



public interest
ADVOCACY CENTRE

Submission to the Inquiry into The Protocol for Homeless People in Public Places

13 March 2020

About the Public Interest Advocacy Centre

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 and communication. PIAC's work on homelessness is delivered through two major projects.

The Homeless Persons' Legal Service

The Homeless Persons' Legal Service (HPLS) was founded in 2004 to provide free legal help to people who are homeless or at risk of homelessness. Now operating at 16 legal advice clinics throughout inner Sydney, outer western Sydney and the Hunter Valley, in partnership with 15 major legal service providers. HPLS is PIAC's largest legal project and helps more than 700 people a year to resolve issues with tenancy, credit and debt, criminal law, and service access.

StreetCare

HPLS operates alongside StreetCare, a consumer advisory committee established in 2009. Comprising individuals with lived experience of homelessness ('consumers'), StreetCare has a diverse membership including women and men of different ages, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. With support from PIAC, StreetCare provides direct feedback and policy analysis from consumers to government, with the aim of tackling the structural determinants of homelessness.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

Introduction

StreetCare members played a key role in the drafting of The Protocol for Homeless People in Public Spaces (the Protocol) in 2012.

This submission is informed by the lived experience of StreetCare members and interviewees of our forthcoming report, 'Policing the Public Space', as well as our experience providing legal assistance through HPLS.

Our specific comments against the terms of reference are set out below.

A: Whether the protocol continues to provide an effective framework for government organisations with an operation presence in public places and for services that support people who are experiencing homelessness

In our view, the Protocol continues to be a critical guiding document for agencies that manage public spaces and interact with individuals experiencing homelessness.

Importantly, the Protocol acknowledges and promotes the rights of individuals experiencing homelessness, recognising that their rights must be protected alongside the rights of other community members. The Protocol also provides guidance on how organisations may be able to assist rough sleepers to access appropriate services, and to provide advice and information on points of assistance they may wish to access in the future. The Guidelines for Implementation of The Protocol (the Guidelines) also provide useful guidance about the importance of delivering this service provision in a trauma-informed, non-invasive way.

We recognise that the homelessness services sector has changed significantly since the Protocol was drafted in 2012, and that some of those changes may have impacted on the operation and effectiveness of the Protocol. In particular, we have seen an increase in efforts to assist rough sleepers in the inner-city of Sydney by providing services using an 'assertive outreach' model for service delivery, discussed further below in relation to point C. For further background, we also note recent reviews of the effectiveness of assertive outreach services.¹

In our view, the Protocol continues to provide useful practical guidance in this context. Assertive outreach can be conducted in a way that is both supportive and respectful of the rights of rough sleepers, and the Protocol can helpfully inform those approaches.

While the Protocol continues to provide relevant guidance to its signatories, and potentially other groups interacting with rough sleepers, we note that the Protocol does not provide for an accountability mechanism to address non-compliance. Instead, the Protocol relies on good faith to ensure organisations who have signed on to the Protocol are 'keeping their word' about how

¹ Homelessness New South Wales, *Review of the HOST and HART models for addressing rough sleeping in inner-city Sydney* (Consultation Paper, 8 August 2019).

they interact with individuals experiencing homelessness. To ensure the continuing relevance of the protocol, options for increasing accountability need to be developed.

In particular, signatories should be encouraged to recommit to meaningful implementation of the Protocol, and to publicly report on the steps they have taken to do this. At a minimum, this reporting should cover the training provided to staff who interact with rough sleepers. Signatories should also consider establishing a community of practice for lead practitioners working in this area, facilitating the development of organisational expertise and creating a forum for sharing examples of good practice.

Compliance with the Protocol would also be improved by having a clearly identified lead agency with responsibility for monitoring compliance with the Protocol and ensuring that signatories remain engaged with, and committed to, its implementation. The lead agency could also have responsibility for organising reporting on the protocol, coordinating cross-agency training, and developing other initiatives to support compliance with the Protocol.

