



Submission to the consultation paper, *Justice for everyday problems: Civil Justice in NSW*

24 February 2017

1 Introduction

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. In 2004, PIAC established the Homeless Persons' Legal Service (HPLS).

HPLS has provided legal assistance to more than 5,900 people who are homeless or at risk of homelessness, on over 11,000 occasions. HPLS provides free legal advice at 15 legal advice clinics based at homelessness services and welfare agencies throughout inner Sydney, outer western Sydney and the Hunter.

In 2016 alone, HPLS helped over 759 people with a range of civil and criminal law matters. Of these, at least 25 per cent displayed some form of mental illness or self-identified as having a mental illness.

In 2009, PIAC established its homeless consumer advisory committee StreetCare, made up of people with lived experience of homelessness. StreetCare includes men, women, transgender people, young people, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. StreetCare enables PIAC to obtain direct input from homeless people into its work and provides a mechanism for PIAC to facilitate the involvement of people with lived experience of homelessness input into public policy and law reform initiatives.

PIAC welcomes the opportunity to comment on the NSW Department of Justice consultation paper, *Justice for everyday problems: Civil Justice in NSW*. While PIAC supports initiatives that improve the accessibility of legal information and self-help tools to consumers, and exploring online dispute resolution facilities for suitable matters, PIAC strongly recommends that such initiatives should be considered as secondary to the importance and need of providing appropriately resourced legal advice, assistance and financial counselling services to assist disadvantaged and marginalised people in the community to resolve their credit/debt and tenancy issues.

Based on the casework experience of HPLS, PIAC considers that reliance on online information/advice and dispute resolution facilities will not be feasible for many of the most disadvantaged people in the community, and will place them at risk of further difficulties and escalation of their legal problems. Drawing on our experience providing legal assistance to people who are homeless or at risk of homelessness, PIAC makes the following specific recommendations regarding the needs of particularly vulnerable groups, including women, people living with mental illness, Aboriginal people and people in rural and regional areas of NSW at risk of homelessness.

Summary of recommendations

Recommendation 1 –

PIAC recommends that the NSW Government ensure adequate funding for community legal services to increase the capacity to provide legal advice and assistance to people with mental illness and women facing domestic violence. In particular, specific priority should be given to increasing the funding of those legal services that focus on the needs of women and people with

mental illness in rural, regional and remote areas, especially those experiencing or at risk of homelessness.

Recommendation 2 –

PIAC recommends that the NSW Government increase the funding for non-legal advocacy services, financial counselling services and mental illness counselling services to provide assistance to people in housing crisis or experiencing homelessness, and to provide specialised support for women and people with mental illness.

Recommendation 3 –

PIAC recommends that all energy and water utility providers, telecommunication service providers and financial institutions review their respective hardship programs to ensure that women who experience domestic violence are included as a specific category of persons eligible for hardship assistance under those programs.

Recommendation 4 –

PIAC recommends that the NSW Department of Family and Community Services (FaCS) adopt an ‘eviction as a last resort’ policy where a social housing tenant has fallen into arrears with their rent payments, or is facing other tenancy related debt. In such circumstances, FaCS should make multiple efforts to contact the tenant via mail, telephone and personal visits, in order to ascertain if the tenant is facing circumstances of financial hardship or crisis, with a view to referring the tenant to appropriate support services. Only after multiple attempts to contact the tenant have been unsuccessful should FaCS consider issuing a written warning that it is considering a Notice of Termination.

Recommendation 5 –

PIAC recommends that the NSW Department of Justice pilot a specialist list in the New South Wales Civil and Administrative Tribunal (NCAT) in respect of housing and tenancy matters for Aboriginal people in Western Sydney.

2 Everyday problems – not necessarily so simple

The consultation paper *Justice for everyday problems: Civil Justice in NSW*, notes that one in four people in NSW experience a substantial legal problem each year, and that 85 per cent of these problems are civil issues. The most commonly reported problems are consumer issues, money and debt matters, and housing related legal issues.

While any of these issues occurring in isolation may be perceived as a simple, everyday problems capable of early resolution if an individual has access to appropriate information and advice, it is the experience of PIAC that this does not hold true for the most vulnerable and disadvantaged people in the community who experience these problems.

