



QUEENSLAND PUBLIC INTEREST LAW CLEARING HOUSE INC
Homeless Persons' Legal Clinic

with

Brisbane Youth Service
Salvation Army Youth Outreach Service
Australian Red Cross (through its Youth Night Café)



Written submission to the
National Youth Commission Inquiry into Youth Homelessness

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National Youth Commission Inquiry into Youth Homelessness

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1 List of Recommendations

Recommendation 1: *That State, Territory and Federal governments increase funding for preventative and early intervention drug & alcohol strategies for young people experiencing or at risk of homelessness.*

Recommendation 2: *That State, Territory and Federal governments increase funding for mental health programs to provide long-term treatment & support for young people experiencing or at risk of homelessness.*

Recommendation 3: *That State, Territory and Federal governments recognise the benefit of holistic, outreach youth homelessness services by providing increased and ongoing funding to community organisations delivering those services.*

Recommendation 4: *That State, Territory and Federal voting legislation be amended to improve the ability for young homeless people to exercise their right to vote.*

Recommendation 5: *That all State and Territory public order legislation be reviewed and amended to include statutory defences for all public space offences, thereby minimising the criminalising impact of public space laws on young homeless people.*

Recommendation 6: *That the Queensland government recognise 17 year olds as children by immediately implementing s6(1) of the Juvenile Justice Act 1992 (Qld).*

Recommendation 7: *That compulsory annual training be introduced for all State and Territory police services about youth homelessness which includes the participation of local youth support services.*

Recommendation 8: *That all State and Territory fine systems be reviewed and amended to give such systems a wide discretion to waive fines on the basis of a defendant's homelessness and/or inability to pay.*

Recommendation 9: *That all State and Territory governments implement Special Circumstances Courts aimed at diverting homeless defendants away from the criminal justice system and into support services.*

Recommendation 10: *That any existing Special Circumstances Courts initiatives be continued and be adequately funded.*

2 Introduction

2.1 About the report - authors & aims

This submission was substantially researched and written by two volunteers of the QPILCH Homeless Persons' Legal Clinic operating at the Red Cross Youth Night Café. It was edited by Monica Taylor, Coordinator of QPILCH Homeless Persons' Legal Clinic.

This is a collaborative submission which incorporates the views and experiences of three homeless support services in Brisbane, namely:

- Brisbane Youth Service;
- Salvation Army Youth Outreach Service; and
- Australian Red Cross (through its Night Café for young homeless people in Brisbane)

The report aims to address the majority of the Terms of Reference (TOR) of the Inquiry however it has focused on TOR 2 to 4:

- 2) To identify issues that prevent homeless young people from connecting with their local community and participating in the broader society as active citizens;
- 3) to draw attention to positive and negative changes affecting homeless young people since the last national independent inquiry on youth homelessness by HREOC in 1989;
- 4) to report on the adequacy of existing services and programs, as well as identify innovative initiatives for responding to the needs of homeless young people.

2.2 Red Cross Youth Night Café

Every Tuesday, Thursday and Sunday night, the Australian Red Cross operates a Café in inner city Brisbane for young people. Generally, the doors are open for young people between the ages of 12- 25years who are homeless or disadvantaged.

The Café is the only after-hours homeless service available for young people in the city. Each week the Café is frequented by a significant number of young homeless people, both first time visitors and regulars, who value it as a safe place to go at night.

The Red Cross staff and volunteers who manage the Café informally screen those wishing to enter to ensure the space is free from older influences, people under the influence of alcohol or drugs and people known to provoke trouble or violence. The screening process is extremely effective and based in an approach that ensures that the decisions are made without being arbitrary, judgmental or overly cautious. Young people who come to the Café respect these rules resulting in the Café's reputation as a safe place for homeless young people.

The Café provides free hot food, facilities such as showers and toilets, and outreach services including a free legal clinic every Tuesday night. The cafe also runs a range of activities with young people addressing key issues such as substance misuse. Recent activities include a production of a CD addressing substance misuse as well as photography mentoring program.

2.3 Homeless Persons' Legal Clinic

The Homeless Persons' Legal Clinic (**HPLC**) began in December 2002 and is a project of Queensland Public Interest Law Clearing House (**QPILCH**). QPILCH is a non-profit community based legal service that coordinates the provision of pro bono legal services in public interest matters. The HPLC currently operates 10 outreach legal clinics in Brisbane, Toowoomba and in Inala whereby lawyers from the private sector attend their firm's clinic to provide free, accessible legal assistance to people experiencing or at risk of homelessness. In the case of the Red Cross Youth Night Café, volunteers from Mallesons Stephen Jaques and Gilshenan & Luton attend the Café from 7 to 9 pm every Tuesday night to offer free legal advice and referral services to homeless young people.

2.4 Who we see, what we do

QPILCH and the lawyers who attend the HPLC are well placed to understand the legal problems that commonly affect homeless young people. In recent times there has been a noticeable increase in the number of clients who require assistance with criminal charges and related matters, particularly in relation to public nuisance, trespass, dealings with Queensland's State Penalties Enforcement Registry and police "move on" powers.

Since its inception, but particularly in the last two years, a major concern for the HPLC has been, and remains, the detrimental effect the Queensland criminal justice system has on homeless young people. It is rare for the HPLC to assist a young homeless person who has had no interaction with the Queensland criminal justice system. The majority of this submission therefore focuses on the criminalising effect of public space laws on homeless young people.

However, the legal problems relayed to the lawyers at the HPLC are impossible to view in isolation. Many other aspects of a homeless existence are inextricably linked with a client's 'legal' story (ranging from the cause of their homelessness to the inadequacy of services to how they are perceived by society generally) and these issues cannot be ignored. The HPLC has therefore sought the input of support services to also have a voice in this submission regarding non-legal issues affecting homeless young people.

At times, HPLC clients visit the Café merely for a catch up, or to seek advice about everyday situations which do not necessarily involve legal issues. While the type of non-legal advice some HPLC clients seek may be viewed by some as only common sense, many homeless young people have been deprived of the opportunity to freely interact with society and not surprisingly, do not have the confidence to deal with these types of issues themselves.

3 Homelessness defined

3.1 What is homelessness?

For the purposes of this submission, we adopt the concept of homelessness developed by Chamberlain and McKenzie:¹

- (a) Primary homelessness, characterised by people living without conventional accommodation. For example, people sleeping rough on the streets, squatting in deserted buildings or houses, and living in cars or improvised dwellings.
- (b) Secondary homelessness, characterised by people moving between various forms of temporary shelter, such as staying with friends or relatives (commonly known as 'couch surfing'), or in emergency accommodation and boarding houses.
- (c) Tertiary homelessness, characterised by people living in a single room in a private boarding house on a long-term basis, but without their own facilities such as a bathroom or kitchen.

Clients who visit the HPLC clinic at the Red Cross Youth Night Café span all three categories and it is not unusual for a regular client to traverse all classes of homelessness at one time or another.

A persons' homelessness status is often transient - one seemingly minor event can cause a person's homelessness to change in an instant. In our experience there is often a lot of movement between primary and second homelessness, with many young HPLC clients alternating between staying with their family or friends for a few days and sleeping rough for the rest of the week. This is particularly common for clients whose family homes are outside of Brisbane. These clients will often sleep rough during the week and on the weekends travel home to stay with their family.

¹ Chamberlain, C & MacKenzie, D (1992) 'Understanding Contemporary Homelessness: Issues of Definition and Meaning', Australian Journal of Social Issues 24(4), 274-297

Our dealings with homeless young people constantly remind us that homelessness is not just about a lack of shelter. Homelessness can also be usefully defined in other ways, such as a person's feelings of disconnection and exclusion from society. A person without a conventional home is also likely to be lacking economic and social support, access to personal amenities, safety, privacy and a sense of personal control.

