11865.pdf>.

Kingsford Legal Centre, *Kingsford Legal Centre E-Bulletin, 1 May 2005*, no. 22, 2005.

Lake, R, *Housing NSW Acceptable Behaviour Progra*m, 2004, <http://www.pwd.org.au/e-bulletin/pwd_e-bulletin_10.html#nsw3>.

Law Access NSW online, *Referral of Customers to Specialist Legal Services, Private Solicitors and Other Legal Advice or Related Assistance Services*, 2003, <http://info.lawaccess.nsw.gov.au/lawaccess/lawaccess.nsf/pages/legal_specialist>.

Law and Justice Foundation of NSW, *Access to Justice and Legal Needs Program, Background Paper*, 2002, <http://www.lawfoundation.net.au/access/background.html>.

Law and Justice Foundation of NSW, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW. Stage 1: Public Consultations*, Law and Justice Foundation of New South Wales, Sydney, 2003.

Law and Justice Foundation of NSW, *Access to Justice and Legal Needs: A Project to Identify Legal Needs and Barriers for Disadvantaged People in NSW. Stage 2: Quantitative Legal Needs Survey, Bega Valley (Pilot)*, Law and Justice Foundation of NSW, Sydney, 2003.

Law Council of Australia, *Erosion of Legal Representation in the Australian Justice System*, Law Council of Australia, 2004.

The Law Handbook: Your Practical Guide to the Law in New South Wales, Barry, R (ed.), 9th ed., Redfern Legal Centre Publishing, Redfern, NSW, 2004.

Legal Aid Commission of New South Wales, *Annual Report 2003–2004*, Legal Aid Commission of New South Wales, Sydney, 2004, <http://lacextra.legalaid.nsw.gov.au/internet/ar0304/legalaidannrpt.pdf>.

Legal Aid Commission of New South Wales, *Legal Aid NSW Outreach Programs*, <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=68>.

Legal Aid Commission of New South Wales, *Policies in Brief*, <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=242>.

Legal Aid Commission of New South Wales, *Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice*, Sydney, 2003, pp. 41–4. <http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2002-04/legalaidjustice/submissions/sublist.htm>.

Legal Aid Commission of New South Wales, *WDVCAP Program*, <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=58>.

Lynch, P, "Begging for Change: Homelessness and the Law", *Melbourne University Law Review*, vol. 26, 2002.

Lynch, P, "From Cause to Solution: Homelessness and the Law in Australia and the United States", in *'Beyond the Divide'* papers presented at the Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, Canberra, 2003, <http://www.afho.org.au/4_publications/conference_papers/conference_papers.htm>.

Lynch, P, "Homelessness and the Right to Social Security", *Lawyer's Weekly*, vol. 150, 2003, p 10.

Lynch, P, "The Power and Purpose of Rights", *Parity*, vol. 17, no. 1, 2004, p. 103.

Lynch, P & Klease, C, *Homelessness and Access to Justice: Submission to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice*, Homeless Persons' Legal Clinic and Queensland Homeless Persons' Legal Clinic , Melbourne, 2003, <http://www.aph.gov.au/senate/committee/legcon_ctte/legalaidjustice/submissions/sub13.doc>.

Lynch, P & Stagoll, B, "Promoting Equality: Homelessness and Discrimination", *Deakin Law Review*, vol. 7, 2002, pp. 295.

Mackenzie, A, "Young, Gay and Homeless", in *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, Canberra, 2003, <http://www.afho.org.au/4_publications/conference_papers/Mackenzie.pdf>.

MacKenzie, D & Chamberlain, C, *Homeless Careers: Pathways In and Out of Homelessness*, Counting the Homeless 2001 Project, Hawthorn, 2003, <http://www.salvationarmy.org.au/reports/Homeless_Careers_2003.pdf>.

Malcolm, A, "Providing Primary Health Care to the Homeless", *Parity*, vol. 17, no. 8, 2004, p. 9.

