

# Specialist Homeless Persons Criminal Law and Law Advocates: Addressing Legal Need for People Experiencing Homelessness

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In 2004, the Sydney based Public Interest Advocacy Centre (PIAC) in partnership with the Public Interest Law Clearing House established the Homeless Persons' Legal Service (HPLS) to provide accessible, free legal advice and assistance to people who are homeless or at risk of homelessness. The HPLS was set up along similar lines to homeless persons' legal clinics previously established in Queensland and Victoria. In 2008 the HPLS created a dedicated role to provide legal representation to people experiencing homelessness charged with criminal offences. The HPLS Solicitor Advocate was the first specialist homeless persons' criminal law advocate position created in Australia.

## Criminal Law Legal Need Amongst People Experiencing Homelessness

The decision to create such a specialist criminal law advocate position for people experiencing homelessness was made in response to an identified particular legal need for people experiencing homelessness. Several studies in Australia over the last 15 years have found a strong correlation between homelessness, criminal offending, and experience of imprisonment. According to Tamara Walsh people who are homeless report high levels of interaction with police, with many people experiencing homelessness in urban centres reporting daily interactions with police.<sup>1</sup>

A 2003 study of people released from prison found that being homeless and not having effective accommodation support were strongly linked to returning to prison. Sixty-one per cent of those homeless on release returned to prison, compared to 35 per cent of those with

accommodation.<sup>2</sup> According to the Australian Institute of Health and Welfare, in 2005/06, 12 per cent of clients of specialist homelessness services reported that they had spent time in the criminal justice system, and 11 per cent reported they had more than one experience of being incarcerated in a correctional facility.<sup>3</sup>

In 2009 a New South Wales (NSW) Inmate Health Survey reported that 11 per cent of survey participants were homeless prior to their current incarceration, and of those who had previous experience of prison, 30 per cent reported that they had experienced difficulties accessing stable accommodation within six months of their last release into the community.<sup>4</sup> In 2011 the Drug Use Monitoring in Australia (DUMA) program examined the prevalence and nature of homelessness among a sample of police detainees, and found that an estimated 22 per cent of police detainees were homeless or experiencing housing stress.<sup>5</sup>

According to Walsh, people who experience homelessness, particularly primary homelessness, are by the very nature of their use of public space vulnerable to police attention in respect of a range of public space offences, including begging, offensive behavior, public nuisance, excessive use by police of move-on powers, and prohibitions on public sleeping and drinking. In addition, given the high correlation between homelessness and substance addiction, many people experiencing homelessness are charged with minor drug offences such as possession and use.

Their economically marginalised status means that people experiencing homelessness are often driven to commit theft in

order to provide for themselves with the necessities of life. While people experiencing homelessness are more likely to be the victims of violent crime rather than the perpetrators, the increased prevalence of ice addiction on the streets has also meant an increase in violent crime amongst people experiencing homelessness.<sup>6</sup>

This research illustrates how homelessness and housing stress combine with other risk factors to place individuals at high risk of coming into contact with the criminal justice system. According to the Australian Institute of Criminology, an appropriate response to crime and repeat offending requires a targeted and strategic response to both substance use and housing stress in tandem, rather than seeking to address each issue in isolation.

## The HPLS Solicitor Advocate — Responding to Legal Need for People Experiencing Homelessness

Recognising that specialist criminal law advice and advocacy for people experiencing homelessness was an unmet legal need for Sydney's people experiencing homelessness, PIAC's established the HPLS Solicitor Advocate position. The role was created in 2008 to overcome some of the particular barriers people experiencing homelessness face accessing legal services, including: a lack of knowledge of how to navigate the legal system; the need for longer appointment times to obtain instructions; and the need for greater capacity to address multiple and complex interrelated legal and non-legal problems such as mental health or addiction issues.



Since 2008, the HPLS Solicitor Advocate has provided court representation to 551 individual clients in 846 matters. From January 2010 to December 2015, the HPLS Solicitor Advocate provided court representation to 430 individual clients facing criminal charges. Of these:

- 49 per cent disclosed that they had a mental illness
- 63 per cent disclosed that they had drug or alcohol dependency
- 37 per cent disclosed that they had both a mental illness and drug/alcohol dependency
- 75 per cent had either a mental illness or drug/alcohol dependency
- 40 per cent disclosed that they have previously been in prison.