3.2 What is youth homelessness?

The HPLC defines youth homelessness to incorporate any homeless person aged 25 years or under, without capriciously adhering to that cut-off. The HPLC sees clients from as young as 16, however the majority of our clients fall within the 17-25 age bracket. While it is rare for children 15 or under to visit lawyers at the HPLC, it certainly isn't rare for them to attend the Café for food or other services.

In the 1950s and 1960s, the typical homeless person in Australia was a middle aged or older single male. The Burdekin Report issued in 1989 noted that from 1970 onwards, there was a marked increase in numbers of homeless young children, both male and female. At the time the Burdekin Report was issued, 70,000 Australian children and young people were homeless.

Of course, the levels of homelessness and youth homelessness in Australia cannot be determined with precision. Any estimate of youth homelessness would often be understated, as many young homeless children are too young to seek access to homelessness services. However, there have been several investigations which seek to establish at least an approximate number of homeless young people in Australia.

The Homeless People in SAAP: SAAP National Data Collection Annual Report 2004-2005 outlined figures of the assistance given to clients by the Supported Accommodation Assistance Program from 2004 to 2005. An estimated 56,800 children received accommodation or another service through the program during this time.

Another report prepared by the Australian Institute of Health and Welfare noted that every day 200 children and their families were turned away from the homeless service system and in 2002-03, 53,800 children under the age of 18 accompanied their guardian to a homeless service.²

The Queensland figures calculated from Census night in 2001 showed that there were 9,941 homeless children between the ages of 0 to 11, 2,060 aged between 12 and 18, and 10,113 aged between 19 and 24. This is a total of 22,114 homeless young people out of a total 99,900 homeless people in Australia.³ Even so, this number is likely to be understated given the acknowledged undercount produced by Census data.

Despite the lack of a precise system to record homeless data, those working in homeless support services in Brisbane who have provided input into this submission agree that the rate of homeless young people in Queensland is at best static but has likely increased since the 1989 Burdekin report. The sheer increase in population due to interstate migration to Queensland is one reason to partly explain this growth.

In addition to a quantitative description, youth homelessness can also be described as a state of profound vulnerability. Homeless young people have a high risk of contracting serious illnesses can be caused by malnutrition, lack of hygiene facilities, inadequate sleep and exposure. Due to their age and inexperience on the streets, homeless young people are also highly susceptible to physical and mental harm arising from violent injuries, substance abuse and sexual exploitation.

² *Children Accompanying Homeless Clients 2002-2003* (2004) Australian Institute of Health and Welfare, Canberra

³ *Hidden Homelessness in Australia* (2003) Australian Bureau of Statistics, Canberra

3.3 Causes & consequences of youth homelessness

If any progress is to be made in reducing the levels of youth homelessness, the causes of homelessness must be identified and addressed.

The many causes of homelessness have been frequently canvassed and are well known. It is rare that homelessness can be attributed to one sole cause and many are intersectional and interrelated. Family issues such as domestic violence, relationship breakdown and loss of support networks are particularly prevalent in contributing to youth homelessness. Young people leaving the care of the State also represent a proportion of homeless young people and many of these young people are survivors of child abuse and family violence. Unemployment, health problems (such as mental illness), and drug or alcohol addiction are also common causes.

These causes can all be a trigger and a consequence of homelessness. The experience of homelessness can have devastating impacts on young people – they develop difficulties with trust from a very early age and may never heal from this – they may not even be able to trust people who are there to help them. It is an easy solution for young people, who are not emotionally mature enough to deal with such significant problems, to numb that pain with drugs or alcohol which are easily accessible to them.

For other young people with nowhere else to turn, it is common to get caught up in street life and feel a bond with the others experiencing homelessness, particularly older street kids who may act as their protector. Vulnerable young people are at an enormous risk of harm as they adopt a ‘street identity’ alongside other hardened streeties.

Undoubtedly, many young homeless people are wise and mature beyond their years; they face danger every day of their life to which they respond to with considerable resilience. But any perceived maturity or sense that they are able to cope should not disguise the fact that they are still children, who have basic needs which are not being met by society.

4 Human Rights

4.1 International conventions

There are many international instruments touching on issues affecting homeless young people. These include article 11 of the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) and article 27 of the Convention on the Rights of the Child (**CRC**) which both provide that right to an adequate standard of living including food, clothing and housing. Other relevant instruments include the Universal Declaration of Human Rights (**UDHR**) particularly Articles 16 and 25 which state that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control; the International Covenant on Civil and Political Rights (**ICCPR**) (Articles 2.1 and 17) and the ICESCR (Article 2.2).

Perhaps most pertinent, however, is the Declaration of the Rights of the Child (**the Declaration**). The Principles enunciated in this Declaration establish that children have a right to adequate housing, to enjoy the benefits of social security (which will be addressed below) and to protection from all forms of neglect, cruelty and exploitation. Principle 6 of the Declaration specifically provides that: ‘Society shall have the duty to extend particular care to children without a family and to those without adequate means of support.’

4.2 'Special Protection'

Principle 2 of the Declaration states that: 'The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.' Under the Declaration, a government has a duty to provide assistance to families to enable those families to discharge their duties towards their children and provide them with, if not moral, then at least material security. If children cannot be protected within their own families then it falls to the government of the State to protect these children directly. This means that children are entitled to protection beyond that which would normally be required to be provided by governments to adult citizens. That children are especially vulnerable and require special assistance is also recognised in the Universal Declaration of Human Rights.⁴

4.3. Recognition of International Instruments in Australia

Australia voted in favour of the Declaration.⁵ The principles espoused in this document have been incorporated into federal legislation in Australia in the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). This Act empowers HREOC to report to the Attorney-General on methods the Federal Government needs to take to comply with the terms of the Declaration. This being said, HREOC's powers under the Act are not limited to making recommendations at a Federal level: it can also propose steps that can be taken by State and Territory governments towards compliance with the Declaration. Further to this, in the wake of the 1995 High Court decision of *Teoh*,⁶ people are entitled to a 'legitimate expectation' that administrative decision makers will act in accordance with international instruments that have been ratified by Australia.

Despite this, Principle 6 of the Declaration states that 'a child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and responsibility of his parents, and in any case, in an atmosphere of moral and material security' This is far from the life of a homeless young person today.

5 Issues & trends since Burdekin report

5.1 Emerging issues

In this chapter, we consider some broader issues and trends which have emerged since the 1989 Burdekin report. This chapter has been largely informed by the experiences of the support services (BYS, YOS and the Night Café) that have contributed to this submission.

5.2 Indigenous young people

It is important to recognise and reiterate the persistence of homelessness amongst young Indigenous people. The intergenerational impact of racism, poverty and violence on Indigenous Australians is obvious and is clearly illustrated by the number of young Indigenous people in need of homeless support services in Brisbane. The recent Oxfam Australia campaign to 'close the gap' is evidence of the lack of significant progress in this area since the 1989 Burdekin Report.⁷

⁴ Art 25(2); International Covenant on Economic, Social and Cultural Rights, Art 10(3) and the ICCPR Art 24.

⁵ G.A Res 1386(XIV) 14 UN GAOR Supp. (No.16) at 10 UN Doc A/4354 (1959).

⁶ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273

⁷ See www.oxfam.org.au/campaigns/indigenous/ Accessed 15 June 2007

5.3 Refugees

Anecdotal evidence from support services in Brisbane suggests that an increasing demographic amongst homeless young people are refugees, particularly from Africa. The HPLC has also assisted young Sudanese clients with their legal issues through the Night Café clinic. Young refugees have considerable cultural and language barriers which make it extremely difficult for them to comprehend the legal system.

