

20 August 2003

The Secretariat
Senate Legal and Constitutional Committee
Room S1.61
Parliament House
Canberra ACT 2600

Dear Secretariat

Inquiry into Legal Aid and Access to Justice

Attached is the joint submission of the PILCH Homeless Persons' Legal Clinic and the QPILCH Homeless Persons' Legal Clinic to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice. The submission is endorsed by the organisations and individuals listed at Part 10.

The submission examines two aspects of current access to justice arrangements to meet the needs for legal assistance of people who are homeless or at risk of homelessness:

- (a) the extent to which current access to justice arrangements enable homeless people to access systems of justice (that is, the effectiveness of current arrangements in relation to ensuring that homeless people can access legal service providers and the courts); and
- (b) the extent to which current access to justice arrangements enable homeless people to access substantive justice (that is, the effectiveness of current arrangements in relation to ensuring that the formulation and application of the law with respect to homeless people is fair).

The submission makes recommendations to improve access to both procedural and substantive justice for people who are homeless or at risk of homelessness.

We urge the Commonwealth to accept and implement the recommendations.

Please contact Philip Lynch on (03) 9225 6684 with any questions.

Yours sincerely

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Homelessness and Access to Justice

**Submission to the Senate Legal
and Constitutional Committee
Inquiry into Legal Aid and
Access to Justice**

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1. Executive Summary and Recommendations

1.1 Summary

This submission is made by the PILCH Homeless Persons' Legal Clinic ('PILCH Clinic') and the QPILCH Homeless Persons' Legal Clinic ('QPILCH Clinic') to the Senate Legal and Constitutional Committee Inquiry into Legal Aid and Access to Justice. It is endorsed by the organisations and individuals at Part 10.

The submission examines two aspects of current access to justice arrangements to meet the needs for legal assistance of people who are homeless or at risk of homelessness:

- (a) the extent to which current access to justice arrangements enable homeless people to access systems of justice (that is, the effectiveness of current arrangements in relation to ensuring that homeless people can access legal service providers and the courts); and
- (b) the extent to which current access to justice arrangements enable homeless people to access substantive justice (that is, the effectiveness of current arrangements in relation to ensuring that the formulation and application of the law with respect to homeless people is fair).

The submission makes recommendations to improve access to both procedural and substantive justice for people who are homeless or at risk of homelessness.

A summary of recommendations is set out below.

1.2 Recommendations

Recommendation 1

The Commonwealth increase funding to state legal aid bodies to improve access to legal aid assistance in respect of civil and administrative matters arising under state laws.

Recommendation 2

The Commonwealth increase funding to state legal aid bodies to improve access to legal aid assistance in respect of summary criminal law matters arising under state laws.

Recommendation 3

The Commonwealth divest authority in relation to the formulation and application of funding guidelines for civil and administrative law matters arising under Commonwealth laws to state legal aid bodies.

Recommendation 4

The Commonwealth authorise state legal aid bodies to expend Commonwealth legal aid monies on matters arising under state laws.

Recommendation 5

The Commonwealth formally acknowledge the outstanding commitment and contributions of pro bono lawyers to ensuring access to justice for people who are homeless or at risk of homelessness, including by taking those contributions into account in the consideration of tenders for governmental work.

Recommendation 6

The Commonwealth contribute monies to the operation of specialist homeless persons' legal services in Victoria, Queensland and New South Wales to ensure the continued financial viability of those services and to enable those services to continue providing access to justice for people who are homeless or at risk of homelessness.

Recommendation 7

The Commonwealth formally acknowledge the outstanding commitment and contributions of homelessness agencies and welfare workers to ensuring access to justice for people who are homeless or at risk of homelessness, including by taking those contributions into account in the allocation of monies for the homelessness and related service systems.

Recommendation 8

The Commonwealth increase funding to community legal centres and legal aid to enable them to provide increased outreach legal services in the areas of criminal and family law at crisis accommodation facilities and welfare agencies.

