

By Thomas Chailloux

‘What many of us face’

**Homelessness,
disability and
institutional
neglect**



‘I just want to reiterate that desperateness of what many of us face: the fear of not having anywhere to live.’¹



A severe shortage of social housing, combined with an increasingly unaffordable private rental market and inadequate social security payments, is causing more and more people to experience homelessness across Australia. Because disability is a risk factor for poverty and homelessness, people with disability are over-represented.

The Public Interest Advocacy Centre (PIAC) provides free legal assistance to people experiencing or at risk of homelessness with a range of civil and criminal legal issues through our Homeless Persons' Legal Service (HPLS). We operate 16 legal advice clinics across the Sydney and Hunter regions. There are few specialised legal assistance services for people experiencing homelessness, but similar services exist in other states such as Homeless Law in Victoria, Law Right in Queensland and StreetLaw in the ACT. PIAC also supports a lived experience advisory committee, StreetCare, which operates alongside the HPLS to promote structural and systemic reform to housing and homelessness policy.

A large proportion (68 per cent) of people seeking legal assistance through the HPLS identify as having disability and/or substance use disorder.² Difficulties in securing employment and obtaining medical evidence to access the disability support pension (DSP), and a punitive and inefficient employment services system, combined with difficult personal circumstances, lead many people with disability to experience homelessness, including rough sleeping.

Inadequate payment rates and delays in accessing the DSP have a profoundly negative effect on the lives of our clients. We describe the issues they face. We also advocate for a social security system that genuinely supports people to access and maintain housing, take up opportunities and fully participate in their communities.

This article highlights the key systemic and individual factors leading to the overrepresentation of people with disability among those experiencing homelessness. We argue that our social security system is failing people with disability, in particular people experiencing overlapping forms of disadvantage. Finally, we put forward proposals for reform.

HOMELESSNESS AND PEOPLE WITH DISABILITY

At increased risk

Homelessness can happen to anyone, but people with disability are at increased risk.³ This is due to a combination of factors, including:

- discrimination in the labour and housing markets;
 - limited capacity to work and sustain tenancies for some; and
 - lack of adequate support services and suitable housing.
- Because of discrimination and a reduced capacity to work, only 53 per cent of working-age people with disability are in the labour force, compared to 84 per cent of people without disability.⁴ Living with disability is also expensive. People with disability face high costs for housing, health care and transport. Lacking adequate social security, many live in poverty.

Homelessness is also a risk factor for disability. Maintaining good health while homeless is very difficult. People who are rough sleeping over long periods of time are likely to develop

physical, mental health and/or substance use issues. As a result, the health conditions of people experiencing homelessness can lead to permanent physical or psychosocial disability.⁵

Overlapping discrimination and marginalisation

‘To apply for rental accommodation, when you’re on the DSP and over 50 and you have little savings, you really are at the mercy of agents.’⁶

It can be more difficult for people with disability than those without disability to access the private rental market, because they are often discriminated against when applying for rental properties. When people have experienced homelessness, or have periodically lived in institutions, they will have patchy rental histories and lack references. This, in combination with an unaffordable and competitive private rental market, can make it extremely difficult to access private housing.

While boarding houses do offer a partial response to the need for cheaper housing, they are inadequate places in which to live. People living in this kind of accommodation often have difficulties taking care of their health and accessing employment and education. Further, they often encounter situations that threaten their wellbeing and/or recovery from substance use disorder or mental ill-health.⁷

People with disability also face long waiting times for accessing social housing. Disability alone does not guarantee priority access, and many people must wait five or ten years before a suitable property is offered to them.⁸

Overall, it can be very difficult for some people with disability to access any kind of housing.

Consequences of de-institutionalisation

Since the 1980s, people with psychosocial disability and/or severe mental health issues have increasingly been receiving care through community mental health services rather than through institutions. Unfortunately, ‘community-based’ mental health services remain limited, and are often clinically focused and provided from hospitals. To be successful, de-institutionalisation requires a range of support services and housing.⁹ Given the combination of a severe shortage of social housing and very limited support services, many people with disability who would have otherwise lived in mental health institutions experience homelessness or incarceration rather than life in the community with adequate support.

Difficult lives: Complex and competing priorities

People experiencing homelessness, particularly those with psychosocial disability who are rough sleeping, have complex lives with competing priorities. On top of trying to find stable accommodation, people in this situation often struggle with substance use, trauma and/or severe medical conditions. They have to manage multiple priorities to meet their basic needs: attending food vans; engaging with government departments; dealing with legal issues; and accessing health care.¹⁰

These activities require significant amounts of time and energy every day, so there is little time left to engage with job service providers. People who are living on the street or

in refuges or are moving houses every few days struggle to meet the mutual obligation requirements for receiving social security payments. Failure to meet the requirements can lead to payment suspensions.