Case Study 1: John* is a 21 year old Sudanese refugee living in Brisbane who sought assistance from the HPLC through the Night Café. John spent 5 years in a refugee camp before coming to Australia. He has no immediate family in Brisbane and relies on the support of community organisations to assist him to ‘make a new life’. He speaks limited English and his writing skills are rudimentary. John accesses homeless support services for young people to assist him with a range of services including English tutoring, food parcels, clothing and counselling.

John is completing year 12 at a local high school which supports young refugees re-settle into Australia. He has been volunteering at his local police citizen’s youth club and is keen to gain employment in the field of youth work.

John is in a relationship with a Liberian woman and they have had a child together, but are not married. John says that his girlfriend’s family does not like him because he is Sudanese.

John and his girlfriend had a fight which resulted in two serious criminal charges being brought against him. As a result of those charges, John received a letter from the Commission for Children and Young People asking him to ‘show cause’ as to why his Blue Card should not be taken away. The charges also jeopardised his application for permanent residency to Australia.

Without a Blue Card, John’s chances of gaining employment in youth work would be seriously undermined. HPLC lawyers drafted a response to the Commission on John’s behalf explaining his situation and his desire to retain his Blue Card. The Commission held his matter in abeyance pending the outcome of John’s criminal charges.

John’s experience with the legal system in relation to his criminal charges was entirely alienating. Despite having a grant of legal aid, John was initially not provided with a translator for the court trial. When he was offered translation assistance, the translator spoke Arabic in a completely different dialect to John’s first language so he did not understand him at all.

John has recently discovered that the criminal charges against him are going to be withdrawn on the basis of unreliable prosecution evidence. This may enable him to re-lodge his application for permanent residency and to be re-issued his Blue Card. The HPLC is continuing to advocate for John in this regard.

* Not his real name

Adequate housing is an especially important issue for asylum seekers and refugees on temporary protection visas in Australia as people in these categories are not eligible under SAAP for public or transitional housing. People under Bridging Visas E are prevented from gaining employment, which effectively bars their access to the private housing market. In a 2003 study by the Hotham Mission, it was found that of the over 68% of participants were homeless, with loss of income being the direct cause in 70% of those cases.⁸ The consequence of this is that asylum seekers and refugees must often find accommodation of their own initiative, and are therefore heavily reliant on community organisations or informal networks such as family and friends for assistance. It has been reported anecdotally that asylum seekers and refugees are further

⁸ *Welfare Issues & Immigration Outcomes for Asylum Seekers on Bridging Visa E: Research & Evaluation*, at: http://www.refugeecouncil.org.au/docs/current/asp_research_jan04.pdf Accessed 15 June 2007.

prejudiced due to reluctance in the private rental market to provide accommodation to people from this demographic.

Case Study 2: Gary* is a 20 year old Zambian refugee living in Brisbane. He was charged with public nuisance after being bashed by a group of drunken university students outside a pub in Brisbane's CBD. As Gary tried to fight back and defend himself, the pub owner called the police, however when police arrived the other boys had already left, leaving Gary to deal with the police by himself. The police charged Gary with public nuisance and he was detained overnight in the watch house. When Gary went to court the next day he was assigned a duty lawyer who encouraged him to plead guilty even though he was innocent. Due to Gary's lack of understanding of Queensland laws and English in general, he did not question the duty lawyer's advice and he pleaded guilty.

Gary received a 6 month Good Behaviour Bond. He had no idea what this actually meant until it was explained by his youth worker the following day.

***not his real name**

5.4 Substance abuse

Since the 1989 Burdekin Report, new and different patterns of substance abuse have emerged (eg. Ice) which are resulting in different physical and mental health problems amongst homeless young people.

In 2003, Kim Rayner presented her report on homeless people's use of drug treatment services. Entitled "*Making Change Possible*", it reported the results of interviews with 95 homeless people. The interviewees' state of accommodation was largely one of long term homelessness, with 63% of interviewees reporting that their present state of homelessness was due to their substance addiction. This finding demonstrates the strong links between homelessness and drug use. The two situations appear to feed each other, with homeless people being exposed to a high level of cultural drug use, leading to addiction, which therefore perpetuates the problems causing their homelessness. Mental health was an associated problem with drug use and homelessness, with 79% of participants having been diagnosed previously with clinical depression. Forty-one per cent of participants also had reportedly attempted suicide. The vast majority of participants (83%) had previously accessed drug treatment services, but reported there were myriad problems with the services including long waiting periods (although 17% of participants reported that this was not a problem if workers from other support services assisted them through the process). Other problems were staff attitudes towards homeless clients, and the lack of support once the participants had been through the system, in that often they did not have accommodation ready when they left, and therefore returned to a situation of homelessness in the environment they had recently left.

Once young homeless people begin taking drugs, their circumstances make it very difficult for them to break their habits. This being said, a positive finding of decreasing drug use amongst homeless youths was made in *Project i*, a study conducted by the University of Melbourne.⁹ The major factors influencing a change in drug use were cited as substantial changes in circumstances, such as finding a caring partner, or stable and suitable accommodation. It was found that the most common drugs used by homeless young people were alcohol and marijuana, although 40% of participants in the study were either non-drug users or were not using hard drugs such as heroin and amphetamines. The connection between homelessness and drug use was perhaps affirmed in the finding that length of time was a predictor of drug use, with people who were newly homeless being less likely to use drugs than those who were experienced homeless. A further finding of the study was that drug use was more commonly a precursor to homelessness, with over on third of participants stating that it was their drug use that had led to

⁹ www.kcwuh.unimelb.edu.au/projecti/. Accessed 15 June 2007.

family conflict and then on to homelessness. Approximately one quarter of participants said that they left due to problematic drug use in another family member (usually their mother). The family member's drug use meant that the young person was exposed to a chaotic, stressful and abusive home life, often below the poverty line. It was less than one fifth of participants who stated that they were not using drugs prior to becoming homeless. Amongst this group, family conflict over personal issues affecting the young person such as freedom and independence was cited as the main reason for leaving home.

Another major substance (although not necessarily categorised as a drug) of abuse amongst young people is inhalants. In 2003, the Brisbane Youth Service identified that 'chroming is simply a response to the isolation and exclusion homeless people experience; an escape from reality. They sniff paint because it relieves boredom, and they don't sniff paint when involved in meaningful and exciting developmental activities.'¹⁰ The impact of substance abuse on Indigenous young people is of particular concern to the agencies represented in this report. Further, the Queensland Commission for Children and Young People stated that 'blanket approaches which are not relevant to the circumstances of communities experiencing volatile substance misuse and the issues of the young people engaging in volatile substance abuse are likely to fail'. The Commission also recognised the futility of 'strategies which further marginalise or isolate young people who may be experiencing problems in their lives'.¹¹

In light of these studies and reports it is submitted that a preventative approach that identifies youth at risk of homelessness as a result of drug use and family conflict is potentially more effective than a reactive approach to providing rehabilitation facilities for young people once they become homeless. Law enforcement options that result in the further marginalisation of homeless young people are counterproductive and provide an ineffective result that may further exacerbate the issues causing young homeless people to engage in substance abuse.