Recommendation

Accountability mechanisms should be incorporated into the Protocol. In particular, signatories should be required to report publicly on the steps they have taken to implement the Protocol and the training provided to staff who interact with rough sleepers.

Recommendation

A lead agency should be identified with responsibility for monitoring compliance with the Protocol and ensuring that signatories remain engaged with, and committed to, its implementation. This could include responsibility for coordinating reporting, supporting training, and developing other initiatives to promote compliance with the Protocol.

B: The extent to which the Protocol is being implemented in practice by government organisations providing direct service delivery, and non-government organisations contracted on behalf of government

In our experience, there is considerable variability in practice by employees of organisations that are signatories to the Protocol.

In research for our forthcoming report, 'Policing the Public Space', we spoke to consumers who had been sleeping rough in the two years from July 2017–June 2019 about their interactions with NSW Police and other government officials. These consumer responses highlight a number of points of concern as well as examples of good practice.

Good practice

There are some notable examples of good practice by organisations that interact with rough sleepers. For example, the City of Sydney Council has adopted and implemented the principles of the Protocol into their homeless outreach practice. We consistently hear from individuals experiencing homelessness and long-time rough sleepers that the City of Sydney Public Space Liaison Officers operate in a non-invasive way, respecting the rights of rough sleepers while also delivering trauma-informed intervention when appropriate.

Some examples of good practice by police are highlighted in the research extract below.

Paolo

Paolo told us that he had recently been released from prison when he was apprehended by police on suspicion of shoplifting. He was staying in a residential homelessness program at the time. During this encounter, police made contact with his caseworker, who advocated for him to be able to return to the service. Due to his long history of incarceration and homelessness, Paolo reflected that if had been arrested that day, it would have 'shattered him'. He said that in this interaction, Police were understanding and talked to him respectfully as they accompanied him back to the service.

Owen

Owen was experiencing a period of rough sleeping, in which he was sleeping in his car with his young daughter. He disclosed that it was an interaction with a particular police officer that led him to engaging in services. Owen described the officer's genuine concern and respectful communication while explaining what services were available for Owen in the local area and how he could contact them, in order to avoid further negative consequences such as the removal of Owen's child from his care.

Concerns with police practice

We are concerned with reports from consumers that suggest principles of the Protocol have been disregarded in favour of approaches that appear to involve punitive, arbitrary policing of public spaces.

In our recent study, participants identified that they had experienced particular difficulties with police, citing examples of misuse of police discretion, improper and potentially unlawful stops and searches, and improper use of move-on orders and strip-searches.

Monica

Monica is an Aboriginal woman who reported having been strip searched eight times over a period of three months at Central railway station, without appropriate privacy measures in place. None of the searches resulted in any prohibited items being found in her possession or any charges being laid.

Monica told us; 'If I'm laying down in the park, just enjoying it and having a cigarette, they [The Police] will come up and say "What are you doing here? How long have you been here? Why are you here? Where do you live?" and then they just start strip searching.'

Ryan

Ryan told us that move on orders disrupt the survival measures that a person has to take when they are sleeping rough. Usually, rough sleepers locate a spot and secure this position as 'theirs', at least for the coming night. When Ryan is asked to move on from these spots, seemingly without legal justification for the order, this has a direct impact on his safety and security. It is often too late in the day to find somewhere else appropriate to sleep, and so he ends up sleeping in spaces that are unsafe, or that have no protection from the rain, wind, or other people.

Ryan said, 'you'd think after a week of them asking you the same question every day, then they'd know that you're homeless and you're just sitting there, not doing anything wrong, but it's not like that.'

Additionally, consumers recounted experiences where police practice failed to recognise the complexities of homelessness and suggested gaps in knowledge or training about trauma-informed approaches to dealing with mental health, substance dependence, and other complex behavioural presentations.