Martin, C, *New Tenant Database Rule to Commence*, 2004, <http://www.tenants.org.au/>.

Martin, C, *The Public Housing 'Anti-Social Behaviour' Laws – Information Sheet for Tenants*, 2004, <http://www.tenants.org.au>.

Martin, C, *Tenant Blacklists to Be Regulated At Last: New Rule of Conduct for Agents Offers Some Hope Against Database Listings*, 2004, <www.tenants.org.au>).

McConnell, D, Llewellyn, G & Ferronato, L, *Parents with a Disability and the NSW Children's Court*, Family Support and Services Project, University of Sydney, Sydney, 2000.

McGirr, M, *The Big Issue*, Vol. 214, 2004, p. 18.

Megarrity, A, *Residential Tenancies Amendment (Public Housing) Bill 2004, Second Reading Speech*, 3 June 2004, <http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA20040603043>.

Memmott, P, Long, S & Chambers, C, *Positioning Paper: Categories of Indigenous 'Homeless' People and Good Practice Responses to Their Needs*, Australian Housing and Urban Research Institute, Queensland Research Centre, 2003, Brisbane, <http://www.ahuri.edu.au/attachments/20168_pp_categoriesindigenous.pdf>.

Memmott, P, Long, S & Spring, F, *Final Report: Categories of Indigenous 'Homeless' People and Good Practice Responses to Their Needs*, November 2003, Australian Housing and Urban Research Institute, Queensland Research Centre, Brisbane, 2003, <http://www.housing.infoxchange.net.au/library/ahin/social_housing/items/00094-upload-00001.pdf>.

Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General, *Residential Tenancy Databases Issues Paper*, 2003, <http://www.consumer.gov.au/html/download/Fianl%20discussion%20paper.pdf>.

Mundell, M, *Condensed Summary: Youth Component of Submissions to the Victorian Homelessness Strategy*, Council to Homeless Persons, Melbourne, 2003, <http://www.chp.org.au/YouthPolicy.shtml>.

Mundell, M, "Giving Voice to the Voiceless: Homelessness and Democracy", *Parity*, vol. 17, no. 1, 2004, pp. 94–5.

National Association of Community Legal Centres, *Doing Justice: Acting Together to Make a Difference*, 2003, <http://www.naclc.org.au/docs/Doing_Justice_doc.pdf>.

National Welfare Rights Network, *Appeals – How to Appeal Against a Centrelink Decision*, 2004, <http://www.welfarerights.org.au/factsheets/fs_appeal.doc>.

NCOSS, *NCOSS Projects Better Service Delivery Program*, <http://www.ncoss.org.au/projects/bsdp/about.html>.

Neame, A & Heenan, M, *What Lies Behind the Hidden Figure of Sexual Assault? Issues of Prevalence and Disclosure*, Briefing Paper 1, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, 2003, <http://www.aifs.gov.au/acssa/pubs/briefing/acssa_briefing1.pdf>.

Neil, C & Fopp, R, *Homelessness in Australia: Causes and Consequences*, Research Monograph 1, Australian Housing and Urban Research Institute, 1994.

Noone, M, "Comment: The Activist Origins of Australian Community Legal Centres", *Law in Context*, vol. 19, 2001, pp. 128–37.

NSW Aboriginal Justice Advisory Council, *Where to from Here: 10 Years After the Royal Commission, Some Suggested Directions for Aboriginal Justice Planning*, Discussion Paper, Sydney, Undated, <http://www.lawlink.nsw.gov.au/ajac.nsf/pages/discussionpapers>.

NSW Attorney General's Department, *Magistrates Early Referral into Treatment Program Annual Report 2002, NSW Attorney General's Department Crime Prevention Division*, 2003, <http://www.lawlink.nsw.gov.au/cpd%5Cmerit.nsf/pages/Annual%20Report>.

NSW Attorney General's Department, *Magistrates Early Referral into Treatment Program*, undated, <http://www.lawlink.nsw.gov.au/cpd/merit.nsf/pages/index>.

