



Council to Homeless Persons – Submission to the Access to Justice Review

Introduction

The Council to Homeless Persons (CHP) welcomes the opportunity to provide a submission to the Access to Justice Review (the Review).

We welcome in particular the consideration given by the review to the needs of disadvantaged Victorians, including Victorians from an Aboriginal and Torres Strait Islander background.

People experiencing or at risk of homelessness can face systematic exclusion from a range of services. Access to justice and legal advice is one of these areas.

In understanding the many ways in which people experiencing homelessness struggle to achieve justice, it is important to understand that homelessness occurs as a consequence of broader structural issues in the Australian economy, including poverty, an increasingly deregulated and casualised workforce, serious shortages of affordable housing, and racism. Those who are least able to successfully negotiate these issues are more likely to experience homelessness.

Consequently, while homelessness can happen to almost anyone, people with low levels of educational attainment, and those with chronic illnesses or physical or mental disability, or who have histories of trauma, or who are Aboriginal, are most likely to experience homelessness. They are also more likely to experience repeat episodes or chronic homelessness.

Some of the same personal characteristics – like cognitive impairment, or low literacy, or a history of trauma – that directly, or indirectly contribute to people’s experience of homelessness, will also present challenges to achieving justice. Yet homelessness also presents additional challenges for people attempting to understand, navigate and respond to justice issues.

This submission talks to both the challenges specifically pertaining to homelessness, as well as to the issues of engaging people with more complex needs, who are over-represented among people who experience repeat or chronic homelessness.

People experiencing or at risk of homelessness may face a number of issues, including:

- frequent change of location that results in documentation being lost
- sudden loss of income or unexpected expenses, and insufficient financial resources to resolve the crisis

- persistent poverty, resulting in an inability to pay fines or infringement notices
- mental and physical health issues that impact on their ability to respond to legal issues, and/or
- lack of understanding of legal processes or available assistance.

People in the midst of an episode of homelessness are also in crisis, and are likely to prioritise their most immediate needs. Issues that will create future problems, like unpaid fines, are therefore more likely to be left unresolved.

Homelessness and access to justice

According to the Australian Institute of Health and Welfare (AIHW), in 2014-15, 14 per cent of people accessing Specialist Homelessness Services needed legal information; 10 per cent needed court support; and 3 per cent needed professional legal services (AIHW, 2015).

While this is a significant figure, CHP expects this may be an underrepresentation of need. Excessive demand pressure on the Specialist Homelessness Services' (SHS) access points, may mean that initial assessments do not always fully identify the range of justice issues a person may be facing. This may be because consumers do not feel comfortable disclosing these issues to workers when they present, or because discussion primarily focuses on housing issues. In addition, consumers may not think of problems they face as having a legal dimension.

Furthermore, a number of people who are homeless may not be connected to a SHS, for example people living in rooming houses, people who are sleeping rough or people who are couch surfing.

Access to justice is not simply about the ability to resolve existing justice issues. It also encompasses empowering people to both exercise their rights, and fulfil their responsibilities under the law. However, the experience of homelessness can make this particularly difficult.

Homeless Law (2013) notes that people who are experiencing homelessness, particularly those rough sleeping, are:

- (1) more likely to get fines because they are forced to carry out their private lives in public places, and
- (2) less likely to be able to address the fines through payment or navigating the complex legal system.'

This is reiterated by O'Grady et al (2011, p.6-7) who report that '[w]hen homelessness is made visible, law enforcement often becomes a key component of the emergency response'. As such, people experiencing homelessness publicly, face what O'Grady et al (p. 13) refer to as the criminalisation of homelessness, where people 'become more marginalized and experience social exclusion both in terms of their engagement with the criminal justice system, and more broadly, in terms of increasing restrictions on where and how they are able to use public spaces'. This is illustrated by the experience of Pat, described in the case study below.