Riley

Riley told us that he was suffering from a mental health crisis and, having previously attempted suicide on multiple occasions, jumped in front of an oncoming train in an attempt to end his life. He was detained by staff at the railway station and police were called to attend. When the police arrived, Riley reported that he was not offered any mental health assistance: instead, he was arrested and taken to the local police station. He was charged with an offence relating to obstructing the train service. No further follow up or referrals were conducted and no assistance provided to Riley in relation to his ongoing mental health issues.

Experiences like Riley's highlight the importance of ensuring knowledge within NSW police about how they can appropriately refer (or better assist) individuals experiencing homelessness and a commitment to making such referrals.

The Protocol establishes a positive framework for addressing these issues. The Guidelines for Implementation (the Guidelines)² provide useful guidance on how agencies such as Police can appropriately respond to people experiencing homelessness in public spaces. The Guidelines also encourage training in mental health first aid and other relevant courses to promote understanding and awareness of the impact of trauma and other complex needs may have on people experiencing homelessness.

Recommendation

Signatories to the Protocol, including NSW Police, should conduct whole-of-organisation training on the Protocol, including adopting recommendations in the Guidelines for Implementation, and ensuring that all front-line officers have access to training in mental health first aid and trauma-informed practice.

C: The appropriateness of the Protocol to support joint responses between government organisations, non-government organisations and local governments working in partnership to respond to homelessness.

Assertive Outreach

Since the introduction of the Protocol, the homelessness sector has engaged in a number of collaborative efforts to address homelessness, particularly in the inner city area of Sydney. Most notable among these are the assertive outreach projects of the Homelessness Outreach Support Team (HOST) and Homelessness Assertive Response Team (HART), run by a mix of government (HOST) and non-government organisations (HART). We have been advised that the

² Department of Family and Community Services (NSW) *Protocol for Homeless People in Public Places: Guidelines for Implementation* (2013).

principles of the Protocol have been imbedded in the HOST and HART practice models, which focus on providing trauma-informed care.

We note that assertive outreach involves proactive engagement with rough sleepers, while the Protocol states that that people experiencing homelessness in public spaces should not be approached unless they require, or request, assistance. In our experience, workers in both the HOST and HART programs are aware of this tension, and find the Protocol provides useful guidance on how they can avoid overstepping in their work.

This highlights that the Protocol is a useful 'baseline document' for assertive outreach and other collaborative approaches, providing a shared understanding of good practice, in particular in addressing complex, high needs clients. In our experience, assertive outreach is most effective when workers respect individual rights and provide a service informed by principles of trauma-informed care.

Policing

By contrast, the feedback we have received from homelessness service providers suggests relatively low levels of cooperation between NSW Police and other agencies, notwithstanding that NSW Police are signatories to the Protocol.

One provider commented that they felt they were racing against time to find suitable accommodation for their client before the client was incarcerated again, and that there was little prospect of working collaboratively with police to address this concern. Service providers have also commented that while police seem to expect services providers to work cooperatively in relation to law enforcement matters (for example, to execute an arrest warrant), police offered little cooperation in relation to diversion and referral.

Police have the potential to play an important role in reducing homelessness. For some individuals who have difficulty engaging with support services, police may be one of their only sources of contact with Government. We note that there are some positive examples of good practice by police (see the stories of Paolo and Owen above), and that improvements in policing in line with the Protocol would have significant benefits for the rough sleeping community.

Recommendation

Signatory agencies, including NSW Police, should identify opportunities to develop and strengthen referral networks and commit to working cooperatively with the non-government homelessness sector to make appropriate referrals for support.

D: Whether the protocol adequately protects the rights and interests of people who are experiencing homelessness who use public space, including Indigenous and minority groups.

In our experience, people who are members of minority groups (including Aboriginal and Torres Strait Islander people) are particularly likely to be the subject of inappropriate and invasive policing. While the Protocol provides useful guidance on good practice, it is not clear that it has protected minority groups from these negative practices.