NSW Consumer Credit Legal Centre, *Pitfalls with Direct Debits from Cheque/Savings Accounts*, 2003, <http://www.cclcnsw.org.au/DFT_Project_2002/module_18_Banking/cw_dd.html>.

NSW Department of Fair Trading, *Application of Residential Park Laws*, 2003, <http://www.fairtrading.nsw.gov.au/realestaterenting/parksvillages/applicationofresidentialparklaws.html>.

NSW Department of Housing, Policy *ALL0040A: Priority Housing*, 2003, <http://www.housing.nsw.gov.au/phop/all0040a.htm>.

NSW Department of Housing, *Protocol for Homeless People: Fact Sheet*, 2003, <http://www.housing.nsw.gov.au/>.

NSW Department of Housing, *Annual Report 2002–2003*, Sydney, 2003.

NSW Legal Referral Forum, *Effective Legal Referral – Draft for Discussion*, 2004, <http://www.lawfoundation.net.au/information/referral/effective.html>.

NSW Legislative Council Select Committee on the Increase in Prisoner Population, *Interim Report: Issues Relating to Women*, Sydney, 2000.

NSW Ombudsman, *Complaints and Investigations*, <http://www.ombo.nsw.gov.au/complaints/index.html>.

NSW Ombudsman, *Assisting Homeless People: The Need to Improve Their Access to Accommodation and Support Services*, Sydney, 2004, <http://www.nswombudsman.nsw.gov.au/publications/page.html>.

NSW Parliament Legislative Committee on Social Issues, *Juvenile Justice in New South Wales*, Final Report, No. 4, NSW Parliament, Sydney, 1992. <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/c91ccf757cb06189ca256e500038888d/3e98b5a8616d0640ca256f2b00088473!OpenDocument>.

NSW Parliament Legislative Council Select Committee on the Increase in Prisoner Population, *Interim Report: Issues Relating to Women*, NSW Parliament, Sydney, 2000.

NSW Parliament Legislative Council Standing Committee on Social Issues, *Inquiry into Children's Advocacy*, NSW Parliament, Sydney, 1996, <http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/c91ccf757cb06189ca256e500038888d/01da900109670cd5ca256f27000afb95!OpenDocument>.

O'Neill, N, Rice, S & Douglas, R, *Retreat from Justice: Human Rights Law in Australia*, The Federation Press, Sydney, 2004.

Otto, D, "Addressing Homelessness as a Violation of Human Rights in the Australian Context", in *'Beyond the Divide'*, papers presented at the Third National Homelessness Conference, 6–8 April 2003, Brisbane, 2003, AFHO, Canberra, <http://www.pilch.org.au/html/getFile.asp?table=tbl_TCA_Article_Files&field=image&id=129>.

Parker, S, Limbers L & McKeon E, *Homelessness and Accommodation Models for People Living with Mental Health Problems*, 2002, <http://www.mhcc.org.au/projects/homelessness.htm>.

Pearce, D, Disney J & Ridout, R, *The Report of the Independent Review of Breaches and Penalties in the Social Security System*, Sydney, 2002, <http://eprints.anu.edu.au/archive/00001515/01/index.html>.

Perth Inner City Youth Service, *Closets in SAAP*, Perth, 2003, <http://www.facs.gov.au/internet/facsinternet.nsf/VIA/newsaap/$File/closets.pdf>.

Pleasance, P, Buck, A, Balmer, NJ, O'Grady, A, Genn, H, *Causes of Action: Civil Law and Social Justice*, The Stationery Office, London, 2004.

Popovich, J, "Homelessness and The Law: A View from the Bench", *Parity*, vol. 17, no. 1, 2004, pp. 53–6.

Property, Stock and Business Agents Regulation 2003 (NSW).

Psychogios, C, "Homelessness and Disability in Australia", *Parity*, vol. 17, no. 4, 2004, pp. 1112.

Public Interest Advocacy Centre, *Homeless Persons Legal Service*, <http://piac.asn.au/legal/hpls.html>.

