

# **Homeless Persons' Legal Service**

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



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## **Taking action on homelessness: Response to the NSW Homelessness Action Plan**

**2 March 2009**

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Homeless Persons' Legal Service

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## Introduction

### Homeless Persons' Legal Service

In 2003, following an extensive consultation process, the Homeless Persons' Legal Service (**HPLS**) was established by the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**).<sup>1</sup> HPLS is funded by the NSW Public Purpose Fund through the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates nine clinics on a roster basis at welfare agencies in the greater Sydney area.<sup>2</sup> These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from PILCH members.<sup>3</sup> Since the launch of HPLS in May 2004 it has provided advice to over 2000 homeless people.

### NSW Homelessness Action Plan

HPLS welcomes the opportunity to respond to the NSW Homelessness Action Plan (the **Action Plan**). HPLS notes, however, that the time allowed for review and comment on the Draft Action Plan was less than one week. This is extremely disappointing and makes it impossible for a small organisation to provide anything more than a summary response. It has precluded HPLS from undertaking effective consultation with those affected directly by homelessness and by the NSW Government's proposed actions. As such, it is likely that the resulting Action Plan will be less effective in responding to homelessness.

<sup>1</sup> Further information about the Public Interest Advocacy Centre and the Public Interest Law Clearing House is provided as Appendix A to this document.

<sup>2</sup> The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Normal Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

<sup>3</sup> The following PILCH members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Deacons, DLA Phillips Fox, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW and Minter Ellison.

# **Strategic Direction and Outcome 1 – Prevention of homelessness**

## **Action: Review current data on people at risk of eviction and identify priority groups for intervention**

HPLS urges the NSW Government to include boarders and lodgers as a priority group for intervention. Currently, boarders and lodgers are expressly excluded from the operation the *Residential Tenancies Act 1987* (NSW). In HPLS's experience, this lack of protection contributes to the rates of homelessness because of the power of landlords to evict tenants without grounds or notice.

HPLS supports a review of current data and identification of priority groups but strongly believes this action should go much further to include legislative amendment to offer the same protection of tenancy rights to boarders and lodgers.

HPLS believes this action should be commenced in 2009/10.

## **Action: Conduct review of Housing NSW policies that may contribute to eviction, tenancy and exit failure**

HPLS identified the need for regular reviews of Housing NSW policy as a priority in the earlier Strategic Framework process. HPLS believes that this review process should involve the NGO sector and those who have personal experience of homelessness to ensure the review is informed by the day-to-day reality of homelessness in NSW.

HPLS believes this action should be commenced in 2009/10.

## **Action: Work with the Commonwealth to review Centrelink's breaching policy**

HPLS recognises that homeless people being breached is a significant issue and submits that the NSW Government should work with the NSW Centrelink Homelessness Reference Group and other agencies working with homeless people as part of the review process.

HPLS believes this work should be completed as a priority in 2009/10.

The NSW Government should also commit to working with the Commonwealth on other Centrelink issues affecting homeless people. Please see below for a discussion of Centrelink's Crisis Payment.

## **Action: Develop discharge plans at point of entry for all clients exiting facilities**

While advocating strongly for adequate post-release planning for those exiting prisons, HPLS is concerned that this priority may fail to address those people who may be in custody for the short term (such as being on remand).

People who are on remand make up approximately 50% of all detainees in custody and many of those who move from remand back into the community are at high risk of homelessness due to inadequacy of support services.

This action also fails to address the impact of bail and refusal of bail for young people at risk of homelessness. Many young people at risk of homelessness who have been granted bail are detained in custody due to a lack of appropriate accommodation that meets the conditions set for bail. In order to ensure that the safety of a young person is secured, the Court will often grant bail to a young person with a condition that they 'reside as directed by DoCS [the Department of Community Services] and DJJ [the Department of Juvenile Justice] and not to be released until appropriate accommodation has been found'. What usually occurs in such a situation is that the young person remains in custody, due to lack of accommodation options and limited assistance from DoCS.

HPLS also strongly advocates that non-government organisations, such as the Community Restorative Centre, that work with people upon discharge from prison should be involved as a partner in the development of discharge plans. HPLS believes this work should be commenced as a priority in 2009/10.

### **Action: Provide education and training for staff involved in developing discharge plans**

HPLS is concerned that Government ensures that any such training is a compulsory aspect of all relevant correctional staff training (whether within a privately run prison or detention centre or otherwise).

### **Action: Analyse obstacles that prevent access to legal and medical services**

Review of the obstacles to legal services for homeless people has been extremely effectively and adequately addressed in the Law and Justice Foundation of NSW's Report, *No home, no justice?*. That report indicates that traditional models of legal service delivery present a barrier to homeless people. As many homeless people have pressing needs to attend to—such as finding accommodation and getting money for food and other basics—there can be little time or capacity to see a lawyer. Legal problems are likely to accumulate and will generally compound the longer they are left unattended.