PIAC notes that research into legal needs in Australia and the UK indicates that for many people, these so-called “everyday” legal problems are often experienced in clusters, and tend to remain unresolved without access to early legal assistance or advice or financial counselling advocacy. Results from quantitative legal needs surveys conducted in the United Kingdom and Australia suggest that debt-related legal problems are one of the most commonly experienced legal problems in the community, and the nature in which consumer experience multiple debt and

tenancy problems together, combined with other legal problems, indicate significant complexity for the individuals involved.¹

These problems are more likely to be experienced by individuals who are socially/economically disadvantaged, including lone parents, people with a disability, people in disadvantaged housing, people on low incomes, and people with lower levels of education.² The studies also indicate that debt-related legal problems are often not experienced in isolation, but cluster with other types of legal problems, and particularly other debt and housing problems.³ According to Pleasence, each time a person experiences a legal problem, including debt-related problems, their vulnerability to experiencing further problems increases.⁴ There is also evidence to suggest that people who seek some form of advice for their money-related problems are more likely to succeed in resolving these matters without having court proceedings issued against them.⁵

In research undertaken by the Victorian Department of Justice in 2007 with 90 adult clients of financial counselors, a total of 91 per cent of participants reported having multiple debts. This included:

- 57 per cent of participants reported experiencing five or more debts.
- 79 per cent of participants reporting that they had at least one credit card debt, with 53 per cent of participants reporting multiple credit card debts and 53 per cent reporting having at least one utility/telco bill related debt.

Of the 451 civil consumer debts that participants reported, 63 per cent were for amounts of less than \$5,000. Over 80 per cent of participants reported at least two indicators of socio-economic disadvantage. This accounted for over 86 per cent of the reported debts.⁶

Between 2010 and 2016 PIAC's HPLS provided assistance to 3,874 people who were experiencing homelessness or at risk of homelessness. Of these:

- 661 people sought assistance for credit and debt problems, 45 per cent of whom had more than one legal problem;
- 789 people sought assistance for tenancy problems, 33 per cent of whom had more than one legal problem;
- 120 people sought assistance for both tenancy and credit and debt problems during this period.

1 Genn, Hazel (1999), *Paths to Justice – What people do and think about going to law*, Hart Publishing, Oxford, 1999; Pleasence, Pascoe, Buck, Alexy, Balmer, Nigel, O'Grady, Aoife, Genn, Hazel and Smith, Marisol (2004), *Causes of Action: Civil Law and Social Justice*, The Final Report of the First LSRC Survey of Justiciable Problems, Legal Services Commission, United Kingdom, 2004; Coumarelos, C, Zhigang, Wei, and Zhou, Albert (2006), *Justice Made to Measure – NSW Legal Needs Survey in Disadvantaged Areas*, Access to Justice and Legal Needs, Volume 3, Law and Justice Foundation of New South Wales, March, 2006; Coumarelos, C, Macourt, D, People, J, MacDonald, HM, Wei, Z, Iriana, R & Ramsey, S (2012), *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney, 63-65, 86-87.

2 Pleasence et al, 2004, above n 1, 25-27; Coumarelos et al, 2006, above n 1, 84, 300; Coumarelos et al, 2012, above n 1, 71-72.

3 Coumarelos et al, 2006, above n 1, 75-78; Pleasence et al, 2004, above n 1, 35, 40-42; Coumarelos et al, 2012, above n 1, 63-65, 86-89.

4 Pleasence et al, 2004, above n 1, 107.

5 Genn, 1999, above n 1, 124-125, 161.

6 Schetzer, Louis (2007), *Drowning in Debt – The experiences of people who seek assistance from financial counsellors*, Department of Justice, Victoria, December 2007, 25-29.

It is estimated that at least 25 per cent of the people who sought assistance from HPLS clinics for assistance with their credit/debt or tenancy legal issues have some form of mental illness. As service users may be reluctant to disclose this information to HPLS, this figure is almost certainly a significant underestimation of the actual incidence of mental illness amongst HPLS service users.

3 Multiple everyday problems require personal advocacy assistance

In addition to the evidence that tenancy and minor debt problems often cluster together, particular for people who experience social and/or economic disadvantages, there is significant evidence about the value of advocacy assistance in debt and tenancy matters. Where advocacy assistance can be provided, individuals are more likely to have the matter resolved, and more likely to have the matter resolved in their favour, than if they sought to resolve their problems themselves through self-help facilities and resources.