QPILCH, *The Homeless Persons' Legal Clinic, End of Pilot Report*, Brisbane, 2003.

Residential Tenancies Amendment (Public Housing) Act 2004 (NSW).

Richardson, A, "The Erosion of Housing in Australia", *Parity*, vol. 17, no. 1, 2004, pp. 92–3.

Robinson, C, *Shifting the Deckchairs: Homeless People and Mental Health Services in Inner-City Sydney*, Wesley Missions Publications, Sydney, 1997.

Robinson, C, *Understanding Iterative Homelessness: The Case of People with Mental Disorders*, Australian Housing and Urban Research Institute, Sydney, 2003, <http://www.ahuri.edu.au/attachments/70072_FINAL_incipienthomelessness.pdf>.

Rossiter, B, Mallett, S, P Myers & D Rosenthal, *Living Well? Homeless Young People in Melbourne*, Australian Research Centre in Sex, Health and Society, LaTrobe University, Melbourne, 2003.

Rossiter, B & Sutton, R, "Accessing and Maintaining Income Support: Difficulties, Research and Collaborative Solutions", in *Out of the Blue: New Responses to Young People and Homelessness*, papers from forum at St Kilda Town Hall, Melbourne, 2003.

RPR Consulting, *Family Homelessness Prevention Pilot: Interim Evaluation Report*, Department of Family and Community Services, Canberra, 2003, <http://www.facs.gov.au/internet/facsinternet.nsf/content/fhpp_interim.htm>.

RPR Consulting, *I'm Looking at the Future: Evaluation Report of Reconnect Final Report*, Department of Family and Community Services, Canberra, 2003, <http://www.facs.gov.au/internet/facsinternet.nsf/VIA/reconnect/$File/ImLookingToTheFuture_FinalReport_30Oct2003.pdf>.

Sackville report – see Commission of Inquiry into Poverty

Sanders, J, *Fines and Young People (or, All You Need to Know about the SDRO)*, 2004, <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/48109001084410066281.doc>.

Schetzer, L, "Community Legal Centres and the Future of Law Reform", *Alternative Law Journal*, vol. 23, no. 5, October 1998, pp. 254–5.

Schetzer, L & Henderson, J, *Access to Justice and Legal Needs: A Project to Identify Legal Needs and Barriers for Disadvantaged People in NSW, Public Consultations*, Law and Justice Foundation of New South Wales, Sydney, 2003.

Schirmer, M & Riddle, J, "Department of Justice Purchased SAAP Services: Drug Court Homelessness Assistance Program", 3rd National Homelessness Conference in *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, AFHO, 2003, <http://www.afho.org.au/4_publications/conference_papers/Schirmer_Riddle.pdf>.

Scott, S, Eyland, A, Gray, A, Zhou, A, Coumarelos, C, *Data Digest: A Compendium of Service Usage Data from NSW Legal Assistance and Dispute Resolution Services, 1999–2002*, 2004, <http://www.lawfoundation.net.au/publications/reports/a2jln/1B/>.

Scott, S & Sage, C, *Gateways to the Law: An Exploratory Study of How Non-Profit Agencies Assist Clients with Legal Problems*, Law and Justice Foundation of NSW, Sydney, 2001.

Select Committee on Mental Health, *Mental Health Services in New South Wales – Final Report*, Parliamentary Paper No. 368, Legislative Council, Parliament of NSW, Sydney, 2002.

Senate Community Affairs References Committee, *Forgotten Australians. A Report on Australians Who Experienced Institutional or Out-of-Home Care as Children*, SCARC, Canberra, 2004.

Senate Legal & Constitutional Committee, *Inquiry into Legal Aid and Access to Justice, Final Report*, SLCRC, Canberra, 2004.

Shanahan, M, et al., "Cost-Effectiveness Analysis of the NSW Adult Drug Court Program", *Evaluation Review*, vol. 28, no. 1, 2004.