Recommendation 9

The Commonwealth increase funding to community legal centres in rural and regional areas to enable them to provide increased outreach legal services at crisis accommodation facilities and welfare agencies.

Recommendation 10

The Commonwealth provide funds to ensure the continued operation of the Special Circumstances List at Melbourne Magistrates' Court and the introduction of a similar list at Brisbane Magistrates' Court.

Recommendation 11

The Commonwealth provide funds to undertake further research to determine the feasibility of establishing a specialist homeless persons' court in Victoria and in other metropolitan centres of Australia.

Recommendation 12

The Commonwealth encourage and assist in the development of collaborative relationships between lawyers and welfare agencies to enhance the access of marginalised and disadvantaged clients to appropriately targeted and tailored legal services.

Recommendation 13

The Commonwealth increase funding to community legal centres to enable them to provide enhanced community legal education, including through regular publications and newsletters where appropriate.

Recommendation 14

The Commonwealth implement Recommendation 7 of the Joint Standing Committee on Electoral Matters in their 'Report of the Inquiry into the 2001 Federal Election and Matters Related Thereto' in such a way as to ensure the maximum possible homeless voter registration and vote casting.

Recommendation 15

The Commonwealth amend the Social Security Act 1991 (Cth) to include an integrated package of social security assistance to people who are homeless or at risk of homelessness that includes housing, employment assistance and personal support to ensure sustainable outcomes and facilitate public participation.

Recommendation 16

The Commonwealth introduce legislation to prohibit discrimination on the ground of a person's 'social status', including that person's status as homeless, unemployed or being a recipient under the Social Security Act 1991 (Cth).

Recommendation 17

In consultation with homelessness service providers and with people who are homeless or at risk of homelessness, the Commonwealth develop a Charter of Rights for people who are homeless or at risk of homelessness.

Recommendation 18

The Commonwealth appoint an independent and impartial Homeless Persons' Commissioner to promote and protect the rights and interests of homeless people, to assist homelessness service providers to achieve 'best practice' standards, and to critically examine all proposed legislation for the purpose of assessing its potential impact on people experiencing homelessness, including by directly consulting such people.

2. Introduction

2.1 What are the Homeless Persons' Legal Clinics?

PILCH Homeless Persons' Legal Clinic

The PILCH Homeless Persons' Legal Clinic ('PILCH Clinic') is a joint project of the Public Interest Law Clearing House (Vic) Inc ('PILCH') and the Council to Homeless Persons. It was established in October 2001 to provide free legal assistance to, and advocacy on behalf of, people who are homeless or at risk of homelessness. The PILCH Clinic was initially funded by a non-recurrent 18 month grant from the Victorian Department of Human Services (Supported Accommodation Assistance Program Unit). It is now funded by the Victorian Department of Justice through the Victoria Legal Aid Community Legal Sector Program Fund.

QPILCH Homeless Persons' Legal Clinic

The QPILCH Homeless Persons' Legal Clinic ('QPILCH Clinic') is a pilot project of the Queensland Public Interest Law Clearing House Inc ('QPILCH'). It was launched in December 2002 by the Hon Rod Welford MP, Attorney General and Minister for Justice. Like the PILCH Clinic, it provides free legal assistance to, and advocacy for, homeless people. The QPILCH Clinic is currently supported by a non-recurrent grant of \$25,000 from the Queensland Law Society Grants Committee and in-kind assistance (valued at approximately \$22,000) in the form of a secondee solicitor from Blake Dawson Waldron.

Proposed PILCH NSW Homeless Persons' Legal Clinic

In New South Wales, the Public Interest Advocacy Centre ('PIAC') and the New South Wales Public Interest Law Clearing House ('PILCH NSW') are examining the feasibility of establishing and operating a homeless persons' legal service in Sydney. The feasibility study is being undertaken by two lawyers from Minter Ellison seconded to PILCH NSW for three months each.

