

Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness
A joint initiative of the Public Interest Law Clearing House Inc
and the Public Interest Advocacy Centre Ltd



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Mr James Wood AO QC
Chairperson
NSW Sentencing Council
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15 December 2008

Dear Mr Wood,

Review of Alcohol-Related Violent Offences

I am writing in response to the call for submissions into the NSW Sentencing Council's Review of alcohol-related violent offences.

The Homeless Persons Legal Service (**HPLS**) provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. In addition to providing free services, HPLS has a policy role, which involves identification of key issues that affect homeless people and working with all levels of government and other relevant organisations in order to deliver better outcomes for people who are homeless.

HPLS is concerned that the proposed changes to section 21A of *the Crimes (Sentencing Procedure) Act 1999* (NSW) to make the intoxication of an offender an aggravating factor in sentencing will disproportionately affect people experiencing homelessness.

Unfortunately, there are strong links between homelessness and the use and abuse of alcohol. A recent report by the Australian National Council on Drugs (ANCD) estimated that up to 55% of people sleeping rough are dependent on alcohol.¹ These high figures are supported by data collected from users of Supported Accommodation Assistance Program (SAAP) services in 2005/6 that revealed one in three people

¹ Jeremy Northcote and Zaza Lyons, *Alcohol and other drug use among those who are homeless* (2008) Homeless Information Portal <<http://contopiacms.com/>> at 14 December 2008.

using these services had substance abuse issues.² Studies have also revealed that the longer a person is homeless, the more likely they are to abuse alcohol.³

Those experiencing homelessness are also more likely to come in contact with the criminal justice system than other members of the community. Earlier this year, HPLS appointed a Solicitor Advocate in Criminal Law in order to deal with the large number of requests from homeless people seeking assistance in minor criminal matters. Since commencing the position in January 2008, the HPLS Solicitor Advocate has provided advice and representation in criminal matters to over one hundred clients.

In HPLS's experience, the high numbers of homeless people seeking assistance in minor criminal matters is caused, in part, by the public nature of the lives homeless people are forced to live due to their lack of appropriate accommodation. Subsequently, many homeless people are forced to conduct their private activities in public, for example sleeping, toileting, eating and drinking. The public nature of this conduct is what brings many individual experiencing homelessness into contact with police and other law enforcement agencies.

The high level of interaction between homelessness, alcohol abuse and the criminal justice system means that people experiencing homelessness are likely to be affected by any amendment to section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) to make intoxication of an offender an aggravating factor in sentencing. HPLS is concerned that the result of this proposed change would be to remove the distinction between the court's treatment of minor and more serious offences, which in turn will lead to higher rates of imprisonment among homeless people.

The addition of alcohol as an aggravating factor under section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) is also inconsistent with treatment given to someone with a drug addiction in sentencing. Drug addiction is not currently listed under section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW). The Supreme Court of NSW through *R v Henry*⁴ established that while an offender is unable to rely on a drug addiction as a mitigating factor in offending, nor can such an addiction be relied upon by the Prosecutor as an aggravating factor in the offence.

HPLS believes a more successful and consistent approach to reducing alcohol-related violent crimes would be through the provision of court-sponsored treatment programs for those with alcohol addictions. Currently, the eligibility for successful court rehabilitation programs, such as the Magistrates Early Referral Into Treatment Program (MERIT), is restricted to those with a drug addiction. In HPLS's experience the MERIT program enables those with drug addiction to address the reasons underlying their offending behaviour.

² Australian Institute of Health and Welfare, *Supported Accommodation Assistance Program National Collection Data 2005-6(2007)* <<http://www.aihw.gov.au/housing/sacs/ndca/index.cfm>> at 15 December 2008.

³ Shelley Mallett, et al, *Disrupting Stereotypes, Young People, Drug Use and Homelessness* (2003) 341.

⁴ *R v Henry* (1999) 46 NSWLR 346.

Should you have any questions about HPLS's comments please feel free to contact me on (02) 8898 6510.

Yours sincerely

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