According to a Telephone Survey of 450 Victorian Magistrates Court Consumer Default Debtors conducted in 2007, 68.1 per cent of default debtors reported that they did not seek advice or assistance to resolve their matter, and debtors in this group were more likely to resolve their matter either by recourse to full payment, applying for bankruptcy, or a payment plan that was difficult for them to meet. These participants indicated that they believed they had very few workable options available to them.⁷

However, for those participants that did seek external advice and assistance, the most useful assistance that was identified were lawyers or financial counsellors. They participants indicated that these assistance providers were able to access a broader range of options than those who relied on self-help remedies, including debt waiver, access to hardship arrangements and more affordable instalment arrangements. Several participants reported that a lawyer or financial counsellor was better able to negotiate a complex system, and that creditors were more likely to take their advocate seriously.⁸ This is consistent with findings from legal needs studies conducted in NSW.⁹ For those participants who indicated that they suffered some form of mental illness such as anxiety and depression, they reported that their lawyer or financial counsellor played a crucial role in alleviating their anxiety and empowering them not to be vulnerable to financial exploitation.¹⁰

PIAC notes the options being considered in the Consultation Paper to assist people faced with money, debt or tenancy problems obtaining information and advice, including:

- Making LawAccess NSW a more dynamic and interactive online platform;
- Developing tailored smartphone apps to provide information; and
- Developing online self-help tools.

7 Schetzer, Louis (2008), *Courting Debt – The legal needs of people facing civil consumer debt problems*, Department of Justice, Victoria, Civil Law Policy, July 2008, 92-94.

8 Ibid 89-90, 92-94.

9 See Coumarelos et al, 2012, above n 1, 129, 142.

10 Schetzer 2008, above n 7, 91.

While PIAC supports initiatives that improve the accessibility of legal information and self-help tools to consumers, utilising digital and online facilities, as well as exploring online dispute resolution facilities for suitable matters. However, given the experience of HPLS working with some of the most disadvantaged and marginalised people in the community, PIAC strongly recommends that such initiatives should be considered secondary options. In our view, it is critically important that vulnerable individuals have access to appropriately resourced legal advice and financial counselling services to assist them to resolve their credit/debt and tenancy issues. Based on the casework experience of HPLS, PIAC considers that reliance on online information/advice and dispute resolution facilities will not be feasible for many of its consumers, and will place them at risk of further difficulties and escalation of their legal problems. In particular:

- Given the high rate of mental illness amongst people who are homeless or at risk of homelessness, and particularly amongst those who have civil debt or tenancy issues, these individuals will find it especially difficult to navigate online, self-help materials, and will be exceptionally vulnerable in negotiating appropriate solutions to their civil problems;
- Likewise, people with cognitive impairment or acquired brain injury will also find it difficult to navigate online, self-help materials, and will be vulnerable to exploitation if they have to negotiate directly with creditors or landlords;
- Many people who are homeless or at risk of homelessness do not have a reliable access to online facilities, as they may not own a smartphone, or are unable to afford the data usage for such online facilities on their mobile devices. In our experience, while some clients of our service have access to mobile telephones, these cannot be reliably charged without access to a power source. Phones may also be lost, stolen or disconnected when the owners cannot afford to maintain their payment plans, resulting in disconnection. Online facilities will therefore have extremely limited utility for these consumers.
- HPLS has received reports through its contacts in regional areas, particularly through our involvement in the Hunter area, that there are still parts of New South Wales where there is limited or no internet access, and limited or no access to mobile data. Any web-based information, interactive facilities or online dispute resolution services would therefore be unavailable for people in such areas.
- Apart from the need to access specialist, face-to-face legal advice for tenancy matters, people with particular needs, including Aboriginal people and people with mental illness, require specialist legal representation in the New South Wales Civil and Administrative Tribunal (NCAT) in respect of housing and tenancy matters.

PIAC submits that there is a particular need for specialist face-to-face legal assistance services and financial counselling services for women experiencing homelessness and people with lived experience of mental illness and homelessness. This is based on evidence obtained through HPLS casework and PIAC's consumer consultations undertaken with these groups over the last three years, which is documented below.

4 Women who experience homelessness

It is the experience of PIAC's HPLS that women who experience family violence and are at risk of homelessness are tend to experience related legal problems including family law issues, tenancy problems and credit and debt problems. Casework statistics from HPLS indicate that women made up 32 per cent of 3,874 people who sought assistance from HPLS clinics in the period 2010-2016. However, women made up more than 35 per cent of people presenting with a credit and debt problem, and more than 40 per cent of people presenting with a tenancy problem. Notably, women made up more than 45 per cent of people presenting with both problems. These women were more likely than men to present with a credit and debt problem, a tenancy problem and a family law problem. In addition, women were more likely to present with multiple legal problems.