Many people with addictions, mental illness or intellectual disability—a significant population within the homeless community—have difficulty remembering to attend appointments, court dates and so on. Further, many homeless people will have both legal and non-legal problems and not be able to distinguish easily between the two, or even know that they have legal rights to assert.

The HPLS model has been developed to overcome some of these barriers faced by homeless people in accessing legal services. The free legal clinics are based at locations familiar to and easily accessible by homeless people: within agencies that already offer services and support to homeless people, such as casework, financial management, counselling and accommodation. Homeless people do not need to

make appointments and the length of time they can spend with the lawyer is not pre-determined or limited.

Through its work, HPLS continues to seek to further improve its model to overcome barriers to access. By way of example, in 2007, HPLS identified the need for specialist lower court advocacy to represent those homeless people who are least likely to be able to obtain assistance from Duty Lawyers at the courts. In 2008, HPLS established the position of HPLS Solicitor Advocate. The Solicitor Advocate works closely with the lawyers at the clinics to identify clients who have pending court attendances who will need special assistance to prepare and attend the court. The Solicitor Advocate then prepares for the court hearing, obtaining reports and other documents to support the client, and then attends the court hearing with the client, advocating for them. The Solicitor Advocate also assists with follow up work needed to take advantage of court diversion options where ordered.

### **Action: Ensure availability of Legal Aid services to people at risk of homelessness**

The current eligibility criteria for and funding levels of Legal Aid may exclude people who are at risk of homelessness from accessing legal advice and representation. Addressing this should be a high priority for the NSW Government.

### **Action: Expand services of the Homeless Persons' Legal Service in priority locations**

As noted above, HPLS is already considering innovative ways to expand its service a range of particularly disadvantaged groups within the homeless population: young people in detention (particularly Indigenous young people), women and families, and older women.

HPLS is considering piloting an outreach legal clinic to specifically target rough sleepers not accessing any welfare agency.

These are important initiatives to meet identified gaps in current service delivery that should be commenced in 2009. Additional resources may be required to ensure the effective supervision of the legal assistance can be maintained and outreach can be conducted effectively.

### **Action: Develop and disseminate an information card regarding legal services for people who are at risk of homelessness**

HPLS already produces an information card listing the location and time of all nine of its free legal clinics. This is freely distributed to welfare agencies, community organisations, hospitals, etc. HPLS has also produced a poster on display at many welfare agencies and community organisations listing the areas of law in which HPLS lawyers can assist homeless clients.

HPLS would welcome the opportunity to be involved in the development of any new information card and/or support for wider dissemination of the existing information resources.

# **Strategic Direction and Outcome 2 – Effective responses to homelessness**

## **Action: Provide assistance for people to establish and maintain tenancy in the private rental market (such as Rentstart).**

While supportive of programs such as Rentstart, HPLS does not believe that the problems homeless people have accessing private rental are restricted to financial problems. Homeless people often have adverse listings in Rental Tenancy Databases, such as the TICA system. Such listing effectively prevents a person accessing the private rental market in the future. Homeless people will also often have extremely limited options in relation to prior tenancy references.

Homeless people experience exclusion from the private rental market simply because they are homeless. Discrimination on this basis is not prohibited under the *Anti-Discrimination Act 1977* (NSW) or under federal discrimination law. It is HPLS's experience that real estate agents are unlikely to accept an application for someone that has been or currently is homeless.

## **Action: Review the eligibility for priority housing**

HPLS endorses the Government's proposal to review the current eligibility requirements for access to priority housing for homeless people. HPLS has come across numerous cases in which long-term homeless clients have had their priority housing applications rejected on the basis that they can, according to the assessment by the NSW Housing, resolve their housing need in the private rental market. All of these clients have significant mental health issues and rely on Centrelink benefits as their only form of income.

In determining that such individuals can afford private rental, the Department of Housing calculates that an individual receiving Newstart Allowance (including Rent Assistance) could choose to spend (and afford to spend) up to 60% of their total payment on rent. The calculation fails to take into account regular and ongoing medical and pharmaceutical expenses, the cost of food, utilities and other expenses associated with maintaining a tenancy.

HPLS believes that the eligibility requirements applied in such cases are unreasonable and demeaning for someone currently experiencing homelessness.

Further, the approach taken by the Department of Housing fails to understand and take account of the discrimination experienced by homeless people attempting to enter the private rental market.

This review should include the NGO sector and those who have personal experience of homelessness and should be completed in 2009/10.

# **Strategic Direction and Outcome 3 – Breaking the cycle**

## **Action: Establish the most effective ways of seeking the views and advice of homeless people**

In order to ensure that NSW Government's consultation with those experiencing homelessness is genuine and effective, government should utilise the expertise of participants in homeless consumer groups. One such group, the Homeless Advocacy Advisory Group, has recently been established by HPLS, with funding from City of Sydney Council. The Group is the first homeless advisory group in NSW, and consists of people who are currently and formerly homeless. The Group has been established to ensure those experiencing homelessness are effectively consulted and involved in public policy decisions that affect them. The group is not a shortcut for government to hear from homeless people, but rather a mechanism to provide advice on how best to do so.