People who have no housing or income will prioritise finding food and shelter rather than managing their health conditions. This will cause some to stop complying with Community Treatment Orders such as receiving depot injections, and the consequence could be involuntary admission to a mental health facility. Negative spirals like these come at a high cost to people with psychosocial disability or severe mental health issues, as well as to community services, the health system, the police and the community as a whole.

The dual criminalisation of homelessness and disability

People with disability tend to be criminalised more than other people experiencing homelessness, which means they may become entangled in the criminal justice system, and consequently have more severe and prolonged experiences of hardship and homelessness.

Some groups of people with disability, including people with cognitive and/or psychosocial disability, commonly experience multiple forms of disadvantage and encounter police both frequently and unsatisfactorily.¹¹ People with visible intellectual or mental health disability tend to be charged with public nuisance more frequently.¹² This is further compounded for people who are experiencing homelessness, because their presence in public places may be seen as undesirable. Many ordinary behaviours, such as washing, urinating or getting changed, become criminalised in this setting. It is also more difficult for people who are homeless to dissimulate drug and alcohol use from police. As a consequence, difficult interactions with police are common.¹³ Police ‘protective custody’ powers for intoxicated people in public¹⁴ also lead to interactions that make people experiencing homelessness feel criminalised.

OUR SOCIAL SECURITY SYSTEM IS FAILING PEOPLE WITH DISABILITY

People with disability should be able to live with dignity and be supported to achieve full and effective participation in society. Living with dignity includes access to adequate housing, food, utilities, healthcare, transport, education, and other essential needs.

Barriers to accessing the disability support payment

The DSP is an income support payment for ‘people who are unable to work ... due to permanent physical, intellectual or psychiatric impairment’.¹⁵ Barriers to access, however, prevent many people with disability who are experiencing homelessness from accessing their entitlements. They receive an even lower payment than the DSP, usually JobSeeker, which is linked to mutual obligations requirements (such as engaging with an employment service provider, searching for and applying for jobs, or undertaking a training course; requirements that are very difficult to meet for people experiencing homelessness) – or they have no income at all.

These are the main barriers to access our clients face:

- The DSP eligibility criteria and assessment process are complex.
- Obtaining adequate medical evidence is difficult and expensive.
- Appeals are difficult to pursue.

Complex eligibility criteria and assessment process

People who cannot demonstrate that they have a ‘manifest impairment’ (such as being permanently blind, needing nursing home level care or having severe intellectual disability) must meet the ‘general medical rules’. They must show that:

- Their condition will last more than two years.
- Their condition is ‘fully diagnosed, treated and stabilised’.¹⁶
- They have an ‘impairment rating’ of 20 points or more, showing a severe impairment. Points are granted based on impairment tables with different criteria for different types of impairments.¹⁷
- They meet a requirement called the ‘Program of Support’ (POS)¹⁸ if they do not have one severe impairment but instead multiple moderate impairments preventing them from working. This means they must engage with employment or training services for 18 months over a three-year period.
- Their condition will prevent them from working at least 15 hours a week for the next two years.

This complex assessment of eligibility is difficult enough to understand without an in-depth understanding of social security law. When trying to manage the impact of disability or of health conditions, and dealing simultaneously with homelessness, navigating eligibility and evidentiary requirements becomes even more difficult. Many HPLS clients have a psychosocial disability and/or severe trauma, and continue to suffer from the impact of this trauma. They are sometimes reluctant to engage with social workers, let alone with a complex and invasive assessment process.

In the view of the HPLS, the POS requirement for people who attempt to claim the DSP through multiple impairments rather than one severe impairment is punitive and unnecessary.¹⁹ It forces people to show they cannot improve their ‘ability to work’ by engaging with employment services for an 18-month period. Regular reviews of eligibility also cause significant distress to DSP recipients. Disability organisations have described as humiliating these regular obligations to ‘perform’ disability and show how ‘unemployable’ people with disability are.²⁰

In the experience of the HPLS, refusals for clients who are obviously eligible are common. Jeff had his DSP application rejected repeatedly over a five-year period. This was despite a diagnosis of schizophrenia, which included evidence that he experienced serious frequent disturbances to his thoughts and behaviours, and that this led to difficulties with maintaining housing and multiple hospital admissions. He also had severe physical disabilities, and yet he had his application for the DSP rejected because he was assessed as having a capacity to work. The refusals had financial and personal consequences for Jeff’s family members, who had to care for him while they themselves were facing financial hardship and disadvantage.