Recommendation 1: *That State, Territory and Federal governments increase funding for preventative and early intervention drug & alcohol strategies for young people experiencing or at risk of homelessness.*

5.5 Mental Illness

Access for people with mental health problems to adequate treatment is increasingly being recognised not only as a sociological issue but also through the prism of being a basic human right. Article 25(1) of the UDHR recognises that everyone has the right to adequate medical care and security in the event of sickness or disability. The UN CRC provides for the right of children with disabilities to access appropriate health and rehabilitation services (Article 23 CRC). The UN has also developed a set of principles concerning issues faced by people with mental illness in UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

Homelessness has been identified as one of the key risk factors for mental health problems.¹² The *National SAAP Client Satisfaction Survey* published in 2004 found that 38 per cent of clients had drug and alcohol problems and 70 per cent had problems with mental illness. It has been further reported that up to 50% of homeless people have combined substance abuse and mental health disorders,¹³ and it has also been posited that up to 20% of all homeless people

¹⁰ Brisbane Youth Service, *Sniffing Around the Valley: Young People, Homelessness and Chroming in Brisbane's Inner City*, 2003

¹¹ Queensland Commission for Children and Young People, *Volatile Substance Misuse in Queensland*

¹² VicHealth, *Victoria Mental Health Promotion Plan foundation document* 1992-2002, 1999

¹³ De Leon, G., Sacks S., Staines, G., & McKendrick, K. (1999). Modified therapeutic Community for Homeless Mentally Ill Chemical Abusers: Emerging Subtypes. *AM.J. Drug and Alcohol Abuse*, 25(3), pp 495-515; see also Kamieniecki, G.W. (2001)

suffer from a dual diagnosis of significant mental health problems and drug or alcohol abuse.¹⁴ Whilst it is unlikely that mental illnesses such as schizophrenia that more frequently present in early adulthood will affect homeless young people, other psychological disorders remain prevalent. These include mood disorders such as depression, anxiety disorders, including PTSD, and substance abuse disorders.¹⁵ Over 10% of young people surveyed as part of *project i* reported attempting suicide and self harming in the past 3 months.¹⁶

Barriers to young people accessing mental health services include young people's personal perceptions that they should solve their problems on their own; a belief that therapy would not be helpful or that other methods are more effective; limited knowledge of mental health services; concerns about costs; and embarrassment.¹⁷ Additional issues for young homeless people with mental health disorders are myriad. Many services are set up merely to deal with clients with a single issue (i.e. a mental health disorder or a substance abuse disorder) and find it difficult to properly assist young people with dual diagnoses. Homeless young people may have difficulty accessing adequate mental health treatment due to the nature of the services, in that they require clients to keep regular appointments at specific locations. This is often a difficult proposition for a homeless young person due to their itinerant lifestyle and lack of resources. Other issues are more personal, such as low self-esteem, drug use, fear of vilification and unsuccessful previous experiences with mental health services.¹⁸ The result of all these obstacles is that young homeless people are reluctant to access and be less informed about mental health services available to them.

In 2006, the Howard Government announced that it would contribute \$1.9 billion for funding of better mental health services in Australia. Of this \$1.9 billion, \$73.9 million was to be spent over the next 5 years on improved services for people with drug, alcohol and mental health problems. This money could be best applied to programmes designed to increase awareness and decrease embarrassment of mental health disorders amongst young people. Homeless outreach services should be provided with resources to better inform young people of the treatment options available to them, and actual mental health services should be given resources to enable them to take a more long term approach to treatment of young clients, especially with respect to establishing a rapport with their clients and gaining their confidence and confidences.

Recommendation 2: That State, Territory and Federal governments increase funding for mental health programs to provide long-term treatment & support for young people experiencing or at risk of homelessness.

5.6 Changes in service delivery since Burdekin

There are a range of services in Brisbane which support homeless young people, including YOS, BYS, the Youth Advocacy Centre (YAC) and the Australian Red Cross (through its Night Café). Some of these services, such as BYS and YAC, were operational at the time of the 1989 Burdekin Inquiry.

Prevalence of psychological distress and psychiatric disorders among homeless youth in Australia: A comparative review, *Australian and New Zealand Journal of Psychiatry*, 35, 352-358.

¹⁴ See Drake, R.E., Osher, F.C., & Wallach, M.A. (1989) Alcohol use and abuse in schizophrenia: A prospective community study. *Journal of Nervous and Mental Disease*, 177, 408-414.

¹⁵ Mildred, H. (2002) 'Mental Health in Homeless Young People'. *Parity*, vol 15 no 4 pp 5-6

¹⁶ Rossiter, B., Mallett, S., Myers, P. & Rosenthal, D. (2003). *Living well? Homeless young people in Melbourne*, the Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne.

¹⁷ Deane FP, Wilson CJ, Ciarrochi J and Rickwood D. (2002) *Mental health seeking in young people*, report for the National Health and Medical Research Council of Australia.

¹⁸ Booth M, Berrard, D, Quine S, Kang, M, Usherwood T, Alperstein G, Beasley L and Bennett D. (2002) *Access to health care among NSW adolescents*. NSW Centre for the Advancement of Adolescent Health: The Children's Hospital, Westmead, Sydney.

20 years down the track, it is fair to say that the community sector has a vastly increased knowledge of service delivery compared to two decades ago. The move towards integrated and holistic service delivery is a positive feature of contemporary youth support services. So too is the rise in corporate/community partnerships which, in a legal sense, has given rise to cost-effective projects such as the HPLC which draw on the resources of the private sector to deliver outreach legal services to disadvantaged members of society.

Recommendation 3: That State, Territory and Federal governments recognise the benefit of holistic, outreach youth homelessness services by providing increased and ongoing funding to community organisations delivering those services.

6 What current disadvantages homeless youth face

6.1 Limited access to social security

On 1 July 2006 the Federal Government's Welfare to Work changes commenced, inviting comments that the changes represented 'the most significant downgrading of the income support system since the Social Security Act was introduced in 1947'.¹⁹

Homelessness is a significant impediment to the receipt of unemployment benefits. The system is not overtly discriminatory towards homeless young people, but rather there are systemic problems preventing homeless young people from accessing entitlements under the scheme. A requirement for the receipt of benefits is that people respond to letters promptly, regularly apply for jobs and attend interviews. Because of their homelessness, many young people simply do not have the capacity to undertake the activities required to ensure they receive regular benefits. Impediments such as access to the computers and the internet to apply for jobs, lack of resources or proper clothing to attend job interviews, and most fundamentally, lack of a regular address to receive communications from Centrelink and prospective employers means that young homeless people are often 'breached' and have their benefits suspended for occurrences that were beyond their control. Despite minor legislative acknowledgements regarding a person's circumstances, such as if a person is homeless they do not need to fill the training or study requirements in order to gain Youth Allowance,²⁰ there are still significant impediments to homeless young people gaining or maintaining access to Centrelink benefits.

A major impediment to young people moving out of homelessness is the difficulty their circumstances pose for them in accessing Centrelink benefits. Without access to the regular income from this agency, they are much more likely to remain in a situation of homelessness as they are not able to afford rent payments for adequate housing.

Even in the event that a young person does manage to receive their entitlement to social security payments, these payments are generally at a level below the Henderson Poverty Line, a common measure of poverty in Australia. By way of example, in September 2004 the base rate for Newstart Allowance was \$194.60, or \$242.30 if the person received the maximum amount of rent assistance on top of their standard payment. This is compared to the poverty line for a single unemployed adult living independently of \$317.61 per week.

Similarly to the problems associated with young people accessing mental health services, in order to maintain their Centrelink benefits, they must attend regularly at a Centrelink office for meetings, training sessions or simply to 'check in'. Once again, this can prove difficult for a homeless young person, especially if they have a mental health disorder and/or drug/alcohol

¹⁹ National Association of Community Legal Centres 'Welfare to Work or Unworkable Welfare?' June 2006

²⁰ See sections 606(4) and 543 of *Social Security Act 1991*(Cth)

addiction. The difference here however, is that the requirement is legislative, rather than the result of an administrative necessity. If the person does not attend the office, they can have their payments suspended. If they continue to fail to attend at an office or meet a requirement their payments can be suspended for up to 8 weeks. This often results in a young person losing the only substantial and regular means of support they have. A recent survey by the Salvation Army found that if young people are 'breached' by Centrelink and have their payments suspended, up to 16.5% may end up in a situation of homelessness. The exigencies of their circumstances then prevent them from meeting their Centrelink requirements as they have to apply themselves to more pressing matters such as seeking alternative funds and securing temporary accommodation.