A particular limitation of the Protocol is the absence of an independent complaint mechanism. The Guidelines state that 'Complaints regarding the Protocol should be dealt with under each government organisation's existing policies and procedures'.³

It is well known that people experiencing disadvantage, including rough sleepers and Aboriginal and Torres Strait Islander people, are often reluctant to make complaints about Government agencies. Complaint processes may appear to be inaccessible, and many individuals rationally fear that if they complain, they may be denied services, treated less favourably, or retaliated against. For example, in the case of police, rough sleepers who have made complaints have told us that they have been confronted soon after with further intimidating conduct.

Greg

Greg recounted his impression of police complaints procedures:

'There is no point saying anything, wasting my time like I'm just making it worse for me in the future. If I make a complaint, the officer next to him is going to back him up, he's not going to back me up, why would he? That's just the way that stuff works. It's always been like that. In the past when I have complained, I've been harassed more definitely. The more you draw attention to yourself the more they are going to pick you out, single you out. That's been my experience my whole life with them.'

Tom

Tom told us:

'After one incident, I went up and complained to the boss at [suburb] station, saying that I just got abused by one of your officers. Well, two days later, I think a couple of his friends came down. I was just standing there, having a cigarette, and out of nowhere, there were four police officers surrounding me, dressed in riot gear, demanding me to get up against the wall. It was quite scary, because you don't know whether they're going to stomp on your head or not.'

There is therefore a need for an appropriate independent mechanism for complaints of, and investigations into, breaches of the Protocol by any of its signatories, for example through the Ombudsman. This should allow for both individual complaints and systemic/'own motion' investigations. Such an independent complaints body should also have responsibility for reporting regularly on complaints received.

Such complaints mechanism should not overlap with other independent complaints avenues, such as the Law Enforcement Conduct Commission, which will be appropriate for more serious complaints of misconduct.

Recommendation

Signatories to the Protocol should consider establishing an independent complaints mechanism, such as through the Ombudsman, that could be incorporated into the Protocol to improve accountability. Such a mechanism should also be responsible for reporting on complaints received.

³ Ibid 3.

E: Whether the protocol adequately balances the rights and interests of people who are experiencing homelessness with those of residents, businesses and other organisations using public places.

The Protocol has been designed to achieve a balance between the effective policing and regulation of public space to protect the interests of residents, businesses and other users, and the rights and interests of people experiencing homelessness. We believe it achieves this balance.

We also recognise that homelessness is a legitimate issue of concern for members of the public and businesses, and we believe that everyone in our community has a role to play protecting the human rights of rough sleepers.

Local businesses and community members have told us that while they want to help out and work towards a solution to homelessness, they are sometimes unsure of how best to help. We are aware of cases in which an earnest desire to help has led to actions such as placing food items next to a person who is asleep, or handing out tents or other forms of temporary shelter. These gestures are well-intended but can create problems for rough sleepers, for example by attracting vermin, creating hygiene issues, and leading to increased police attention. The provision of inappropriate materials to rough sleepers can also create a waste disposal burden for local councils.

The Protocol has the potential to provide real and useful guidance in these situations, particularly if it is expanded to include guidance about how community members can most helpfully interact with people experiencing homelessness. We note that the current list of resources attached to the Protocol is out of date, and includes references to disbanded services such as the 'Homeless Persons' Information Centre'.

Recommendations

- *Consideration should be given to expanding the Protocol to include guidance for members of the community at large.*
- *The Protocol should be updated with a list of current resources, including referral options, and sources of information for the general public.*

F: Any other related matters

As The Protocol has not been updated since 2013, there are a number of phrases used in language of the Protocol and the Guidelines which do not reflect current preferences about language usage. For example, as addiction has now been recognised as a chronic health condition, the term 'drug dependence' is now used in preference to 'drug misuse'. We note that the expression 'people experiencing homelessness' is now used in preference to the term 'homeless people'.