

Criminalisation of homelessness among Sydney's rough sleepers

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About PIAC and StreetCare

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney. Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

In 2004, PIAC established the Homeless Persons' Legal Service (HPLS). HPLS provides free legal advice at 16 legal advice clinics based at homelessness services and welfare agencies throughout inner Sydney, outer western Sydney and the Hunter region. Since 2004 HPLS has provided legal assistance to more than 8,000 people who are homeless or at risk of homelessness, on over 11,000 occasions.

Ten years ago, PIAC established its homeless consumer advisory committee StreetCare. With support from PIAC, StreetCare provides direct input from people with lived experience of homelessness into government policy making and law reform initiatives, with an aim to tackle the structural determinants of homelessness. StreetCare is a diverse group, including women and men of different ages, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas.

The Criminalisation of Homelessness

Starting in August of last year, the Homeless Person's Legal Service has contributed to a national study on "The Criminalisation of Homelessness and Poverty in Australia" funded by the Australian Research Council. PIAC is one of 10 Australian community legal centres working in partnership with researchers from four Australian universities. The study examines intersections between homelessness and criminalisation through interviews with police, magistrates, service providers and individuals experiencing homelessness, otherwise known as consumers. It attempts to provide a comprehensive account of what the criminalisation of homelessness looks like in modern Australia, as a foundation of policy and law reform.

As the project officer working on PIAC's contribution to the study, I was tasked with completing 20 interviews with consumers of homelessness services in Sydney in relation to their history of interactions with police, the courts, and the criminal justice system. The response was so overwhelming that the Homeless Person's Legal Service decided to extend the scope of an existing research project on Public Space Policing we were conducting in partnership with Homelessness NSW, so that all interested consumers were given the opportunity to tell their stories.

What we heard about police practices when dealing with rough sleepers was harrowing. The overarching themes that emerged from the research include police actively targeting people who were sleeping rough, threatening them with move-on orders, and informing rough sleepers that they are completely 'banned' from particular locations without legal cause. We heard stories of people approaching police looking for help, only to be ridiculed and physically and verbally assaulted. We also heard about the arbitrary use of stop and search powers, in particular strip search powers, without any apparent legal cause.

At the beginning of the project, I expected to hear that once an individual was known to police as a rough sleeper, interactions would decrease. After all, that's what the NSW Protocol for Homeless People in Public Spaces was designed to achieve. However,

consumers informed me that the opposite occurred, with some participants describing persistent practices that bordered on harassment.

The link between homelessness and police interaction seemed to be causative. The daily interactions with police that one consumer experienced were alleviated overnight when he was placed into temporary accommodation.

The following case studies demonstrate that the criminalisation of homelessness serves to compound disadvantage and brutalise the most traumatised and vulnerable members of our society.

David's Story

When I met David*, he frequented a specialist homelessness service in Sydney for support, community and services. He did have a social housing tenancy, although due to the substantial disrepair of the property and feelings of loneliness and isolation, he did not reside there often. He and his former partner have a history of criminality and incarceration. They had a volatile and sometimes abusive relationship, and David's children had been placed into the care of the minister indefinitely. David told me that he wanted to provide his children with a better childhood than he had himself, and break the intergenerational cycle of out of home care and juvenile detention.

He had been the recent victim of a violent assault, however due to a lack of substantial evidence, the local area command involved had chosen not to pursue these charges to prosecution. He also felt targeted by police; he had been strip searched in and around Central railway station in public view seven times within the past four months, with officers recounting his lengthy criminal history and making inferences about his character. David also had outstanding rental arrears with Family and Community Services (FACS), and had been given an ultimatum to pay \$2000 within the next fortnight or face eviction.

The Homeless Person's Legal Service ultimately managed to secure \$1000 worth of brokerage on David's behalf and was able to halt the eviction proceedings. However, by this time we were no longer able to get in contact with David. We have not had contact with David since, despite our best efforts to track him down. Our experience with people living in similar circumstances to David indicates that he is most likely now to be rough sleeping or locked up.

Jessica's Story

Jessica* has multiple physical and psychosocial disabilities and often presents in a heightened state of arousal. Her symptomatic behavioural and communication difficulties mean that she is viewed as difficult and noncompliant. She has spent the majority of her adult life oscillating between incarceration and primary homelessness.

