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MEAN STREETS

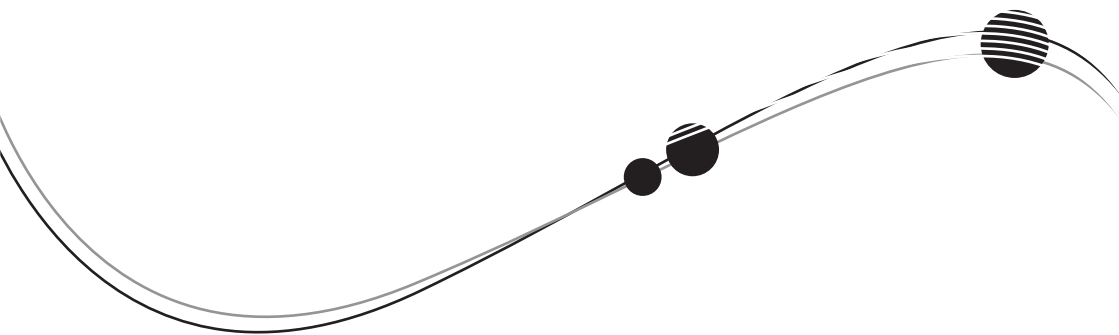
A REPORT ON THE CRIMINALISATION
OF HOMELESSNESS IN EUROPE

POVERTY IS NOT A CRIME. IT'S A SCANDAL.



LEGAL STRATEGIES
CHAPTER X

Addressing Legal Needs of Homeless
People in Sydney, Australia
The Homeless Persons' Legal Service



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HOMELESSNESS IN SYDNEY, AUSTRALIA

Based on the most recent Australian Census figures for homelessness, there are over 104,676 people across Australia who identify as being homeless, and over 27,000 people who are homeless in New South Wales (NSW).

The definition of homelessness adopted by the Australian Bureau of Statistics (ABS) is the widely accepted three-part definition of homelessness as devised by social policy researchers Chris Chamberlain and David McKenzie (2003), as follows:

- Primary homelessness: people sleeping rough, on the streets, in parks, under bridges, deserted buildings, etc.
- Secondary homelessness: people moving between various forms of temporary shelter including friends, relatives -- sometimes referred to as 'couch surfing' -- emergency accommodation, youth refuges, hostels and boarding houses.
- Tertiary homelessness: people living in single rooms in private boarding houses without their own bathroom, kitchen and without security of tenure.

Of the 27,000 people who are homeless in NSW, an estimated 3,500 people sleep rough every night.

Studies in Australia and internationally have consistently documented that people experiencing homelessness report a horrendous and disproportionate level of victimisation, including repeated experiences of childhood abuse, domestic and family violence. Studies have revealed that over 70 percent of young, homeless women and 30 per cent of young, homeless men in Australia can be expected to be survivors of sexual abuse and that over 70 percent of young, homeless men and 30 per cent of young, homeless women in Australia can be expected to be survivors of physical abuse (Thrane, *et al.*, 2006; Whitbeck *et al.*, 2000).

There is also a well-documented relationship between having a mental illness and experiences of homelessness. In 2011, a study of 4,300 homeless people in Melbourne, Australia found that 31 percent of the sample had a mental illness (not including any form of alcohol or drug disorder). According to the ABS, the prevalence of mental illness in the Australian homeless population is three times the prevalence of mental illness amongst people who have never experienced homelessness. Significantly, the study also found that the vast majority of homeless people do not have a mental illness when they become homeless, but acquired their mental illness after becoming homeless (Johnson *et al.*, 2011).

There is also a well-documented relationship between drug and alcohol disorders and homelessness. A 1998 study of 210 homeless people in emergency hostels in inner Sydney reported that 48 percent of the sample had a drug use disorder and 55 percent reported an alcohol disorder. Seventy-five percent of their sample had mental health problems, drug use disorder or alcohol disorder (Hodder *et al.*, 1998).

BACKGROUND TO THE HOMELESS PERSONS' LEGAL SERVICE SYDNEY

The Homeless Persons' Legal Service in Sydney (HPLS) is a highly effective public interest collaboration that brings together 350 lawyers acting *pro bono* from Sydney-based commercial law firms, Legal Aid New South Wales, homelessness service providers and the Public Interest Law Clearing House (PILCH) NSW. HPLS is run, supervised and managed by the Public Interest Advocacy Centre (PIAC).