### Why the Need for a Specialist Criminal Law Advocate for People Experiencing Homelessness

The HPLS Solicitor Advocate aims to provide legal advice and representation for people experiencing homelessness charged with a criminal offence in a way which is client focused, and provides them with the service and assistance that they need. It works for them because they receive a focussed, targeted legal service, that is centred around their particular needs. It does not seek to provide a quick fix for their legal problem as the service recognises the level of complexity in these people's lives, where their circumstances place them at risk of ongoing legal problems, both criminal and civil.

According to the Solicitor Advocate, Jeremy Rea who has held the position since it was established in 2008, the position fills a particular need given the type of criminal offences with which people experiencing homelessness are routinely charged and the particular characteristics and disorders with which they present.

*'With people experiencing homelessness and the criminal law, you've really got to go down the more therapeutic track, especially in regard to drugs and alcohol, and mental illness.'*

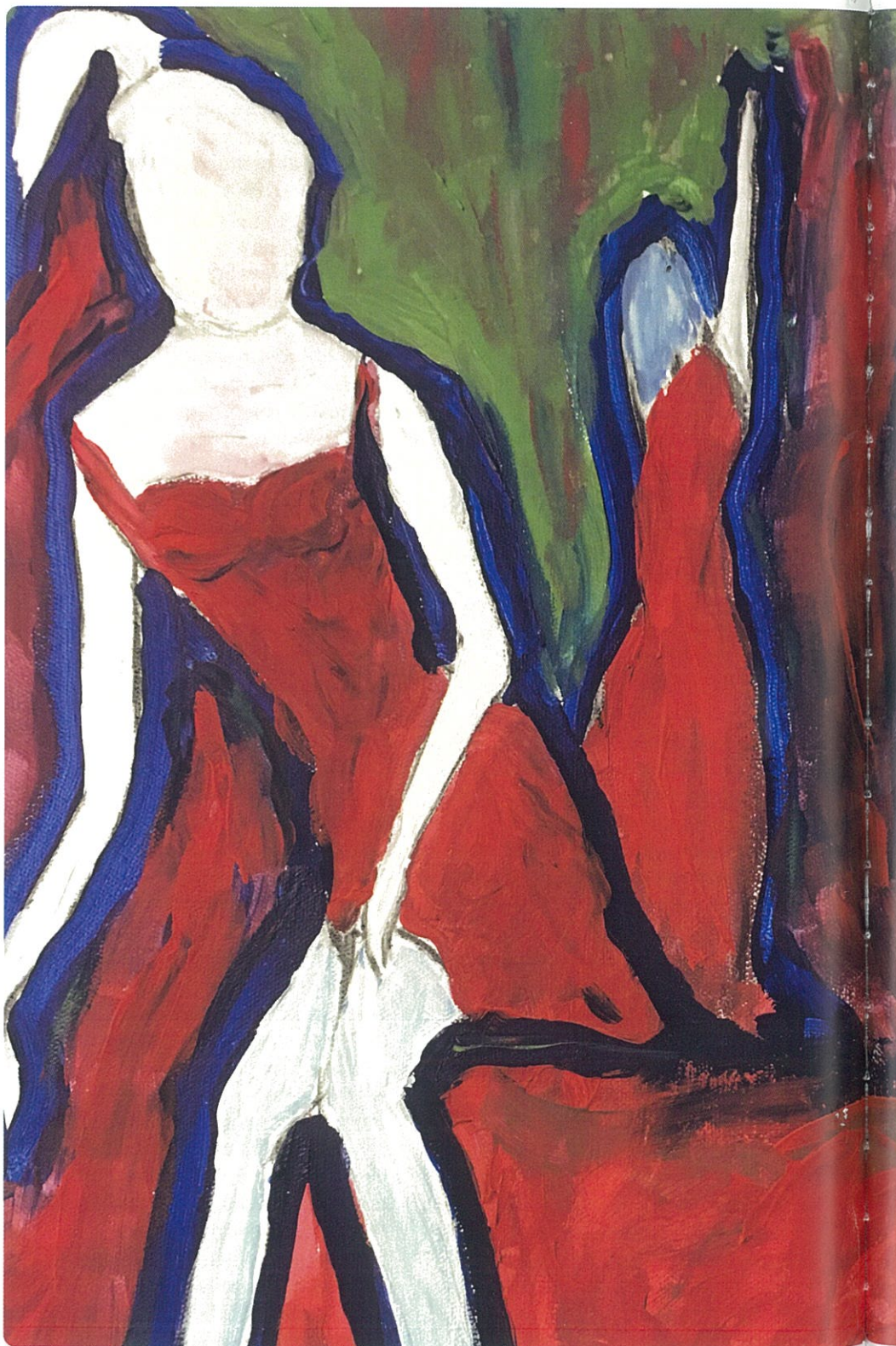
Prior to taking on the role with HPLS, Jeremy was a general legal practitioner in private practice for 19

years, mainly doing litigation and criminal law. He says that people experiencing homelessness need a dedicated specialist advocate, who has the knowledge, skills and personality that can provide a committed, and quality service to people experiencing homelessness, who often present with high needs.