Difficulty and expense of obtaining adequate medical evidence

Obtaining medical evidence can be expensive, especially for neuropsychological assessments. Prior to 2015, the medical evidence to support an application was a standardised form, the ‘Treating Doctor Report’. Since its removal it has been difficult to obtain suitable medical evidence.²¹ Medical reports that are clearly supportive of DSP claims are often rejected because they do not directly use the terminology of DSP criteria, such as ‘fully diagnosed, treated and stabilised’.²²

Difficulty of pursuing appeals

In the experience of the HPLS, applicants who are clearly eligible often have their application rejected on a technicality. This means they must undertake a complex and costly appeal process in the Administrative Appeals Tribunal. This creates obvious power imbalance issues and issues with access to justice. Some people experiencing homelessness, such as Michael (see below), give up on accessing their entitlements after their claim is rejected.

Michael has been rough sleeping on and off since 2016. He suffers from complex PTSD, schizophrenia, depression, and poly substance use disorder. Because of his conditions and his homelessness, he has no capacity to work for the foreseeable future and is unable to comply with JobSeeker mutual obligations. When Michael’s DSP application was rejected, the rejection notes said he did not qualify for enough points under the relevant impairment tables, and no further explanation was provided. Michael’s caseworker believes the decision might be linked to a failure to recognise the cumulative impact of Michael’s multiple conditions and life circumstances, but does not know any more detail about the reasons for the rejection.

It took a lot of time and effort for Michael to apply for the DSP while rough sleeping and managing his mental health conditions. He is now very disheartened, unmotivated to appeal, and reluctant to engage with his caseworker.

Accessing social security should not require the use of legal assistance services. Yet people with disability experiencing homelessness are too often barred from accessing their entitlements by the complexity and rigidity of the eligibility criteria and assessment process. Pursuing an appeal, which involves understanding, analysing and challenging the initial decision and providing additional evidence to meet eligibility criteria, is extremely difficult for people experiencing disadvantage and/or homelessness.

The cycle of disadvantage: Work disincentives

People with disability face significant barriers to employment because of discrimination and competition in an increasingly casualised and precarious labour market. Yet the DSP does not facilitate casual employment. Instead, it creates additional barriers to workforce participation.

“ Rules around assets, income and social security entitlements can be a ‘poverty trap’ and cause distress. ”

DSP rates reduce by 50c for every dollar of income above \$180 per fortnight for singles and \$320 for couples. DSP recipients contemplating paid work must consider associated costs such as transport, and potential implications for income tax and social housing rent.

Rapidly decreasing payment rates are a strong disincentive to work, particularly in insecure or low paid roles. People with disability may also experience negative impacts on health and wellbeing if they work, or have competing priorities such as the need to undergo medical treatment.

Too often, rules around assets, income and social security entitlements can be a ‘poverty trap’ and cause distress. Clients receiving the DSP are wary of ceasing to receive the payment once they are working. This is because it is likely their period of employment will be used as evidence against their claim should they try to re-apply for the DSP.

The social security system should recognise that the work capacity of people with disability fluctuates. It should support workforce participation by providing a safety net, rather than perpetuating disadvantage.

Is the DSP a form of institutional neglect?

The maximum rate of the DSP, for people over the age of 21, is \$987.60 per fortnight for a single person, and \$744.40 each for a couple. This includes the maximum pension supplement and the energy supplement.²³ Due to insufficient payment rates, recipients of the DSP are unlikely to be able to afford a private rental and are at serious risk of homelessness and/or severe and permanent financial hardship.

Data from the December 2020 Rental Affordability Index shows that for a person with a yearly income of \$30,000, rents across the country range from ‘severely’ to ‘extremely’ unaffordable. For such a person, median rent for a one-bedroom dwelling would cost 79 per cent of their income in Greater Sydney, or 41 per cent in the rest of NSW.²⁴ The yearly income of a single person on the DSP is around \$25,000. People on the DSP often have additional disability-related expenses arising from the need for medical treatment and medications, specialised transport, and accessible, newer housing. After meeting housing costs, they live in poverty.²⁵

Forcing people to live in poverty is a form of institutional economic neglect. It impacts on the human rights of people with disability, including the right to an adequate standard of living, and adequate food, water, health, social security and housing. DSP payment levels should be raised to allow people

with disability with no, or limited overall, capacity to work to live with dignity.

WHAT DO WE NEED TO CHANGE?