6.2 Unable to vote

Issues associated with enfranchisement for homeless young people are especially important in 2007, being the year of a federal election. Voting is an empowering activity that reinforces a person's connectedness to society and is a vital part of a young person's transition into adulthood.

The ICCPR recognises that the right to vote is essential to the concept of participatory democracy, engagement in society, and is conducive to a sense of control and belonging to a community.²¹ Statistics on the percentage of homeless people eligible but not registered to vote are wide ranging, but one estimate puts the number at as high as 90 per cent.²²

There are many obstacles within the *Commonwealth Electoral Act 1918* to homeless people being able to vote. Perhaps most obvious is the requirement that, in order to be added to the roll a person must provide a residential address.²³ Further, a person seeking to enrol must have lived at an address for one month before they can have their name placed on the Roll for that Subdivision.²⁴ Given their itinerant and chaotic existence, homeless people often have difficulty in fulfilling these statutory requirements. This problem is potentially overcome by a provision which allows for itinerant voters to register in the Subdivision with which they have the closest connection²⁵, but the procedures involved in registering under this provision are somewhat unwieldy. These problems are mirrored in the Queensland legislation.²⁶

Once enrolled, there are further disincentives for homeless young people to exercise their right to vote. One of these is the fine which can be incurred for not voting once registered. Whilst the fine amount may be seen by the general population as a slap on the wrist, homeless people, being of meagre means, may find the threat of a fine for not voting a disincentive to registration in the first place.

Recommendation 4: That State, Territory and Federal voting legislation be amended to improve the ability for homeless people to exercise their right to vote.

6.3 Lack of affordable housing in Queensland

Australian house prices have risen nearly 100% over the past decade.²⁷ It is accepted that if expenditure on housing consumes more than 30% of a person's budget then this places the

²¹ 999 UNTS 171, Art 25.

²² Horn, M. *Social and Democratic Exclusion: Giving Voice to the Homeless* (Research Paper, Hanover Welfare Services, 2001).

²³ Section 93 *Commonwealth Electoral Act 1918*

²⁴ Section 99(1) *Commonwealth Electoral Act 1918*

²⁵ Section 96 *Commonwealth Electoral Act 1918*

²⁶ See *Electoral Act 1992* (Qld)

²⁷ John Spoehr, 'Waking up to a great Australian nightmare', Australian Institute for Social Research, University of Adelaide, 16 June 2006.

person under significant financial and emotional stress. This term has been referred to as 'housing stress'. The Senate Community Affairs References Committee estimates that almost 10% of people experience 'extreme housing stress' meaning that they are spending 50% of their weekly income on rent.²⁸ This problem is particularly acute for young people on Youth Allowance from Centrelink. According to 2005 data obtained from the Residential Tenancies Authority, the average rent for a three bedroom house per fortnight in Brisbane was \$540. The maximum rate of Youth Allowance at the time was \$400.83 including rent assistance. If all rent was shared equally, this left the young person with just \$220.83 per fortnight to cover all other expenses.

Of the 15 developed countries surveyed in a study conducted by the Organisation for Economic Cooperation and Development, Australia had the highest prices relative to rental levels, the third-highest prices relative to incomes, and the fourth-highest levels of household debt relative to income.²⁹

This lack of affordable private accommodation in Australia means there is a greater reliance on public housing and other facilities such as boarding houses. Whilst the total number of public housing dwellings in Queensland increased between 1995 and 2004, in Brisbane the public housing waiting average allocation period has also been increasing from 1.80 years for 2004, 2.18 for 2005 to 2.43 for 2006.³⁰ In 2004-2005, 157,000 homeless people accessed SAAP services. This number comprised 100,400 adults or unaccompanied children, and 56,800 accompanying children. With such great demand it is not surprising that the service must refuse access to some people. According to SAAP statistics, in 1998, 231 people were turned away from this service due to a lack of housing. In Brisbane, shelters are reporting that they are increasingly unable to accept young clients at night, especially if they are affected by drugs. BYS has reported that even if young people manage to gain access to temporary accommodation such as shelters, there are few long term facilities that meet the requirements of young adolescents for supervision.

7 Public space law in Queensland

Public space ostensibly exists for the enjoyment of everyone regardless of age, race, gender or income status. Society recognises the right of the public to use and access public spaces, and the need for people to feel safe in these places. The ever-increasing regulation and policing of public space in Queensland is an area of grave concern for the HPLC. This section of our submission outlines recent developments in the regulation and policing of public space in Queensland and analyses the impact this has on homeless young people.³¹

7.1 Who needs to use public space

Young people, Indigenous people, people with impaired capacity (including mental illness, acquired brain injuries and cognitive impairments) and people experiencing homelessness are the groups most likely to regularly use public space. People experiencing homelessness also have a greater and more frequent need to use it as they have no private space to retreat to, and

²⁸ Senate Community Affairs References Committee, 'A hand up not a hand out: renewing the fight against poverty' (2004), pp. 123-4.

²⁹ <http://www.oecd.org/dataoecd/40/6/35816576.pdf>. Accessed 15 June 2007.

³⁰ Department of Housing, as of 30 June 2006.

³¹ For a full analysis of the impact of Queensland public space laws on homeless people, see T Walsh, 'From park bench to court bench: developing a response to breaches of public space law by marginalised people' September 2004 Accessible at: www.lawandpoverty.org.au/tamarawalsh

often have no choice but to undertake their basic life activities (eg., sleeping, socialising) that most people would do in the luxury of their own home, in public.

7.2 Homeless young people in public space

Homeless young people are highly visible in public space and frequently attract attention. The way they choose to dress and behave, which is often the only way they have of expressing themselves, puts them in the spotlight in public areas.

Homeless young people in public space are often viewed with suspicion as troublemakers with too much time on their hands. Others may believe that groups of homeless children congregating together are somehow involved in criminal behaviour, especially in the night-time hours, whereas in fact they are more often than not ‘hanging out’ together for their own safety. It is a common perception (but only a perception) that groups of homeless young people dominate and take over public spaces, making them permanently unsafe.

Sometimes, inhabiting public space may be the only safe option a young homeless person has available to them, so it is alarming to see that a young person’s right to use and enjoy public space is increasingly being circumvented by legal regulation. At least in Queensland, public space laws now heavily favour the community’s wish not to be bothered by “undesirables”. Homeless young people have just as much right to use public space as any other member of society, and arguably they need that right more than others.

8 Legislation

8.1 Then and now

At the time of the 1989 Burdekin Inquiry, the key Queensland legislation that governed behaviour in public space was the *Vagrants, Gaming and Other Offences Act 1931*. Under this Act it was an offence for a person to have no means of support, or insufficient visible and lawful means of support. Despite being out of step with modern times, this offence was frequently enforced and the legislation was roundly criticised until its eventual repeal in March 2005.

In 2005, the Vagrants Act was replaced by the *Summary Offences Act 2005 (SOA)*. At the time of the SOA’s introduction there was vigorous debate about the nature and extent of new offences that would be contained in the new legislation.³²

Thankfully, the offence of vagrancy was not incorporated into the SOA. However when viewed as a whole, the new SOA could hardly be viewed as a positive step towards recognition of vulnerable persons’ special circumstances, as it simply retained the majority of the old offences contained in the Vagrants legislation but with increased penalties.