Service delivery model

Both the PILCH and QPILCH Clinics provide civil, administrative and some summary criminal legal services at crisis accommodation centres and welfare agencies so as to encourage direct access by clients. Legal services are provided by volunteer lawyers from PILCH and QPILCH law firms and legal departments.

Aims and objectives of the Homeless Persons' Legal Clinics

The Clinics have the following aims and objectives:

- (a) To provide free legal services to people who are homeless or at risk of homelessness in a professional, timely, respectful and accessible manner that has regard to their human rights and human dignity.
- (b) To use the law to promote, protect and realise the human rights of people experiencing homelessness.
- (c) To use the law to redress unfair and unjust treatment of people experiencing homelessness.
- (d) To reduce the degree and extent to which homeless people are disadvantaged and marginalised by the law.
- (e) To use the law to construct viable and sustainable pathways out of homelessness.

The Clinics undertake the following activities to achieve their aims and objectives:

- (a) Provide free legal assistance, advice, casework and advocacy in the areas of civil and administrative law.
- (b) Identify the range and nature of legal issues affecting homeless people.
- (c) Identify and seek to redress gaps in the delivery of legal services to homeless people.
- (d) Develop and maintain a process whereby PILCH and QPILCH law firms and legal departments can apply their expertise and resources for the benefit of people experiencing homelessness.
- (e) Collaborate with homelessness service providers to ensure that homeless people can access legal services.
- (f) In consultation with homeless people, identify and advocate in relation to relevant law and policy reform issues.
- (g) Conduct community legal education in relation to homelessness, human rights and the law.

2.2 What is Access to Justice?

This submission examines two aspects of current access to justice arrangements to meet the needs for legal assistance of people who are homeless or at risk of homelessness:

- (a) the extent to which current access to justice arrangements enable homeless people to access systems of justice (that is, the effectiveness of current arrangements in relation to ensuring that homeless people can access legal service providers and the courts); and
- (b) the extent to which current access to justice arrangements enable homeless people to access substantive justice (that is, the effectiveness of current arrangements in relation to ensuring that the formulation and application of the law with respect to homeless people is fair).

3. Homelessness

3.1 Definitions of Homelessness

Any person who is homeless or at risk of homelessness is eligible for assistance from the Clinics.

In Australia, a person is defined, at law, to be homeless if, and only if, he or she has inadequate access to safe and secure housing.¹ Section 4 of the *Supported Accommodation Assistance Act 1994* (Cth) provides that a person is taken to have inadequate access to safe and secure housing if the only housing to which a person has access:

- (a) damages, or is likely to damage, the person's health; or
- (b) threatens the person's safety; or
- (c) marginalises the person through failing to provide access to:
 - (i) adequate personal amenities; or
 - (ii) the economic or social supports that a home normally affords; or
- (d) places the person in circumstances which threaten or adversely affect the adequacy, safety, security or affordability of that housing.

This is consistent with the international law definition of 'homelessness' developed by the United Nations Committee on Economic, Social and Cultural Rights ('CESCR') which provides, in effect, that a person is homeless unless he or she has adequate housing that affords the right to live in security, peace and dignity.²

It is also consistent with definitions of homelessness that are identified by people experiencing homelessness themselves. Andrew, a client of Sacred Heart Mission in St Kilda, Victoria, reflects on the experience of sleeping rough:

With life on the street, you don't know what's going to happen next. You're forever on the edge. You don't know if you're going to overdose or if someone's going to give you a 'hot shot'. You don't know if you're going to get enough money to get on.³

Having a home means more than just having a roof over your head.⁴ Ned, another client of Sacred Heart Mission, regards himself as homeless despite the fact that he lives in a boarding house:

¹ *Supported Accommodation Assistance Act 1994* (Cth) s 4. This definition is used to determine eligibility for federal and state funded transitional supported accommodation and related support services ('SAAP services').