Undue contact with law enforcement is particularly acute for people who have experienced persistent trauma or who have acquired brain injuries (ABIs), who are overrepresented among people experiencing homelessness, as they may exhibit public behaviours that others find challenging, and which bring them to the attention of police.

This submission has been informed by the stories of consumers with a lived experience of homelessness, and work undertaken by CHP through our Homelessness Advocacy Service (HAS). CHP does not provide legal advice, but in certain situations provides referral to legal and justice services.

The case example included below of Pat, a person who had contact with the justice system while rough sleeping, highlights a number of the issues addressed in our submission.

Case Study

Pat experienced homelessness for over ten years and found himself particularly exposed to police and the criminal justice system. Pat would often find himself being stopped by the police when homeless, particularly when he was sleeping rough.

/Police have discretionary power to charge you for trespassing if you are walking through public housing property grounds. You are expected to walk the footpath right the way around the land, not cut through. If you can't provide the name and address of your destination (to be confirmed at that time) and a reason for being there, you can be charged. The needle and syringe program is there, but that is not considered a justifiable reason. While they were doing the paperwork for the trespassing, they would do a stop and search/.

Pat says his experience of this law was ridiculous; he was once pulled up five times in one day and says it was not justified;

/I wasn't doing anything; making no noise, causing no problems, just getting on with my day. This was a regular occurrence... If they found any drug paraphernalia they would then charge you. They would then check up on your history and warrants would come up (usually for ticket evasion)/.

Being homeless made Pat particularly visible to the Police.

/If you are homeless when you are picked up, you are carrying everything you own, usually in a back pack. The police would check every last piece of your belongings on suspicion of drug dealing. It used to seem to me that when you are homeless, the police have nothing better to do than terrorise you'.

Pat also spoke of the times when he would try to find somewhere safe to sleep but when he did, if he was seen by police or security, he would be 'moved on'.

This targeting of people experiencing homelessness, extended beyond the Police. When homeless, it is difficult to afford to top up a MYKI card. As a result, Pat, who was rough sleeping, accumulated numerous fines for fare evasion.

'PSO's and ticket inspectors get to know who is homeless. They approach those people on public transport, knowing they will get to charge them'.

The responses below focus on several of the terms of reference and the intersection between access to justice and housing crisis and homelessness.

Availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems

People experiencing homelessness or at risk of homelessness often experience legal issues, precipitated by:

- family violence (both as the victim of violence or a person who uses violence)
- debts
- infringements and/or
- housing issues (eviction, bonds, landlord disputes, repairs and maintenance).

Where these legal issues arise, CHP and specialist homelessness service providers refer consumers to legal services for expert advice. These commonly include:

- Tenants Union of Victoria

- VCAT
- Justice Connect
- Community Legal Services.

How consumers access information about legal assistance services, including the justice system, can be dependent on their level of literacy, level of English, health impairments (such as ABI's or other cognitive impairment) and understanding of the justice system in general.

As noted in the discussion paper, a significant amount of legal information for consumers is available online. While easy to access, plain language resources are important resources, they are not sufficient to achieve access for many people.

For consumers with adequate literacy and English language skills and who have access to Information Communication Technologies (ICT) , accessible information can empower them to resolve legal and justice issues, to know their responsibilities and rights, and to access additional support where required. Workers can support this process by accessing resources to guide consumers through basic legal information and processes, and support consumers to exercise their rights.

However, these resources cannot assist unless people identify that their problem has a legal dimension that could be resolved, and/or prioritise resolving the issue. They are also not useful for people whose cognition or literacy is inadequate to engage with the written materials.

Many people who are homeless or at risk of homelessness also have very limited access to ICT. While a recent Australian Communications Consumer Action Network (ACCAN) report found that 77 per cent of respondents had a smart phone, it also highlighted that 'shortage of credit, service and power restrictions, number changes and handset loss resulted in partial or restricted access to one or a number of mobile and Internet services' (Humphry, 2014, p.3). Furthermore, the study found that vulnerable consumers with complex needs had the most significant payment and debt issues relating to telecommunication services.