The housing and social security systems are failing to relieve poverty and hardship for people with disability. Instead, delayed access to the DSP, inadequate payment rates, and, for some, traumatic interactions with the system, often cause significant distress and further hardship. Changes to social security and housing policy are needed to better meet the needs of people with disability.

The recently released final report of the *Senate Inquiry into the purpose, intent and adequacy of the Disability Support Pension*²⁶ is a step in the right direction. It recommends:

- Investigating how the ‘fully diagnosed, treated and stabilised’ requirement is preventing people with complex conditions from accessing the DSP.
- Reforming the impairment assessment process to better recognise the cumulative impact of some conditions (recommendations 2, 3).
- Making the application process more accessible by increasing the accessibility of medical evidence and forms, for example by reintroducing the Treating Doctor Report and allowing health professionals to claim a specific Medicare Benefits Schedule item for preparing DSP evidence (recommendations 4–10), and by providing greater clarity when claims are rejected (recommendation 11).
- Investigat[ing] ways to better support people on the Disability Support Pension at risk of poverty – particularly those in the private rental market – and ensur[ing] people can participate in their communities and cover their living costs’ (recommendation 27) – in the view of the HPLS, the simplest and most efficient way to do so is to increase the DSP payment.
- Moving away from punitive compliance measures towards genuine support (recommendation 25), including by removing the POS requirement (recommendation 23 suggests a review only, but suggests participation could become voluntary) and by better supporting labour market participation (recommendation 22 suggests reviewing the income test).

Relieving the severe hardship and neglect currently experienced by these members of the community requires urgent action. Our social security and housing systems need reform to end the nexus between disability, poverty and homelessness. People with disability and disability organisations have been strongly advocating for such reforms.²⁷

The first thing that must be done is at-scale investment by state and federal governments in building new, fit for purpose social and affordable housing to address the severe shortage. Second, we must reform our social security system so that payments enable people with disability to live with dignity, the assessment process is fair and accessible, and eligibility and income rules genuinely support people with disability to take up opportunities. ■

Notes: 1 Ricki Spencer, appearing at the Senate Community Affairs References Committee inquiry into the purpose, intent

and adequacy of the Disability Support Pension (DSP), *Committee Hansard*, 16 November 2021, 2. **2** Homeless Persons' Legal Service, *Internal casework statistics* (Report, 8 June 2021). **3** C Chamberlain and G Johnson, 'Pathways into adult homelessness', *Journal of Sociology*, Vol. 49, No. 1, 2011, 60–77. **4** Australian Institute of Health and Welfare, *People with disability in Australia* (Report, 2020) 258 <<https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/about>>. **5** C Frankish, S Hwang and D Quantz, 'The relationship between homelessness and health: An overview of research in Canada' in D Hulchanski, P Campsie, S Chau, S Hwang and E Paradis (eds), *Finding Home: Policy options for addressing homelessness in Canada* (University of Toronto, 2009) ch 2.1; G Moore, M Gerdtz and E Manias, 'Homelessness, health status and emergency department use: An integrated review of the literature', *Australasian Emergency Nursing Journal*, Vol. 10, No. 4, 2007, 178–85; P Loughlin and G Carey, 'Re-framing the links between homelessness and health: Insights from the social determinants of health perspective', *Parity magazine*, Vol. 26, No. 10, 2013, 20–1. **6** Spencer, cited above note 1, 1. **7** This is an observation based on HPLS casework. See J Eastgate, 'Marginal tenures in Australia: Boarding houses, caravan parks and all that', *Parity magazine*, Vol. 24, No. 3, 2011, 26–7. See also N Gurran, M Pill, S Maalsen, T Alizadeh and P Shrestha, *Informal accommodation and vulnerable households: Scale, drivers and policy responses in metropolitan Sydney* (Report, 2019) University of Sydney Policy Lab <file:///H:/Downloads/apr-2019_informal-housing-and-vulnerable-households.pdf>. **8** NSW Department of Communities and Justice, 'Expected waiting times', *NSW Social Housing Register* (Interactive webform, 28 June 2022) <<https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>>. See for example waiting times of five to ten years for a studio/one bedroom and ten+ years for all other types of properties in the CS02 Eastern Suburbs [Sydney] allocation zone. **9** D Gibson, *De-institutionalisation: 'The move to community-based care'* in R Madden and D Gibson, *Australia's Welfare 2001*, Australian Institute of Health and Welfare, 2001, ch 4, 96–139. **10** This is an observation based on HPLS casework and working with people with lived experience of homelessness. See also M Wolfshoerndl, Public Interest Advocacy Centre, *They spit at you with their eyes – Experiences of homelessness in New South Wales* (Report, July 2016); AJ, 'Homeless in Sydney: The letter from the Department of Housing that made AJ see red', *The Sydney Morning Herald* (13 August 2017) <<https://www.smh.com.au/national/nsw/homeless-in-sydney-the-letter-from-the-department-of-housing-that-made-aj-see-red-20170811-gxug8v.html>>. **11** L Dowse, S Rowe, E Baldry and M Baker, *Police responses to people with disability*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Research report, October 2021) 3–4. **12** *Ibid*, 20, 21. See also L McNamara, J Quilter, T Walsh and T Anthony, 'Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia', *International Journal for Crime, Justice and Social Democracy*, Vol. 10, No. 1, 2021, 111–29. **13** Public Interest Advocacy Centre, Homelessness NSW, *Policing public space: The experiences of people sleeping rough* (Report, May 2021). **14** See *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s206. **15** Australian Government, *Social Security Guide version 1.282, 1.2.5.10 Disability Support Pension (DSP) – Description* (Guidelines, 2021) <<https://guides.dss.gov.au/social-security-guide/1/2/5/10>>. **16** Australian Government, *Social Security Guide version 1.294, 1.1.F.240 Fully diagnosed, fully treated & fully stabilised (FDTS) (DSP)* (Guidelines, 16 May 2022) <<https://guides.dss.gov.au/social-security-guide/1/1/f/240>>. **17** Australian Government, *Social Security Guide version 1.294, 3.6.3.05 Guidelines to the Rules for Applying the Impairment Tables* (Guidelines, May 2022) <<https://guides.dss.gov.au/social-security-guide/3/6/3/05>>. **18** Services Australia, *Program of Support* <<https://www.servicesaustralia.gov.au/program-support-for-disability-support-pension?context=22276>>. **19** Similar terms have been used in the final report of the inquiry into the purpose, intent and adequacy of the Disability Support Pension. See for example Senate Community Affairs Reference Committee, Parliament of Australia, *Inquiry into the purpose, intent and adequacy of the Disability Support Pension* (Final report, February 2022) rec 25, 4.106. **20** Mx Giancarlo de Vera, Senior Manager of Policy, People with Disability Australia, *Committee Hansard*, 6 September 2021, 27. **21** National Social