HPLS recommends that NSW Government make use of the Group as a means to seek advice and input into policies affecting homeless people.

However there is also a need to ensure that views of homeless people in areas outside Sydney are considered.

HPLS aware that other non-government organisations have asked the NSW Government to consider the development of a large advisory group that will be representative of rural, regional and remote areas as well as Sydney.

HPLS's experience with the Homeless Advocacy Advisory Group is that such a large catch-all representative group is impractical and unlikely to be successful. While it is only in its early stages of development, the Homeless Advocacy Advisory Group requires significant training and skill development as well as administrative and process support. Its effectiveness depends on high levels of trust between the members and with the support staff. A large group that was trying to cover the whole of NSW would find it much more difficult to get together regularly, develop the necessary trust and effective mechanisms for operating.

HPLS submits that Housing NSW should investigate establishing a number of homeless advisory groups based on the model of the Homeless Advocacy Advisory Group.

HPLS also takes this opportunity to note that the process undertaken by Government to develop the draft Action Plan failed to effectively involve homeless people and the extremely short timetable has meant that HPLS has been unable to effectively consult with homeless people about the proposed actions and priority.

## **Action: Explore provision of *pro bono* legal service agreements for people who are homeless or at risk of homelessness**

The HPLS is a joint initiative of the Public Interest Advocacy Centre (PIAC) and the Public Interest Law Clearing House (PILCH). PILCH is supported by many member organisations including law firms, solicitors and barristers and, as part of its core business, connects people requiring legal services with solicitors and/or barristers with the expertise and capacity to assist them on a *pro bono* basis.

HPLS strongly suggests that PILCH should be involved as a partner in this initiative.

It should be noted that accessing *pro bono* assistance is significantly more difficult in regional, rural and remote areas. The development of outreach services in regional NSW by Legal Aid NSW has been an important adjunct to the HPLS as it overcomes the particular challenges of delivering outreach services in areas where there are few private law firms. Consideration needs to be given to what different resourcing models are necessary to support outreach legal services in those areas where *pro bono* legal services cannot be achieved. This could include funding of local community legal centres to undertake targeted outreach and funding of Legal Aid to expand its outreach in regional, rural and remote areas of NSW.

## **Additional actions**

### **Action: Work with the Commonwealth to review the Centrelink crisis payment**

The Centrelink Crisis Payment is one-off financial assistance provided to individuals who are experiencing severe financial hardship and who are eligible to receive a Centrelink pension or benefit. To be eligible for a Crisis Payment, an applicant must either have experienced an extreme circumstance (such as a natural disaster or domestic violence) that has forced them to leave their home; remained in their home after the removal of a family member because of domestic violence; or have been recently released from prison or psychiatric confinement after having been in custody for at least 14 days.

While the provision of financial assistance to individuals on release is welcomed, the current amount of the payment is not. The current payment is only equal to one week's payment of the recipient's normal Centrelink pension or benefit payment without add-ons (around \$225 for those on Newstart Allowance). This is particularly problematic because individuals being released from prison wait 14 days until they receive their first regular Centrelink payment.

The current level of Crisis Payment is insufficient to enable the individual to obtain adequate housing for the two-week waiting period before they are able to access the regular income support payment. Even emergency, temporary accommodation services have fortnightly fees well above the Crisis Payment levels. This means those receiving the Crisis Payment are at a significant risk of becoming homeless and re-offending.

HPLS recommends that the NSW Government work with the Federal Government to increase the amount of the Crisis Payment to at least two weeks' entitlement. A person in receipt of a Crisis Payment should also be eligible to apply for a further one-off payment, equivalent to two weeks' entitlement, if they are able to demonstrate an urgent need to obtain accommodation or face significant financial hardship.

## Conclusion

HPLS welcomes the opportunity to have input to the NSW Government Homelessness Action Plan. HPLS is keen to remain involved with Government in the further development and implementation stages of the Action Plan and urges the NSW Government to ensure that any future steps are properly resourced and allow sufficient time to properly engage with those most directly affected: homeless people and those at risk of homelessness.

## APPENDIX A

### The Public Interest Advocacy Centre

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.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

### The Public Interest Law Clearing House

The Public Interest Law Clearing House (**PILCH**) was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

1. to identify matters of public interest that warrant legal assistance *pro bono publico*;
2. to identify the legal needs of non-profit organisations;

3. to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
4. to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
5. to expand the participation of private practitioners in the law reform process;
6. to seek the integration of *pro bono* work with legal practice; and
7. to encourage co-operation between private practitioners and public interest lawyers.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association and PIAC.