Consequently, delivering accessible legal information to people experiencing homelessness requires more than provision of online text based formats. Access to workers who can help to identify when people's problems have a legal dimension and explain their context and consequences; and then support clients to resolve these issues is necessary to engage this group.

The introduction of a single entry point

CHP concurs that centralised, well-resourced access points could be beneficial to many members of the community, including for homeless people who identify their problems as having a legal dimension, and who place a priority on seeking out support to resolve their issues.

However, as noted above, people experiencing homelessness are in a crisis and often don't prioritise the resolution of issues if they don't present an immediate threat as pressing, or more pressing than their housing crisis. Being homeless and living in poverty creates a significant, generally unrecognized, workload: there are Centrelink appointments to attend and obligations to fulfil, housing processes to undertake, they may have other appointments with mental health, family services or drug and alcohol workers, and they have the daily business of survival to attend to.

Research from 'The Trauma and Homelessness Initiative' also found that often people who have experienced trauma are distrustful of authorities, which can impede their access to appropriate care (O'Donnell et al , 2014). The evidence shows that engaging this cohort in services relies on the establishment of trusting relationships, and that they are least likely to proactively seek out support.

Our experience, as part of the Victorian Indigenous Statewide Homelessness Network, is that Aboriginal consumers often prefer to receive support from Aboriginal specific, targeted, trusted, local services. This is likely to also be true for CALD consumers, who may have language barriers, and limited understanding of our legal system, and their rights and responsibilities.

For these individuals, access to justice is usually most effective when there is co-location of homeless and justice services, or where justice related services conduct in-reach or outreach to consumers. This enables people to more efficiently resolve their issues in one place, as well as to be provided the support from an existing trusted worker who can identify the legal dimension of their problem, and provide a direct introduction or 'warm referral' to a legal worker who can assist them to resolve their problem.

Options for diverting people from civil litigation and into alternative services where appropriate, such as a 'triage' model

CHP sees legal triage models as an important component of the spectrum of services that should be available in the community. As noted previously, while a centralized

access point may be of particular benefit to many, this may not be adequate or always appropriate to engage particularly vulnerable consumers.

People experiencing vulnerability, or multiple vulnerabilities, who also have unresolved legal issues, may require more resource-intensive models in order to seek or receive legal help. This, in many cases, involves a range of supports that include, but are not limited to legal advice. As such, a coordinated response is often required. In relation to legal advice, as we have found with our Homelessness Advocacy Service, triage models also serve to assist people to recognize and exercise their rights.

People accessing Specialist Homelessness Services, generally have to do so through a local access point. These environments are high volume, and high demand. Services are already struggling to respond to excessive demand on Specialist Homelessness Services, and as such, identification and triage of legal issues may not occur until quite some time later when the client has commenced receiving case management.

Colocation of legal services and advice in agencies, as well as outreach and/or in reach, would assist front line workers to facilitate improved access to justice through triage models.

Conclusion

CHP's submission to the Access to Justice Review has focused on key elements of disadvantage within the justice system that apply to people who are at risk of or experiencing homelessness.

While CHP is aware of the particular issues that face Aboriginal communities, CHP would recommend that the Review pay particular attention to the submission made to the Productivity Commission by:

- Indigenous Legal Needs Project and Victorian Aboriginal Legal Service, and
- Aboriginal Family Violence and Legal Services Victoria

CHP believes that Victoria needs a range of services to respond to access to justice issues, that focus on consumer empowerment, and allow individuals the opportunity to both exercise their rights and their responsibilities under the law.

We believe particularly vulnerable individuals need additional, usually face-to-face supports to respond to and resolve justice issues, due to competing complexities in their lives.

We would welcome the opportunity to further participate in this discussion, and to facilitate the inclusion of consumers with a lived experience of homelessness.

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