³² See generally submissions made by the Rights in Public Space Action Group (RIPS) available at: www.rips.asn.au

8.2 **Summary Offences Act 2005 examined**

This section of the submission analyses the key offences contained in the SOA that in our view are being used disproportionately against young homeless people in Queensland. Many young clients of the HPLC are often charged with these SOA offences.³³

8.3 **Section 6 – public nuisance offence**

Under section 6, it is an offence for a person to behave in a disorderly, offensive, threatening or violent manner where this type of behaviour interferes with, or is likely to interfere with, the public's passage through or enjoyment of a public place. The maximum penalty for a breach of this provision is \$750 or 6 months imprisonment. There is no statutory defence.

There is a long history of parliament seeking to prevent activity that would interfere with the public's right to use and enjoy public spaces. Whilst we recognise that a public nuisance offence is a necessary law to protect society, we consider that the Queensland offence goes too far and disproportionately affects homeless young people occupying public space.

The broad wording of s6 and the lack of any statutory defence makes it easy for police to use the public nuisance offence as a 'catch all' provision for behaviour that may not even meet the threshold elements of the offence. In our experience, many young HPLC clients are charged with public nuisance in situations where:

- A lesser charge could have been employed;
- They were not in a public place;
- There were no other members of the public passing through the public place.

Case Study 3: Gemma* is a 19 year old young woman with bipolar disorder. She identifies as a 'goth' and dresses in black clothing and has a leopard-pattern hairstyle. Gemma was charged with public nuisance after she allegedly called a police officer a slut, made an offensive finger gesture and walked in a 'threatening' manner towards police officers. The police version of events differed significantly to Gemma's, who stated that it was she who was called a slut by police who drove past her in a police paddy wagon when she was sitting alone with her boyfriend outside Roma Street train station. Gemma was arrested in a scuffle involving 6 police officers pinning her to the ground, at which point she suffered an asthma attack and her boyfriend's face was "rubbed into the bitumen" by police officers resulting in skin grazing.

Lawyers from the HPLC arranged representation for Gemma who pleaded not-guilty to the charges. This incident raises questions about whether police are members of the public for the purposes of the public nuisance offence. It also highlights the vulnerability of young people identifying as a different subculture and their susceptibility to police interaction which more often than not leads to arrest.

***Not her real name**

In a series of court studies conducted by Dr Tamara Walsh from 2004 to 2005, the public nuisance offence was found to have been used disproportionately against young people. Some findings included:

- As many of 60% of public nuisance defendants coming before the Brisbane Magistrates Court are aged 25 years of under;
- Many young people are prosecuted for public nuisance when a caution would have been a more reasonable response to their immature behaviour.³⁴

³³ Although we have concentrated on the impact on SOA, we note there are other summary offences that young HPLC clients are also frequently charged with, such as possession of a knife pursuant to s51 *Weapons Act 1990* (Qld).

Perhaps anticipating the deleterious impact of the public nuisance offence on vulnerable people in Queensland, the Crime and Misconduct Commission (CMC) was statutorily required to investigate the use of the public nuisance offence some 18 months after its enactment. The CMC review has been underway since April 2006 and at the time of writing, had not been finalised.

8.4 Section 8 - begging in a public place

Begging is an offence under section 8 of the SOA. A contravention of this section carries a maximum penalty of \$750 or 6 months imprisonment. There is no statutory defence.

The opinions of Parliamentary Ministers on begging can be gleaned from the Second Reading Speech of the SOA: "...*Beggars are likened to con artists who choose "soft" targets such as women or elderly persons who are more likely to be intimidated or acquiesce.*"³⁵

And: "*Persons who often beg for money for no other reason than that it is an easier option than working for a living.*"³⁶ These comments demonstrate how out of touch politicians are with the lived experience of homelessness.

Such comments ignore the fact that homeless young people are forced to beg when they have no source of income and no way to pay for their basic needs such as food. Homeless young people beg out of need, and are humiliated by the experience - the fact that the act of begging is deemed criminal only exacerbates this humiliation.

In our view, this offence directly criminalises behaviour associated with homelessness and should be completely repealed.

8.5 Section 10 - being drunk in a public place

Being drunk in public is an offence under section 10 of the SOA. A contravention of this section carries a maximum fine of \$150. There is no statutory defence.

Generally, Australian society is very tolerant of drinking and of intoxicated people. Drinking alcohol itself is not illegal. Even though club or pub goers may be swearing or urinating in public, picking fights or behaving in a disorderly manner, they will often be given leeway by police officers as this is almost regular and accepted behaviour.

An obvious double standard exists when public drunkenness will be tolerated if committed by certain advantaged members of society, but not when committed by homeless people. Even though they have the right to drink like everyone else, people experiencing homelessness are often punished as they do not enjoy the luxury of drinking in their own home, or the money to drink in a licensed venue.

In our view, this offence should contain a defence of 'reasonable excuse' which would at least enable defendants to argue that the offence was committed directly as a result of their homelessness. The problem of selective policing of this offence (particularly against Indigenous homeless people) must also be addressed.

³⁴ Dr Tamara Walsh, 'No Offence: The enforcement of offensive language and offensive behaviour offences in Queensland' April 2006. Accessible at: www.lawandpoverty.org/tamarawalsh

³⁵ Summary Offences Bill Second Reading speech, comment by Ms Cunningham MP 24 February 2005, Hansard, at 253.

³⁶ Summary Offences Bill Second Reading speech, comment by Mr English MP 24 February 2005, Hansard, at 146.

8.6 Section 9 - wilful exposure (unaggravated)

A person in or near a public space who wilfully exposes themselves commits an offence. The maximum fine is \$150 and unlike other SOA offences, there is a statutory defence of reasonable excuse.

The fact is that homeless young people who have nowhere safe to sleep at night and use public space, have limited options when it comes to performing natural bodily functions. Public toilet facilities may be closed or not in the near vicinity. Homeless young people who face no other option will urinate in public and while there are inadequate services and facilities for them to use, they should be forgiven for doing so. However it is more likely that if seen, they will be charged with wilful exposure, and potentially, if they are mentally ill or intoxicated, wilful exposure with circumstances of aggravation.

In our experience, this offence is rarely used. Arresting officers will usually charge homeless defendants with a section 6 charge of public nuisance. This re-iterates the emergence of the public nuisance offence in Queensland as a 'catch all' offence and also denies defendants the ability to utilise one of the few statutory defences contained within the SOA.

8.7 Section 11 - trespass

A person who unlawfully enters or remains in a yard of a dwelling or business premises will be guilty of an offence under section 11 of the SOA, incurring a maximum fine of \$1,500 or 12 months imprisonment. There is no statutory defence.

Young HPLC clients are at constant risk of being charged with trespass because of their sleeping patterns. Many clients sleep in groups on church grounds or on commercial private property which makes them incredibly vulnerable to a trespass charge. Importantly, the land owner's consent to a person being on their property is immaterial to a charge of trespass. Our service is currently investigating the possibility of defending a trespass charge brought against a 30 year old homeless man on church grounds, despite the church stating that they consent to homeless people being on their property.

If charged, a homeless young person will incur a penalty that is completely disproportionate to the basic aim they were trying to achieve - to get a nights sleep free from harm.

The way to reduce the numbers of homeless people sleeping in yards is not to criminalise such activity. The answer is surely to provide adequate, affordable housing for homeless young people so they are not forced to sleep rough. Again, this charge should at least contain a defence of 'reasonable excuse' which would enable defendants to argue that the offence was committed directly as a result of their homelessness.

8.8 No defences

The impact of the SOA on homeless young people is alarming when you consider there are no available defences (except in respect of wilful exposure). It is not unreasonable to expect that a defence of reasonable excuse should be available for SOA offences, as the circumstances leading to commission of the offence by someone experiencing homelessness could be easily and adequately explained.