In 2015 PIAC decided to further explore the issue of women and homelessness, with a particular focus on the associated legal needs for those women who are in housing crisis and homelessness. This project involved undertaking in-depth consultations with 23 women who had recent experience of homelessness, some of whom continued to be without safe, stable accommodation.

By far the most common legal problem experienced by women who participated in this consultation was domestic violence, with 18 of the 23 women consulted reporting recent experience of domestic violence, and 12 of these women saying it was the major reason for them becoming homeless and triggering an assortment of other legal problems. This is consistent with data from the Australian Institute of Health and Welfare that indicates that domestic violence is the main reason women and children leave their homes in Australia, and the most common reason provided by women for seeking assistance from specialist homelessness services.¹¹

17 of these women who experienced domestic violence also experienced other family law problems stemming from the breakdown of their relationship, usually involving disputes about children or matrimonial property.

Eighteen women reported that they had experienced a tenancy or housing problem in the previous two years. Fourteen of these women said that they also experienced family violence. For several women, the tenancy problem arose as a direct consequence of the domestic violence and relationship breakdown with their spouse.

I have got a major issue with Department of Housing. I was living in Department of Housing house for about eight years, that was the house my ex-partner absolutely demolished. He did \$7,000 worth of damage, controlled my finances and did not pay the rent. It made me look like a bad tenant... Department of Housing were my biggest headache. They would not listen... I could not be a part of any domestic violence programs because they are all funded by FACS and if you are not seen as a suitable housing tenant you are not able to access any of their programs.

- **PIAC Women's Consumer Consultation Participant**

11 Australian Institute of Health and Welfare (AIHW) (2015), *Specialist homelessness services report 2014-2015*, NSW specialist homelessness services data, available at <http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2014-15/supplementary-tables/> (last accessed 18 January 2017).

The relationship between domestic violence and housing or tenancy issues was identified and discussed in detail in the final report of the Victorian Royal Commission into Family Violence.¹² It has also featured in the casework of PIAC's Homeless Persons' Legal Service, which has provided assistance to women who are forced out of the family home due to domestic violence, and then subsequently are held responsible for unpaid rent and damage to the unit caused by their violent ex-partner. This can make it more difficult for these women to secure social housing in the future, as they may be assessed as an "unfit tenant" due to the actions of their ex-partner.

HPLS Case Study

Family violence forced R to flee to a women's refuge with her 2 year-old child. Her violent ex-partner stayed in her public housing unit. He refused to pay the rent and damaged the unit, which resulted in R being assessed as an unfit tenant, because of an outstanding rental debt of approximately \$13,000. She was unable to secure other social housing until the debt had been paid.

R also had personal loan and credit card debts as a result of borrowing money to pay for crisis motel accommodation until a place in a refuge became available.

HPLS Case Study

S is a 41-year-old Aboriginal woman. In 2009 she lived in social housing in the Inner West with her son and daughter aged 19 and 20, and her newborn baby girl. In late 2009, due to family violence, S took her baby and moved in with relatives in Castle Hill. After she left the premises her ex-partner damaged the premises, which Housing NSW estimated to be about \$9,000 worth of damage. S was told by Housing NSW that that because she was the tenant, they would be held responsible for the repair costs. S has refused to pay the repair costs, as the damage was the result of criminal activity with which she had no involvement and was not even present. Housing NSW listed her as a former unsatisfactory tenant and would not accept her application for priority housing until she agreed to enter a payment plan.

Seventeen women reported that they had experienced a problem in relation to outstanding loans or debts. Twelve of the women who experienced domestic violence also experienced legal problems relating to outstanding loans or debts. Consistent with other studies, several women reported how their ex-partner had left them with debts or bills that were in joint names or in their sole names, and for which they were now responsible. This had left them in a situation of financial crisis that presented a significant barrier for them to exit homelessness, either through the private rental market, or accessing temporary accommodation.

For many domestic violence victims, their ex-partner leaves them with a crap load of debt and then you go into a crisis place and they expect your whole world to change in two months or three months and be out the door.

- **PIAC Women's Consumer Consultation Participant**

12 Royal Commission into Family Violence (RCFV) (2016), 'Financial security', Chapter Twenty-One in Volume Four, *Royal Commission into Family Violence: Report and recommendations*, Victorian Government Printer, March 2016, 113-114.