As the result of incidents in which she caused disruption, Jessica has been banned from almost every single specialist homeless service (SHS) in the state. However, in order for Jessica to be offered a public housing tenancy, she is required by FACS to demonstrate "living skills" by residing in an SHS for a period of six months without incident. The only SHS left that will offer Jessica services is notorious for drug activity and disruption between residents, and Jessica's lack of ability to manage her day to day life means that the limited casework support that she receives under the care of an SHS is inadequate. Jessica feels as though the personal requirements set by FACS for public housing eligibility are both discriminatory and insurmountable.

HPLS is currently in the process of representing Jessica in relation to some minor criminal

matters that occurred after the escalation of a simple transaction at a local SHS. Conviction has the potential to have a significant negative impact on Jessica.

We are also attempting to help Jessica to apply for support under the National Disability Insurance Scheme (NDIS) to receive the wrap-around intensive support that Jessica requires in order to function in society. However, to achieve this Jessica will need significant documentation in relation to her disabilities – documentation she currently lacks. We are also concerned that due to Jessica's reduced capacity for engagement, she will find the process of navigating the NDIS system without substantial support insurmountable.

Jessica and David are just two examples of an entire cohort of individuals lost in a system that criminalises their multiple intersections of disadvantage, trauma and abuse. They, like many others, do not have the capacity to engage with systems that demand self-advocacy, rational decision making, and compliance to access services. Their experience with social services provided by institutions such as Centrelink, FACS and the NDIS is that people are assumed to have the personal and cognitive resources to control their impulses, make long-term decisions, and navigate a complex bureaucracy. Systems like these require that individuals proactively engage, and remain compliant, in order to receive services. For people who do not have the capacity to comply or engage, it is seen not as the failure of the system, but the failure of that individual, whose noncompliance is viewed as a decision to cease cooperation, rather than a symptom of their disadvantage. 1. Society washes its hands of the Jessicas and Davids of the world, justifying its callous disregard with the saying, "you can't help someone that doesn't want to help themselves".

Next steps and recommendations

The first reports arising out of the national project are due for release in 2020, and will provide a picture of the complexities and intersectionality of the criminalisation of homelessness in Australia, accompanied by policy and reform recommendations.

We are currently working with Homelessness NSW to prepare a report making specific recommendations about the policing of rough sleepers, particularly in the Sydney CBD area and Woolloomooloo. We hope that this report, due to be realised in Homelessness Week, will foster important discussion across sectors and be a catalyst for change.

There is, of course, an urgent need to reduce rough sleeping itself. As more rough sleepers move into housing, interactions with police can also be expected to reduce significantly. To this end, StreetCare have also been in discussions with The Act to End Street Sleeping Collaboration, the organisation tasked with actioning the Vanguard Initiative, a commitment made by the NSW Premier late last year to halve the number of rough sleepers in NSW by 2020, working towards 'functional zero'. 2, 3. We have attended several forums and events and are looking forward to working closely with others in the sector to provide collaborative and innovative solutions for people like David and Jessica.

One of the key tenets of the Vanguard Initiative is an emphasis on assertive outreach. Assertive outreach approaches have already been employed by both Family and Community Service and partner SHS services in Sydney over the past 18 months, and these have offered a glimmer of hope in their departure from traditional approaches to service delivery. Assertive Outreach recognises that in order to engage with high-needs, entrenched rough sleepers, one needs to be proactive in meeting these individuals where they are, rather than requiring individuals to be proactive in resolving their own disadvantage.

However, we have seen that it is not uncommon for subsequent tenancies to disintegrate, as post-housing support is either not available, or fails to adequately address consumer needs in an accessible way. In the experience of the people we have spoken to, once they demonstrate their high needs by engaging in symptomatic behaviours such as drug use

and/or squalor, they face eviction by the housing provider for non-compliance with their tenancy agreement.

There is, however, evidence that when complex, high-needs individuals are provided with low-barrier, affordable, appropriate housing with intensive, wrap around support services, the outcomes for both individuals and society are overwhelmingly positive. 4. But with the exception of Camperdown's 'Common Ground' and Woolloomooloo's 'Platform 70', the type of purpose-built facilities that Jessica and David require simply do not exist. HPLS emphasizes that the provision of purpose-built accommodation is necessary in any meaningful attempt to reduce the number of individuals who are sleeping rough on Sydney streets. Without it, individuals like David and Jessica spend a life-time in and out of primary homelessness, effectively bullied by police for sleeping on the street, because there is nowhere else for them to go for any sustainable period of time; except, of course, to prison.

* Not their real names.

References

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