*'You've got to know where to find the clients, how to get them in, where to see them. You need to*

*work closely with their caseworkers, to get them to work with the clients to do the things they need to do, whether it be getting them to medical appointments, getting them to meet with their lawyer, getting them to court. It's really integral to the job.'*

*'The clientele are often leading quite chaotic lives. You need a specialist advocate who can find*



Artist Ray Morgan, provided by Frances Addabbo, Mission Australia Centre



them, and focus on getting them to appointments, and who can be quite flexible in their approach, even if that means representing the person without having previously met the client.'

According to Jeremy, the position is also important in terms of giving confidence to people experiencing homelessness that their lawyer will be there for them at court, and will stick by them.

'It's important for them to know that the person at court will not be a new face. That it's the person that they have met before and to whom they have already told their story. It gives them certainty.'

'For people experiencing homelessness, the issue of trust is so important because for much of their life, these guys have been let down by their parents, by society in general, and they don't trust people.'

Since the position was established, the NSW Local Court has become more familiar with the particular needs of people who are homeless who present before the court after being charged with criminal offences.

According to Jeremy:

'For those magistrates who know you and are familiar with the HPLS position, they give you a level of flexibility, in terms of mental health, in recognising that these guys have problematic histories, particularly when you are seeking adjournments or applying for bail.'

'We get a lot of interest and queries from the magistrates about the work we do, and how the system can be more nuanced to assist people experiencing homelessness.'

Asked to identify three areas of criminal law legal need for people experiencing homelessness, Jeremy noted the following:

'The first would be a revamp of the Department of Corrective Services approach to assessing eligibility for community service orders and intensive corrections orders. It is so hard for our clients to get access to those diversionary sentencing options, because of the high rate of mental illness and drug and alcohol addiction amongst people experiencing homelessness. It means that our clients quickly graduate to the more serious penalties, usually custodial sentences.'

'The second need is for greater development of the court's mental health services. More of those on

site would be great, so we can get clients assessed really quickly.'

'The third area is bail, which is now a very difficult area with more 'show-cause' offences. Having to show stability of accommodation in order to get bail always makes it difficult for our clients to get bail.'

## Conclusion

People experiencing homelessness coming into contact with the criminal justice system have particular needs in terms of legal representation that are not adequately addressed by mainstream legal aid services. The particular vulnerabilities experienced by people experiencing homelessness mean that they require a dedicated, specialist service, capable of proactively contacting the client, engaging with her or his case worker, and maintaining a steady, committed engagement with the individual all the way through to the conclusion of their hearing. At the heart of the issue is the need for people experiencing homelessness to be able to build trust in their legal advocate. The HPLS model for a specialist criminal law advocate for people experiencing homelessness encapsulates the sort of specialist criminal law advocacy that is needed for people experiencing homelessness.

## Endnotes

1. Walsh, T 2011, 'Law and Order Approaches to Homelessness', Chapter Three in *Homelessness and the Law*, Federation Press, 2011. 74.
2. Baldry E, McDonnell D, Maplestone P, Peeters M 2003, *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?* Australian Housing and Urban Research Institute (AHURI), as quoted in Australian Housing and Urban Research Institute (AHURI) 2004, 'The role of housing in preventing and re-offending' Research and Policy Bulletin, Issue 36.
3. Australian Institute of Health and Welfare (AIHW) 2007, *People experiencing homelessness in SAAP*, SAAP National Data Collection Annual Report 2005-06, <sup>1,3</sup> Canberra.
4. Corben S and Eyalnd S 2011, *NSW Inmate Census 2011*, Corrective Services NSW.
5. Payne J, Macgregor S and McDonald H2015, 'Homelessness and housing stress among police detainees: Results from the DUMA program', *Trends and Issues in crime and justice*, No. 492, Australian Institute of Criminology, February 2015.
6. Walsh, T 2011, op cit, pp.77-90.