Because my partner put all the bills in my name. After I find out I think “Oh my God, I’ve got a lot of debt”. Also, my partner used my phone. But the bill came out when I was in hospital.

- **PIAC Women’s Consumer Consultation Participant**

I have some money problems. I don’t get any money from my husband and I only have Centrelink which is not enough for me and my son, and also to pay bills.

- **PIAC Women’s Consumer Consultation Participant**

The co-occurrence of money and debt problems with domestic violence has also featured in PIAC’s HPLS case work.

HPLS Case Study

M escaped from a violent, abusive relationship. She had significant credit card debt from a joint card with her ex-partner. She had a total debt of \$12,000, including \$6,000 from the credit card. M was assaulted by her partner and suffered significant physical and emotional. HPLS helped M apply for victim’s compensation. She received an award of \$9,600 that allowed her to repay most of her debts and re-establish her life.

HPLS Case Study

H was facing substantial, multiple debts after ending a relationship with her abusive ex-partner. She had been threatened with legal action in respect of an outstanding overdraft account that was in her and her ex-partner’s names. She was also facing fines for overdue DVDs that her ex-partner had borrowed, as well as several parking penalties. As she was suffering from ongoing trauma and depression following her domestic violence, she had been unable to obtain employment, and had fallen into substantial arrears with her repayments. With the assistance of HPLS lawyers, she was able to apply under hardship provisions for the overdraft debt, library fine and parking fine to be waived.

Fourteen of these women said that they also experienced a housing or tenancy problem. The clustering of domestic violence, housing/tenancy problems and debt/money problems was a common feature amongst participants in the interviews.

There was so many people he owed money to and I was receiving threats to say that people were going to follow me to work. That is why they moved me all the way into the city. I was getting all these messages saying they knew that I was working from my house and people were going to follow me from my house.

- **PIAC Women’s Consumer Consultation Participant**

I was in the process of applying for bankruptcy. During my depression and after I was made redundant from my job, I did rake up quite a big credit card bill. Also, I had a huge battle with Telstra and I rang them every day for four months, constant complaints, and the bill has come to about \$6,000...

- **PIAC Women’s Consumer Consultation Participant**

The adverse effects of domestic violence on women's financial security were identified by the Australian Domestic and Family Violence Clearinghouse in 2011. Major areas of concern included debts, bills, banking and accommodation.¹³ The negative financial impacts of violence and the incidence of money-related legal problems among victims of violence were also observed by the Victorian Women's Legal Service Stepping Stones project.¹⁴

Six women who were interviewed in this project said that their money or debt problem was the first legal issue they experienced, triggered the onset of other legal problems, and contributed to them becoming homeless.

Ten women experienced the cocktail of legal problems of domestic violence, family law problems, tenancy and housing. This was in addition to their situation of being homeless, and often combined with experiences of anxiety and depression, and the pressing demand to ensure stability and security for young children.

The experiences recounted by the women who participated in this consultation exemplify how the confluence of legal problems for women particularly in the context of family violence, serve to place women at high risk of housing crisis and homelessness. Overwhelmingly, domestic violence was the most common legal issue that places women at risk of homelessness. However, given the economic disadvantaged position of women in society, the onset of debt and financial problems is also a significant legal issue that places women at high risk of housing crisis and homelessness.

For women who enter homelessness as a result of domestic violence, there is also often deep-rooted trauma that manifests in symptoms of anxiety, depression, low confidence, despondency and disempowerment. For women in these circumstances to navigate the homeless service system, identify services that can assist, and initiate applications for social housing, can be daunting, intimidating and distressing. These feelings are often amplified where children are also involved, with these women indicating the difficulties and stress associated with ensuring safety and stability for their children in a highly unstable environment.

A multitude of stresses and barriers confront women who have become homeless, particularly those who have experienced domestic violence, and those who are caring for children. One can appreciate that seeking legal assistance for the assorted legal issues arising from their experience may be considered by the woman to be a lower priority than securing stable, safe accommodation. However, as previous studies have disclosed, and as confirmed by this consultation project, the effect of related tenancy and housing legal problems and debt and financial legal problems can compound the difficulties faced by these women and make it even more difficult to secure stable, long-term accommodation.

For women in these situations, there is an enormous need need for reliable, competent, committed support services.

13 Braaf, Rochelle and Meyering, Barrett (2011), *Seeking Security: Promoting women's economic wellbeing following domestic violence*, Australian Domestic and Family Violence Clearinghouse, March 2011, 6-7.