Security Rights Network, *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes* (Report, January 2018) 4.2.4, 4.3.1, 5.2, 6.2 <http://ejaustralia.org.au/wp/wp-content/uploads/2018/02/NSSRN-DSP-Report-2017-BRO-case-snapshot-2018_01_31.pdf>. **22** Australian Government, above note 16. **23** Services Australia, *Payment rates: How much Disability Support Pension (DSP) you can get depends on your situation* (2 June 2022) <<https://www.servicesaustralia.gov.au/payment-rates-for-disability-support-pension?context=22276>>. **24** SGS Economics & Planning, *Rental Affordability Index: December 2020 key findings* (Report, 2020) 14–18. **25** P Davidson, P Saunders, B Bradbury and M Wong, *Poverty in Australia 2020: Part 1, Overview* (ACOSS/UNSW Poverty and Inequality Partnership Report No. 3), ACOSS, Sydney, 2020 <https://povertyandinequality.acoss.org.au/wp-content/uploads/2020/02/Poverty-in-Australia-2020_Part-1_Overview.pdf>. **26** Parliament of Australia, Senate Community Affairs References Committee, *Purpose, intent and adequacy of the Disability Support Pension* (Report, February 2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DisabilitySupportPension/Report/section?id=committees%2freportsen%2f024728%2f77015>. **27** See for example People With Disability Australia (PWDA), 'In our own words: People with disability Australia's submission to the Senate Community Affairs References Committee Inquiry into the purpose, intent and adequacy of the Disability Support Pension', 2.1, Priority recommendations, 9–18 <<https://pwd.org.au/wp-content/uploads/2021/08/SUB-PWDA-DSP-Senate-Inquiry.pdf>>.

Thomas Chailloux is a Policy Officer at the Public Interest Advocacy Centre specialising in housing and homelessness policy. He advocates for a fair and just society where everyone has access to social security and a secure home. EMAIL tchailloux@piac.asn.au.



DISBURSEMENT FUNDING SPECIALIST

- Business-to-Business lender
- Releases working capital
- Provides more cash flow flexibility
- Simple terms of trade
- Daily payment of invoices
- Increases the number of cases (without cash flow implications)
- Facilitates growth

LAWCAPITAL

T: 1300 539 207 E: info@lawcapital.com.au
www.lawcapital.com.au