The lack of statutory defences gives rise to an inordinate amount of police discretion. Statutory defences provide an accountability tool in monitoring police behaviour, as police must prove that the offence was committed in the absence of any reasonable excuse. Amending the SOA to insert defences into all offences would therefore go some way to addressing the problem of policing attitudes in relation to young homeless people and would have some impact in reducing their entry point into the criminal justice system.

8.9 **Police Powers and Responsibilities Act 2000: move-on powers**

The Police Powers and Responsibilities Act 2000 (Qld) (PPRA) is a further example of Queensland legislation which targets and criminalises behaviour intrinsically linked with homelessness. When it was originally passed in 2000, the PPRA contained what would become known as police ‘move-on powers’, giving police the power to issue a move-on direction to a person occupying a particular area, in certain circumstances.

At the time of the PPRA’s introduction, police could only lawfully use their move-on powers in limited areas, such as shopping malls, licensed premises and public spaces that may have been declared a notified area following a statutory application process.

The move-on power is contained in Part 5 of the PPRA. Under the relevant sections, a police officer can issue a move-on direction for person to leave a public place if they reasonably suspect the person’s behaviour or presence is or has been causing anxiety to another person, is disorderly, indecent, offensive or threatening, interferes with trade or business or disrupts the peaceable and orderly conduct of an event.³⁷

The move-on direction empowers police to direct the person to leave the place and not return for up to 24 hours, or to move away from a location for reasonable distance in a stated direction for up to 24 hours. The police officer must also give the person or group their reasons for giving the direction.

Receiving a move-on direction is not an offence in itself, however contravening the direction is. The maximum fine for contravening a move-on direction is \$3,000. There is no statutory defence. If a person contravenes the direction and believes the move-on direction is itself unlawful, the only way a person can contest the fine is by defending it in court.

8.10 **Expansion of move-on powers**

Move-on powers have been a ‘hot topic’ in Brisbane since August 2005, when the Brisbane Lord Mayor announced that the Brisbane City Council intended to apply for police move-on powers in three major public spaces in Brisbane commonly frequented by homeless young people. Despite overwhelming opposition from the public, the Council’s application in respect of all three areas was approved by the Police Minister in February 2006.³⁸

Shortly after this local expansion, the Police Minister announced her intention to expand the ability for police to exercise move-on powers in every public space in Queensland. This move has had a considerable impact on the rights of young homeless people in Queensland to use and enjoy public space.

“Police tell you to move-on and go home, but when you’re a streetie, it is your home.”

19 year old rough sleeper, Brisbane

8.11 **Impact of move-on powers on young homeless people**

Fearing the impact of state-wide move-on powers on homeless people, in 2006 the HPLC undertook a joint research project with TC Beirne School of Law at the University of

³⁷ Sections 46 and 47 *Police Powers and Responsibilities Act 2000*

³⁸ 85% public submissions objected to the expansion of police move-on powers into the three public spaces.

Queensland to examine the use and effect of police move-on powers on homeless people in Brisbane.³⁹

The report findings reveal that move-on powers are being exercised frequently against homeless young people and often in circumstances which constitutes harassment or where there is no lawful justification.

Move-on powers have a detrimental impact on homeless young people in many ways. They convey a powerful message of social exclusion and cause homeless young people to feel further disengaged and alienated from society. A move-on direction can also prevent young people from accessing support services or attending appointments. In Brisbane, it is common for homeless support services which provide food, clothing, information and counselling to operate in or near public spaces. A good example is the Red Cross Youth Night Café which is located adjacent to King George Square.

The HPLC often hears from our young clients that police often target them when they are in groups, and issue move-on directions to disperse the group. Not only is this use of the move-on direction unlawful but the HPLC considers direct targeting of young people in this way is discriminatory and an action for discrimination on the basis of age against the police could well succeed.⁴⁰

“It is a load of crap. Because I am doing nothing wrong and I am told to move-on. Someone else may be messing around and we all get in trouble.”

17 year old rough sleeper, Brisbane

While contravention of a move-on direction could not be considered a serious offence, like the SOA offences it provides yet another entry point into the criminal justice system for vulnerable young people.

The HPLC / UQ report⁴¹ also established that police often fail to give reasons when issuing a move-on direction. It is also common for police to move-on people for a time period in excess of 24 hours. Some of our young HPLC clients have been told to move-on for 48 hours, one week, from an entire suburb or interstate.

Most homeless young people are not aware of what constitutes a lawful police move-on direction, and our report found that the majority of young people accepted the direction without question. Move-on powers therefore serve as a powerful dispersal tool in Queensland and as such, are in breach of a young person’s right to right to freedom of association enshrined in the ICCPR and the right to peaceful assembly in the CRC.

Like the public nuisance offence, the CMC is charged with reviewing state-wide move-on powers some 18 months after their enactment. This government strategy of introducing far-reaching legislation with no statutory defences that seriously undermines human rights, followed simply by a CMC review once the impact of the laws has been felt by vulnerable people is, in our view, a poor excuse for legislative and police power accountability.

³⁹ The final report is entitled, *Nowhere to Go; the impact of police move-on powers on homeless people in Queensland* and is accessible at www.qpilch.org.au. A copy of this report was provided to the NYC commissioners at the HPLC’s oral hearing in Brisbane.

⁴⁰ See Walsh T and Taylor M, ‘You’re not welcome here’: move-on powers and discrimination’ *UNSW Law Journal* Vol 30, 1, 2007 (forthcoming)

⁴¹ See above at 39.

Recommendation 5: *That all State and Territory public order legislation be reviewed and amended to include statutory defences for all public space offences, thereby minimising the criminalising impact of public space laws on young homeless people.*

8.12 **Juvenile Justice Act 1992: 17 year olds as adults in Queensland**

At the time of writing, the Queensland Attorney-General had just announced that the Queensland government would not amend its laws that regard 17 year olds as adults within the criminal justice system.⁴² Queensland remains the only state in Australia that still treats 17 year olds as adults and imprisons them in adult correctional facilities. Every other jurisdiction regards 17 year old offenders as juveniles.

This position is in breach of Queensland and Australia's international legal obligations pursuant to the UN CRC and is out of touch with modern thinking about how young offenders should be dealt with. It goes without saying that this has a grave impact on homeless young people in Queensland by widening the net of their criminalising behaviour.

Ironically, the *Juvenile Justice Act 1992 (Qld)* already contains a regulation which, once implemented, would extend applicability of the Act to cover 17 year olds. This regulation has sat in abeyance for fourteen years.

Recommendation 6: *That the Queensland government recognise 17 year olds as children by immediately implementing s6(1) of the Juvenile Justice Act 1992 (Qld).*

9 **Policing practices & targeting of homeless young people**

"I have to walk around for ages sometimes trying to find somewhere else safe enough to go back to sleep. Police abuse their rights, and take away ours. They should not be able to continue this bullshit."

23 year old rough sleeper, Brisbane

It is clear that young homeless people face a 'double disadvantage' in response to police attitudes to public space policing. Both their age and homelessness place them at high risk of police interest which, in our view, more often than not leads to arrest and provides an entry point for vulnerable young people into the criminal justice system.

One of the most common complaints that clients of the HPLC have is that they feel harassed and targeted by police. We know of one young person who was on his way to court to appear on a charge of public nuisance police when he was stopped and searched at Brunswick Street train station, thus making him late for his court appearance.