14 Women's Legal Service Victoria (2015), *Stepping Stones: Legal Barriers to Economic Equality After Family Violence*, September 2015, 16.

5 People with mental illness

Of the 661 people who presented with credit and debt problems or tenancy problems at HPLS clinics between 2010 and 2016, 25 per cent volunteered information that they had a mental illness. Of those that presented with multiple credit/debt/tenancy problems, 33 per cent said that they had a mental illness. As this was information that was volunteered by the individuals themselves, it is almost certain that the actual figure of people presenting with these problems and also living with mental illness is much higher.

The incidence of credit/debt and tenancy problems for people with mental illness was identified in the 2007 Victorian study of clients of financial counsellors which found that 38 per cent of participants reported suffering from mental illness such as anxiety, depression. Most of these participants recounted how their financial problems either caused or exacerbated their stress and anxiety, with many reporting that their anxiety and stress made them feel embarrassed and ashamed of their predicament, and reluctant to seek assistance.¹⁵

The relationship of mental illness to debt problems, both as a contributor and a symptom, was highlighted by the UK Legal Services Research Centre (LSRC) study of 176 clients of advice agencies. In that study 89 per cent of clients interviewed reported being anxious about their money problems 'most' or 'all' of the time, and the great majority of clients believed that their health had been adversely affected by their debt problems. In their analysis of the 2004 English and Welsh Civil and Social Justice Survey (CSJS) the LSRC found that 40 percent of debt problems were reported to have led to physical or stress-related ill-health, of which slightly more than half also reportedly led to GP visits.¹⁶ Likewise the 2006 study conducted by the UK Department for Constitutional Affairs into legal problem clusters in solicitors' and advice agencies found that many clients of debt advice agencies presented with stress, anxiety and depression related to, and being aggravated by, their debt problems.¹⁷

The Law and Justice Foundation of NSW also identified a vulnerability of people with mental illness to consumer debt, with a number of factors underlying this connection, including:

- Accruing debt as a result of general financial disadvantage;
- Mental illness or addiction affecting capacity to make sensible decision about purchasing behaviour or entering into contracts;
- Vulnerability to high pressure sales tactics; and
- Vulnerability to financial exploitation and fraudulent activity.¹⁸

For HPLS clients living with mental illness, their reliance on the Disability Support Pension and other Centrelink payments means that they are extremely vulnerable to financial stress and debt, particularly if their payments are cancelled or they are subject to breaches from Centrelink. These clients often face considerable difficulty sustaining their social housing tenancies, particularly making rent payments or repaying outstanding housing debts. This situation is compounded by

15 Schetzer 2007, above n 6, 29-30, 51.

16 Pleasence, Pascoe, Buck, Alexy, Balmer, Nigel, Williams, Kim (2007), *A Helping Hand: The Impact of Debt Advice on People's Lives*, Legal Services Research Centre and Department for Constitutional Affairs, United Kingdom, March, 2007, 6-7.

17 Moorhead, Richard and Robinson, Margaret (2006), *A trouble shared – legal problems clusters in solicitors' and advice agencies*, Department of Constitutional Affairs, DCA Research Series 8/06, United Kingdom, November 2006, 57.

18 Karras, Maria, McCarron, Emily, Gray, Abigail, Ardasinski, Sam (2006), *On the Edge of Justice – The Legal Needs of People with a Mental Illness in NSW*, Access to Justice and Legal Needs Volume 4, Law and Justice Foundation of New South Wales, May 2006, 79-81.

the difficulty these individuals have communicating with the NSW Department of Family and Community Services (FaCS), and delays in response or poor customer service from FaCS.

HPLS Case Study

FaCS NSW removed G from his priority position on their waiting list on the grounds that he had housing related debt. Approximately 15 years ago, G incurred a debt of \$1100 after leaving a rental property. The landlord alleged that G had damaged fittings in the property, an allegation denied by G. Notwithstanding his denial, G has reduced the debt by \$800 to date. He claims that if had known earlier about FaCS's position on his debt he would have discharged it earlier, and that the delay in communication has unfairly prejudiced his case. G has had trouble liaising with FaCS as he is currently homeless.