HPLS provides free legal advice and representation to individuals who are homeless or at risk of homelessness in the Sydney metropolitan area, in relation to a wide range of legal problems. During 2011/12, the service assisted over 700 homeless people. Since its inception in 2004, HPLS has assisted over 5,000 clients who have been homeless or at risk of homelessness.

The primary points of contact between HPLS and its service users are the weekly clinics offered in the inner city of Sydney and three suburban areas. Ten clinics are operated on a roster basis at welfare agencies that provide direct services, such as food and accommodation, to people in housing crises. The clinics are staffed by lawyers acting *pro bono* from Legal Aid and private law firms that are members of PILCH. The staff of the HPLS co-ordinates and supervises all of the work done at the clinics and provides training and support for the *pro bono* solicitors from the partner legal practices.

The most common legal problem presenting at HPLS legal clinics relates to fines and infringement notices, mostly in relation to travelling on public transport without a valid ticket, or for minor offences in public spaces. Other common problems are minor criminal charges (including possession and use of illicit drugs, offences relating to public space, offensive language), compensation applications for being a victim of crime, arbitrary evictions from tenancy, credit and debt matters, and complaints against police.

HPLS CASE STUDY

Nathan suffered traumatic brain injury as a child. This injury, combined with other mental impairment, has meant that Nathan finds it difficult to retain permanent housing, employment or manage his life. He has had a history

of drug abuse, homelessness and imprisonment. He receives the Disability Support Pension.

Over the last 11 years, Nathan has incurred nearly 100 civil and criminal fines totalling almost \$40,000. The vast majority of the infringement fines relate to travelling on a train without a ticket. The criminal fines include offences relating to motor vehicle registration and drug possession.

In 2010, the State Debt Recovery Office (SDRO) issued a warning of the possibility of a Property Seizure Order being made. HPLS succeeded in obtaining a series of extensions to prevent further enforcement being taken against Nathan, as more time was needed to manage his legal affairs, due to his intellectual impairment.

In 2011, the HPLS applied for a full write-off of all of Nathan's debts. The SDRO approved the write-off on two conditions: (1) that the debt would be reinstated if any further fines were referred to the SDRO within the next five years, and (2) that Nathan advise the SDRO if his financial, medical or domestic circumstances changed within the next five years.

Nathan has since incurred more fines. The extent of his intellectual disability and way of life mean that this is likely to keep happening. The principle of deterrence in issuing and enforcing fines has no impact on his behaviour. HPLS believes that in clear and extreme cases such as Nathan's, the SDRO should exercise its discretion by not taking enforcement action on future fines, where it is clear from the client's particular circumstances and disabilities, that there is no prospect of the fines ever being paid.

HPLS CASE STUDY

Peter was assaulted in his sleep while sleeping rough in inner-Sydney. When Peter spoke to HPLS lawyers he was unable to provide specific details about the injuries he sustained as a result of the violent act. He was admitted to hospital following the assault. The hospital records state that a bystander reported that an unknown attacker had kicked and stomped on Peter's head while he was sleeping and had punched him several times. The medical record noted head and facial injuries. However, Peter absconded from hospital before any thorough or extensive testing, so the medical records do not document the extent of his injuries.

HPLS lawyers are continuing to assist Peter in his enquiries, with a view to making an application for criminal victims' compensation.

THE HPLS SOLICITOR ADVOCATE

In 2008, the Service employed a Solicitor Advocate to provide court representation for people who are homeless and charged with minor criminal offences. For people experiencing homelessness, there is too often an entrenched cycle of mental illness, offending and reoffending. This can often lead to vulnerable people spending considerable time in custody, but with little or no benefit to the community if the underlying causes of their offense are untreated. The purpose of the HPLS Solicitor Advocate position is to establish a dedicated point of contact for people who are homeless or at risk of homelessness to access legal representation in minor criminal matters. By diverting homeless clients out of the justice system, HPLS is able to give many an opportunity to seek treatment, with the prospect of better outcomes for all. The HPLS Solicitor Advocate has particular skills and experience in providing legal assistance to people who are homeless. Such experience is often crucial in providing useful legal services to clients who are homeless. The role was established to overcome some of the barriers homeless people face accessing legal services, which are not sufficiently addressed by Legal Aid duty lawyers. From 1 January 2010 to 31 December 2011, the HPLS Solicitor Advocate provided court representation to 179 individual clients. Of these:

- Forty-five percent disclosed that they had a mental illness.
- Sixty percent disclosed that they had drug or alcohol dependency.
- Sixty-nine percent said that they had either a mental illness or drug/alcohol dependency.
- Thirty-five percent disclosed that they had both a mental illness and drug/alcohol dependency.
- Forty-five per cent indicated that they had previously been in prison.

HPLS CASE STUDY

Jonathan was homeless. He was initially found guilty of criminal offences, including offensive language, offensive conduct and goods in custody. His consumption of alcohol and methylated spirits increased. He was charged with wielding a knife in a public place, the ninth such charge on his record since 2001. On many occasions he had received a short jail sentence and then was back on the street. In recent times, his matters had been diverted from the correctional system to address his mental illness issues. However, none of his underlying issues had been addressed.

The HPLS Solicitor Advocate worked with a treatment provider to ensure that a treatment plan for Jonathan was put together that would have an impact on his long-term situation, not just his short-term legal problem. This meant that when Jonathan received a good behaviour bond, he was released, not back to the streets, but straight into long-term accommodation with 24-hour support and medical care.

HPLS CASE STUDY

Leanne was charged with resist police and possession of illicit substance. She was apprehended in Kings Cross (Sydney inner-city suburb). Police released her on bail, on condition that she not go within 1000 metres of Kings Cross railway station. She was subsequently arrested in Kings Cross again sharing needles, and was taken into custody. An application for bail was made before the court, and bail was granted with the same conditions, namely that she not go within 1000 metres of Kings Cross railway station.

The bail condition presented considerable difficulties for Leanne as she needed to enter the Kings Cross area to access her doctor and her methadone clinic. The HPLS Solicitor Advocate made an application for variation of the bail conditions. HPLS lawyers were of the view that the reason for the original condition was to keep her out of the area in order to minimise disruption and annoyance rather than to reduce the risk of reoffending.

Following the variation, Leanne was permitted to go into the Kings Cross area between 9am and 6pm.

HPLS POLICY AND LAW REFORM WORK

HPLS works to identify and reform systemic issues affecting people who are currently or who are at risk of becoming homeless. The policy and law reform work of the HPLS is based on the recognition of the human rights of people who are homeless, including their right to be involved in decision-making processes that directly impact them.

HPLS has been involved in a number of significant law reform initiatives, including being actively involved in advocating for and advising on the reform of the fines enforcement system, to establish a system where homeless people can have their fines debts waived in return for attending drug treatment programmes and educational programmes or by participating in volunteer work programmes.

HPLS has also been active in advocating for reform of the conditions of boarding houses in NSW. Tenants in boarding houses are often living in poor conditions and have inadequate recourse to argue for their rights as tenants. HPLS has been heavily involved in advocating for stronger legislative regulation for boarding house operators.

HPLS has been at the forefront of advocating for legislative recognition of human rights for homeless people, prohibition of discrimination on the basis of criminal history, and improved support and accommodation options for people exiting prison who are at risk of homelessness.

Underlying the policy and law reform work of HPLS is a commitment to ensure the opinions and voices of homeless people are heard in our advocacy. To this end, HPLS has developed various mechanisms to involve homeless consumers in our policy and law reform activity.

INVOLVEMENT OF HOMELESS CONSUMER ADVISERS IN THE WORK OF HPLS

HPLS believes it is essential that those that have experienced homelessness play a central role in its law reform activity. It is a core principle of HPLS that this will lead to the development of more effective policy formed in response to homeless issues as well as being an empowering opportunity for those who participate. HPLS believes that homeless people should be involved in decision-making processes because it is consistent with human rights. The fundamental right of affected people to participate in public affairs is enshrined in Article 25 of the *International Covenant on Civil and Political Rights*.

In mid-2008, HPLS established Street Care, an advisory group consisting entirely of people who had experienced or were currently experiencing homelessness. Such an advisory group of homeless people had never before been established in NSW.