Recently in Brisbane, the HPLC and support services have observed a noticeable increase in the level of public space policing. It is not uncommon to observe groups of up to five police officers walking together around public spaces in the CBD, proactively approaching young people and performing on-the-spot ID and bag checks. This method of policing is often described by officers as 'community policing' but leads to questions about the obvious power

⁴² The *Juvenile Justice Act 1992 (Qld)* defines child as a person who has not turned 17 years. In relation to the Attorney General's announcement, see 'Teens to stay in adult jails' 31 May 2007, Sunday Mail on-line at: <http://www.news.com.au/sundaymail/story/0,,21822845-3102.00.html>

imbalances in such a situation. It also raises legitimate questions about whether police are lawfully exercising their stop-and-search powers.⁴³

There are various reactions to policing of public space laws by homeless young people. Despite being extremely mature in some ways, homeless young people are generally emotionally immature, and they may be confrontational or hostile to police who are restricting their enjoyment of public space. On the other hand, homeless young people may lack the knowledge or confidence to question a police officer's decision, and accept it in circumstances where they have done nothing illegal.

Police have a range of powers at their disposal which they may or may not choose to invoke. Rather than automatically charging a young person for an offence, a police officer may instead exercise their discretion to do nothing, or administer a caution. Police are encouraged to use alternatives to arrest for young people in their Operational Police Manual and the First Response Handbook.⁴⁴ Unfortunately for our clients, it appears that some police view homeless young people as 'hardened' and therefore deserving of the full force of the law, thereby exercising their discretion to charge a young person instead of using available alternatives to arrest.

What follows is a clear need for ongoing training and education of police officers about the lived experience of homeless young people. One activity in Brisbane which is impacting positively on challenging negative stereotypes and attitudes – both of police towards street kids, and vice versa – is a police drumming program run by YOS. The program involves young homeless people being taught drumming and rapping by police officers in uniform from the local police station. YOS workers report that this initiative has led to a direct decrease in the number of arrests of young people and antagonism generally held by young people towards police.

Recommendation 7: That compulsory annual training be introduced for all State police services about youth homelessness which includes the participation of local youth support services.

10 Sentencing

10.1 Getting to court

When a homeless young person is charged with an offence they usually are required to appear in court to have the matter heard and determined.

It is difficult for homeless people to keep court appointments for many reasons: they have no where to store the charge sheet so they may lose it and not know when they need to attend, they may not be able to afford travel to court, they may not understand why they have to go, it may not be their highest priority compared to meeting daily needs such as finding a safe place to sleep. Despite these barriers, a 'failure to appear' will either result in the matter being heard in the persons' absence (and usually with harsher penalties) or a warrant being issued for the defendant's arrest.

10.2 Sentencing options

Under the *Penalties and Sentences Act 1992 (Qld)*, the goals of sentencing include punishment in a way that is just in the circumstances, rehabilitative, consistent and fair.⁴⁵ Magistrates have a

⁴³ Pursuant to sections 29 and 30 of the PPRA police must, before searching a person, have a 'reasonable suspicion' that the person has in their possession implements such as a knife, dangerous drug or something that may have been used as an implement for housebreaking.

⁴⁴ Sections 5.4.2 and 5.7.1 Operational Police Manual and 2.4 First Response Handbook (6th Edition, April 2005)

⁴⁵ See sections 3 and 9 *Penalties and Sentences Act 1992 (Qld)*

range of sentencing options available to them, including the power to discharge and release a defendant or to order probation. However in our experience, the vast majority of young homeless defendants receive a monetary fine (in the vicinity of \$200 for public nuisance) and usually a conviction for a low level public space charge.

A conviction recorded against a homeless young person renders them less likely to succeed in the job market and may also jeopardise their access to housing. It is also grossly unfair to mark a person's criminal record permanently because they have committed 'crimes' due to their homelessness.

10.3 Fines: State Penalties Enforcement Registry (SPER)

SPER is the agency that administers fines in Queensland.⁴⁶ Unlike other jurisdictions in Australia, until recently in Queensland there was no capacity for SPER to waive fines on the basis of a person's disadvantage and a person will simply accrue a fine history. It is not unusual for young HPLC clients to have an accumulated SPER debt in excess of \$2,000. Some changes were recently made to fine legislation in Queensland to make the system fairer on disadvantaged people, however it remains to be seen how effective these changes will be.

It is unrealistic and punitive to require a young homeless young people to pay off hefty fines which are, in our view, a symptom of their homelessness and disadvantage. Fine histories effectively lock young people into a cycle of indebtedness and thereby impede their ability to transition out of homelessness.

Recommendation 8: *That all State and Territory fine systems be reviewed and amended to give such systems a wide discretion to waive fines on the basis of a defendant's homelessness and/or inability to pay.*

10.4 Recent positive initiative: Special Circumstances Courts

One step in the right direction for dealing with the special needs of homeless young people in the criminal justice system in Queensland has been the introduction of a Special Circumstances Court (SCC).

This idea of a SCC was first adopted in June 2002 by the Victorian Department of Justice. It was recognised that the same type of people were commonly passing through the lower courts on public space charges. A SCC was therefore introduced in Melbourne in an attempt to address the problems underlying a person's offending behaviour. Homeless people in Melbourne can appear in the SCC where their homelessness results in them being unable to control conduct which constitutes the offence for which they are charged.

Now 5 years old, the Melbourne SCC is regarded as a great success. Most cases result in adjournment or dismissal in combination with other orders. It recognises that effective orders for homeless people appearing before the SCC include undertakings of good behaviour and/or referral pathways to support services.

In May 2006, Brisbane followed Melbourne's lead by also introducing a two-year trial SCC. Similar to Melbourne, the Brisbane SCC represents an alternative for young homeless people aged 17 or over who have been charged with minor public order offences.

To be eligible for participation in the SCC, a defendant must:

- plead guilty;

⁴⁶ For a full discussion of SPER and its administrative function, see T Walsh, 'From park bench to court bench', above at 31.

- be aged 17 or over;
- be homeless or at risk of homelessness;
- appear to be suffering from impaired decision making capacity (whether due to their mental health, intellectual disability, acquired brain injury or cognitive impairment);
- be charged with an ‘eligible’ offence (an offence of a public order nature which can also include failure to appear and breach of bail for the original offences).

The SCC is supported by a dedicated Homeless Persons’ Court Liaison Officer. Possible court orders may include releasing the individual, either totally or with an order for court supervision, recognisance or on condition of good behaviour. Conditions may also be attached which deal with the individual’s problems, for example a referral to drug assessment/treatment, psychiatric assessment/treatment or a life skills course.

The SCC’s success can partly be attributed to a change in the usual structure of court proceedings - instead of the lawyers and judge communicating in an adversarial manner, SCC proceedings are more open and allow the defendant to engage in the process. Homeless service providers also provide assistance and the ultimate order is more often a negotiated solution between all interested parties, rather than a punishment decided solely by a judge who may not be aware of the impact it will have on the defendant.

The success of the Brisbane SCC is currently being evaluated. In its short history, it already appears to have had a significant positive impact on some defendant’s patterns of offending behaviour. In many ways, the success of the SCC relies on the existence of suitable referral pathways for homeless defendants. This remains a stumbling block with an ongoing lack of resources in Brisbane.

Furthermore, it must be noted that a change in sentencing practices in the absence of change to policing and prosecution attitudes is futile. Although police have a responsibility to enforce the law, it should be necessary for them in special circumstances (such as cases involving disadvantaged homeless young people) to adopt a problem-solving, consensual approach, accompanied by a willingness to withdraw charges if the circumstances allow it.

Homeless young people have long been denied a voice in society and their ‘lack of voice’ has traditionally also extended to the court process. We therefore applaud the SCC initiative and consider that it and other therapeutic sentencing projects should be given greater prominence within the legal system.

Recommendation 9: *That all State and Territory governments implement Special Circumstances Courts aimed at diverting homeless defendants away from the criminal justice system and into support services.*

Recommendation 10: *That any existing Special Circumstances Courts initiatives be continued and be adequately funded.*