Shelter NSW, *Submission to the Commonwealth Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General Inquiry into Residential Tenancy Databases*, 2004, <http://www.consumer.gov.au/html/Residential/submission%20downloads/Shelter_NSW.pdf>.

Slatter, M, "On the Way Out: Evictions and Eviction Process", in *'Beyond the Divide'*, papers presented at Third National Homelessness Conference, 6–8 April 2003, Brisbane, 2003, AFHO, Canberra, <http://www.afho.org.au/4_publications/conference_papers/conference_papers.htm>.

Smyth, N, *Impact 21: Innovative Models Promoting Advanced Concepts Through the 21st century*, Women's Refuge Resource Centre, Sydney, 2003.

Society of St Vincent De Paul, *Home is Where the Heartache Is*, 2002, <http://www.vinnies.org.au/files/Home%20Is%20Where%20the%20Heartache.pdf>.

South Eastern Sydney Area Health Service, *Homelessness Health Strategic Plan 2004–2009*, 2003, <http://www.sesahs.nsw.gov.au/Homelessness/HomelessHealthStrategicPlan.pdf>.

South Sydney City Council, 2002, *State of the Environment Report*, South Sydney City Council, Sydney, 2002.

State Library of NSW, *Legal Information Access Centre*, 2004, <http://liac.sl.nsw.gov.au/about/>.

Sue, Big Issue vendor, Pitt Street, Sydney, in *The Big Issue*, vol. no 189, 2003.

Supported Accommodation Assistance Act 1994 (Cth).

Taplin, S, *Process Evaluation of the NSW Drug Court: A Qualitative Study*, NSW Bureau of Crime Statistics and Research, Sydney, 2001.

Tenants Union of NSW, *About the Tenants Advice and Advocacy Program Services and the Tenants Union*, 2001, <http://www.tenants.org.au/about/>.

Tenants Union of NSW, *Tenants Rights Fact Sheet No. 11: Consumer, Trader and Tenancy Union*, 2004, <http://www.tenants.org.au/factsheet/28.html>.

The Law Society of New South Wales, *Legal Help: Pro Bono Scheme*, 2004, <http://www.lawsociety.com.au/page.asp?partID=6744>.

The Shopfront Youth Legal Centre, *The Shopfront Youth Legal Centre – An Overview*, <http://www.theshopfront.org>.

The Shopfront Youth Legal Centre, *Police Powers and Your Rights*, 2004, <www.theshopfront.org/documents/policepowers.pdf>.

The Women's Services Network (WESNET), *Domestic Violence in Regional Australia: A Literature Review. A Report for the Commonwealth Department of Transport and Regional Services*, Partnership Against Domestic Violence, Office of the Status of Women, Canberra, 2000.

Uniting Care, 2004, <http://www.unitingcarenswact.org.au/library/housing_homelessness/letter_tebbutt_public_tenants0604summary.doc>.

Walgett SAAP Services, *Submission for Recurrent Funding for an Alcohol and Other Drug Worker at Walgett SAAP Services*, 2003.

Walsh, T, "Inequality Before the Law: Legal Issues Confronting People Who are Homeless", *Parity*, vol. 17, no. 1, 2004, pp. 38–40.

Western, J, National Evaluation of The Supported Accommodation Assistance Program (SAAP III), Commonwealth Department of Family and Community Services, Social and Economic Research Centre, Australian Housing and Urban Research Institute , University of Queensland, Canberra, 1999.

Winick, BJ, *Therapeutic Jurisprudence Defined*, undated, <http://www.brucewinick.com/TherapeuticJurisprudence.htm>.

Wong, K, *The Youth Drug Court: Diverting and Rehabilitating. Do Practice and Theory Reflect the Principles of the Children's Court?*, University of NSW, Sydney, 2004.

Youth Justice Coalition (NSW), *Kids in Justice: A Blueprint for the Nineties. Overview and Full Reports of the Youth Justice Project*, Youth Justice Coalition, Sydney, 1990.