Street Care consists of nine currently and formerly homeless people who are representative of the considerable diversity of experience among homeless people in Sydney and surrounding regions. Street Care members provide advice to government agencies and other groups seeking information about the best methods of consulting with homeless people. Importantly, the group is not a short-cut to hearing from homeless people, but rather a mechanism to provide advice on how best to do so.

HPLS has arranged for Street Care members to receive training in public presentation, media skills, legal information topics such as tenancy law, fines and credit and debt, and law reform and policy advocacy. Street Care members have been actively involved in undertaking consultations with homeless people in relation to problems they encounter with the State Government Housing authority, the experiences of exiting prison into homelessness, and the difficulties encountered by homeless people when approached by police and other law enforcement officers. Members of Street Care are regularly approached to speak at conferences and training forums, as well as being invited to meet with senior politicians and Housing Department officers.

THE WORK OF HPLS IN HUMAN TERMS - JAMIE'S STORY

Jamie (not his real name) is one of the HPLS consumer advisers and also a client of the Homeless Persons' Legal Service. He is now in his 40s.

Jamie first became homeless when he was 14, leaving home to escape from his step-father who subjected him to sexual and physical abuse. He lived on the street, worked

as a sex worker, and was in and out of foster care and juvenile justice institutions. While he was in foster care he was further sexually assaulted. He was also sexually assaulted and physically assaulted in a juvenile correctional training centre.

About 18 months ago, Jamie had finally secured stable accommodation from the State Government public housing authority, Housing NSW, after being on and off priority lists for housing for the previous three years. In the period leading up to that time, he had relied on a number of different accommodation options, including sleeping rough, accessing hostels and homelessness accommodation services for one or two nights at a time, and some periods in unlicensed boarding houses. He was in a methadone treatment program to address his substance abuse problems. He was also in a job-training scheme. Jamie also had an outstanding unpaid fine for travelling on the train without a valid ticket — one of the most common legal problems to present to HPLS.

Through the fine enforcement system, this unpaid fine resulted in Jamie having his driving licence disqualified for non-payment. While driving his car one night he was pulled over and charged with driving while disqualified. Jamie has a criminal history, and has previously served time in prison and in juvenile detention. At his court hearing he was sentenced to eight months imprisonment. He was released last November after serving the full eight months. He had no job. He had lost his public housing unit and could not get further priority listing because:

- He had an outstanding debt for unpaid rent to Housing NSW.
- Housing NSW regarded that, because he had been in prison, he had been in stable accommodation for the previous six months.

Jamie is currently back on the streets, sometimes in hostels. He has not resumed his methadone treatment.

Jamie's story is an example of systemic failure at several levels — from the inadequate response to his experiences of childhood abuse, the failure to provide protection when in state care, an excessive, punitive sentencing regime, an inadequate response to his needs upon release from prison, and a bureaucratic inflexibility to provide him with safe, secure, adequate housing.

Jamie's story gives rise to a number of recognised human rights: the rights of the child to a safe and secure environment, the rights of the child to be protected from physical, mental, emotional and sexual abuse, the right of a child in care to special protection from further harm and abuse, the right to adequate housing, the right to adequate health and medical services, and the right to necessary social services. HPLS seeks to respond to homelessness and the legal issues that confront people experiencing homelessness, within a human rights framework. This means confronting the underlying causes of homelessness and housing crisis, and the need to advocate for the right of homeless people to have access to adequate housing, health care, social security, access to support services without discrimination, and the right to participate in policy development and the design of services which seek to assist them.

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MEAN STREETS

A REPORT ON THE CRIMINALISATION
OF HOMELESSNESS IN EUROPE

Criminalising and penalising homeless people for carrying out life-sustaining activities in public because there is no where to go is a problem across the EU. Policies and measures, be they at local, regional or national level, that impose criminal or administrative penalties on homeless people is counterproductive public policy and often violates human rights.

Housing Rights Watch and FEANTSA have published this report to draw attention to this issue. This report brings together articles from academics, activists, lawyers and NGOs on the topic of human rights and penalisation. Divided into three main sections, the report provides an important theoretical and historical background, before highlighting examples of penalisation across the EU, and finally suggesting measures and examples on how to redress this dangerous trend.

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