Some HPLS clients with mental illness face considerable difficulty when negotiating with FaCS to settle their debt. The difficulties include delayed response times and ignorance of HPLS's requests for review of the cases. In particular, HPLS evidence suggests that often FaCS will issue a termination notice for rental arrears without having attempted to negotiate with the tenant. On occasions, FaCS will proceed to NCAT in order to get a specific performance order that puts pressure on the tenant to comply, with the threat of having their tenancy terminated. For tenants with mental illness, the receipt of a termination notice and a hearing at NCAT can be particularly intimidating and distressing. As a result, some tenants will not attend at the hearing and orders can be made in their absence, including a termination of the tenancy.

HPLS Case Study

H, a 57 year old woman, had been residing at her present FaCS home for the past 18 years, and prior to that had been residing in other Housing NSW premises. H suffers from poor physical and mental health and has been diagnosed with multiple physical and psychological medical conditions. She was the victim of child abuse that included neglect and maltreatment.

In 2003, an arrangement was made whereby any payments H owed to FaCS would be deducted from her Disability Support Pension and paid directly by Centrelink to FaCS. This arrangement occurred without incident until 2012.

In November 2012, Centrelink wrote to H informing her that FaCS had contacted Centrelink and requested an increase of \$31.90 per fortnight in the deduction from her pension. Centrelink failed to increase the deductions from H's DSP and continued to pay the lesser amount.

In January 2013, H received a phone call from FaCS stating the she was in arrears. H instructed Centrelink to stop making payments to FaCS. The next day, a representative from FaCS visited H at her home and provided her with statements for her water account and rent account for the period June 2012 to January 2013. In late February 2013, H attended a FaCS Housing Office and offered to pay \$230 per fortnight for her rent, water and arrears until the arrears were paid. FaCS refused the offer and told her that a Notice of Termination was being sent to her. She received it in the mail when she returned home that day.

H entered a new agreement with FaCS, that authorised FaCS to deduct \$221.20 per fortnight from H's DSP, which included \$35 per fortnight in rent arrears and \$10 per fortnight in water arrears. FaCS forwarded the new payment agreement to Centrelink in

March 2013. On that same day, FaCS commenced proceedings in NCAT seeking an order to evict H from her residence owing to her rent arrears.

It is recommended that where a social housing tenant has fallen into arrears with their rent payments, or is facing other tenancy related debt, that FaCS adopt an 'eviction as a last resort' policy. In such circumstances, FaCS should make multiple efforts to contact the tenant via mail, telephone and personal visits, in order to ascertain if the tenant is facing circumstances of financial hardship or crisis, with a view to referring the tenant to appropriate support services. FaCS has a policy that classifies some evicted residents as 'unsatisfactory former tenants'. People who are classified in this way can only become eligible for public housing again if they complete a six month tenancy in the private rental market.

Many HPLS clients with mental illness living in social housing have been classified as unsatisfactory former tenants either due to breach of their tenancy agreement for rental arrears or due to complaints by neighbors. Because HPLS clients are often vulnerable and have complex needs (as a result of factors including mental health, intellectual disability and substance abuse issues), they are more at risk of breaches. As a result, HPLS clients with mental illness are often made homeless as a result of a termination based on breach of tenancy agreement or rental arrears. Subsequently, some of these clients continue to be homeless and unable to access social housing because they are classified as unsatisfactory former tenants and cannot fulfill the requirement to complete a six-month tenancy in the private rental market. This 'unsatisfactory former tenant' policy has a huge impact in perpetuating homelessness for people with mental illness.

People with mental illness are vulnerable to fraudulent activity, accruing significant debt, experiencing financial exploitation, negotiating poor contract conditions, or other tenancy difficulties. Accordingly, they are a group of people with significant need for direct, face-to-face legal support, including appropriate, tailored legal information, specialist advice, and ongoing legal representation and advocacy. It is submitted that specialist legal representation for people with mental illness at NCAT is essential given the particular vulnerability of people with mental illness to civil debt and tenancy problems. It is also submitted that a specialist mental illness list at NCAT be established that provides direct and appropriate dispute resolution processes for people with mental illness facing tenancy or civil debt problems.

6 Approaches to support Aboriginal and Torres Strait Islander people at NCAT

In 2015, HPLS began an outreach clinic based at The Shed in Mt Druitt. The Shed is a community based suicide prevention program targeted at Aboriginal men. In 2016, we assisted 41 clients with civil legal issues through this service. In our experience, clients at The Shed are often working with several support services. Despite this support, however, our clients face a number of cultural and practical barriers to accessing the civil justice system. Together with our colleagues at The Shed, we consider the eviction of Aboriginal tenants into homelessness to be a particular concern, and we intend to conduct further research into this issue in 2017.

HPLS Case Study

B is a 25 year old Aboriginal man residing in a Housing NSW property the Mt DrUITT area. He has a chronic and severe mental illness, and has been hospitalised for treatment on several occasions. B cannot read or write English but engages well with a number of support services that assist him to manage his affairs. B was referred to HPLS when FaCS Housing applied to NCAT to terminate his tenancy. FaCS alleged a number of breaches of his tenancy agreement relating to the condition of the property. B instructed us that some relatives had been to stay while during his most recent period of hospitalisation. They had now left, and he was working with a specialist tenancy support service to clean the property up. FaCS representatives were unwilling to negotiate and pursued eviction proceedings at NCAT. Following representations from B's HPLS solicitor, the application was dismissed on the basis that FaCS had not provided sufficient evidence of the alleged damage.

Many of our clients at The Shed would be unable to advocate effectively on their own behalf in a relatively formal and culturally unfamiliar setting such as NCAT. However, with the advice of HPLS and other specialist support services, it is possible to achieve excellent outcomes for this client group.

We support a suggestion raised by workers at The Shed to establish a specialised NCAT list for tenancy matters involving Aboriginal and Torres Strait Islander tenants in Western Sydney, and would propose piloting such a list at the Penrith NCAT registry. Similar schemes established in other courts, such as the Federal Circuit Court, have significantly improved the experience of Aboriginal and Torres Strait Islander people using those courts.

We anticipate this would have particular benefits in eviction proceedings, as appropriate support can be provided where a tenant may not be aware of the proceedings or is uncomfortable attending. By dealing with these matters as a single list, the multiple specialist support services, legal advocates, and Aboriginal liaison workers could be present at a single time to assist consumers to navigate what can be a very intimidating and alienating process.

7 Conclusion

PIAC welcomes the NSW Department of Justice consultation paper, *Justice for everyday problems: Civil Justice in NSW* and supports initiatives that improve access to legal information and self-help tools for consumers. PIAC considers that there are tremendous opportunities for developing improved, accessible and efficient dispute resolution facilities, particularly utilising online facilities.

However, PIAC strongly submits that such initiatives should not be considered a substitute for appropriately resourced legal advice, assistance and financial counselling services. These services are essential for disadvantaged and marginalised people in the community to resolve their civil legal problems. Access to online information/advice and dispute resolution facilities will not be feasible for many of the most disadvantaged people in the community, and will place them at risk of further difficulties and escalation of their legal problems. In particular, people experiencing or at risk of homelessness, women escaping domestic violence, people living with mental illness and Aboriginal people need to have access to well-resourced legal advice and advocacy services to assist them to resolve their civil disputes.

Based on the material in this submission, PIAC makes the following recommendations to improve access to civil justice for the most disadvantaged groups in the community:

Recommendation 1 –

PIAC recommends that the NSW Government ensure adequate funding for community legal services to increase the capacity to provide legal advice and assistance to people with mental illness and women facing domestic violence. In particular, specific priority should be given to increasing the funding of those legal services that focus on the needs of women and people with mental illness in rural, regional and remote areas, especially those experiencing or at risk of homelessness.

Recommendation 2 –

PIAC recommends that the NSW Government increase the funding for non-legal advocacy services, financial counselling services and mental illness counselling services to provide assistance to people in housing crisis or experiencing homelessness, and to provide specialised support for women and people with mental illness.

Recommendation 3 –

PIAC recommends that all energy and water utility providers, telecommunication service providers and financial institutions review their respective hardship programs to ensure that women who experience domestic violence are included as a specific category of persons eligible for hardship assistance under those programs.

Recommendation 4 –

PIAC recommends that the NSW Department of Family and Community Services (FaCS) adopt an 'eviction as a last resort' policy where a social housing tenant has fallen into arrears with their rent payments, or is facing other tenancy related debt. In such circumstances, FaCS should make multiple efforts to contact the tenant via mail, telephone and personal visits, in order to ascertain if the tenant is facing circumstances of financial hardship or crisis, with a view to referring the tenant to appropriate support services. Only after multiple attempts to contact the tenant have been unsuccessful should FaCS consider issuing a written warning that it is considering a Notice of Termination.

Recommendation 5 –

PIAC recommends that the NSW Department of Justice pilot a specialist list in NCAT in respect of housing and tenancy matters for Aboriginal people in Western Sydney.