² United Nations Committee on Economic, Social and Cultural Rights, *General Comment No 4 in Relation to the Right to Adequate Housing*, UN Doc E/CN4/1991/4 (12 December 1991).

³ Andrew, quoted in Peter Cullen and Carol Ann Marshall (eds), *Voices of the Streets* (1999) 69.

⁴ Ian Charles, 'A Roof Over Your Head Doesn't Guarantee the Safety of a Home' (2002) 2 *Urban Seed* 2.

Boarding houses segregate people. You have walls but no real freedom. You can't bring anyone to your room, and you have to be in by a certain time. You lose your choices in boarding houses.⁵

For the purpose of identifying the extent of homelessness and assisting governments to appropriately develop and deliver services, the Australian Bureau of Statistics has adopted the definition of homelessness proposed by Chamberlain and MacKenzie.⁶ Chamberlain and MacKenzie argue that homelessness is best defined in relation to common community standards regarding the minimum accommodation necessary to live according to the 'conventions of community life'.⁷ In Australia, the accepted minimum community standard is said to be a small, rented flat with basic amenities such as a bedroom, bathroom and kitchen.⁸ Having regard to this standard, Chamberlain and MacKenzie identify three categories of homelessness:

Primary homelessness

People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.

Secondary homelessness

People who move frequently from one form of temporary shelter to another. It covers: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families (because they have no accommodation of their own); and those using boarding houses on an occasional or intermittent basis.

Tertiary homelessness

People who live in boarding houses on a medium to long-term basis. Residents of private boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their

⁵ Ned, quoted in Peter Cullen and Carol Ann Marshall (eds), *Voices of the Streets* (1999) 2.

⁶ Chris Chamberlain and David McKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274; Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999).

⁷ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999) 9-11, 49.

⁸ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999) 9-11, 49. The PILCH Clinic recognises that notions such as 'conventions of community life' and 'minimum community standards' are culturally contingent and that any definition derived from such notions does not necessarily reflect whether persons the subject of the definition self-identify as 'homeless'. To the extent that definitions are used to assess need and eligibility for services, and to appropriately target and deliver such services, it is important that they account for subjective understandings of homelessness.

accommodation is not self-contained; they do not have security of tenure provided by a lease.⁹

3.2 Extent of Homelessness

Using the definition proposed by Chamberlain and McKenzie, the Australian Bureau of Statistics enumerated that, on Census night in August 1996, there were over 105,000 people experiencing homelessness across Australia, including more than 17,800 people experiencing homelessness in Victoria and more than 25,600 experiencing homelessness in Queensland.¹⁰ More than 80 per cent of these people were classified in the primary or secondary categories of homelessness (with 20 per cent sleeping rough or in improvised dwellings, 12 per cent staying in hostels, refuges and other forms of emergency accommodation, and 46 per cent staying temporarily with other households).¹¹

It is expected that the Census figures from 2001, due to be released in late 2003, will disclose a higher incidence of homelessness in all categories.

3.3 Causes of Homelessness

The pathways into homelessness are complex and varied. They include:

- structural causes (such as poverty, inadequate affordable housing and unemployment);
- governmental, fiscal and social policy causes (such as economic reform and expenditure on housing, health, vocational and educational services);
- individual causes (such as mental illness, intellectual disability, gambling addiction, substance and alcohol addiction, domestic violence, family fragmentation and severe social dysfunction); and
- cultural causes (such as the provision of culturally inappropriate housing or support services to indigenous communities).¹²

In many cases of homelessness, the causes are intersectional and related.

⁹ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999) 1, 9-11, 13, 49.

¹⁰ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999).

¹¹ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (Australian Bureau of Statistics: Canberra, 1999).

¹² See generally, 'The Changing Face and Causes of Homelessness: Symposium' (2002) 15(9) *Parity*.

4. Demographics of People Accessing the Homeless Persons' Legal Clinics

4.1 Number of Clients

Between 1 October 2001 and 30 June 2003, the PILCH Clinic provided free legal assistance to over 580 homeless clients.

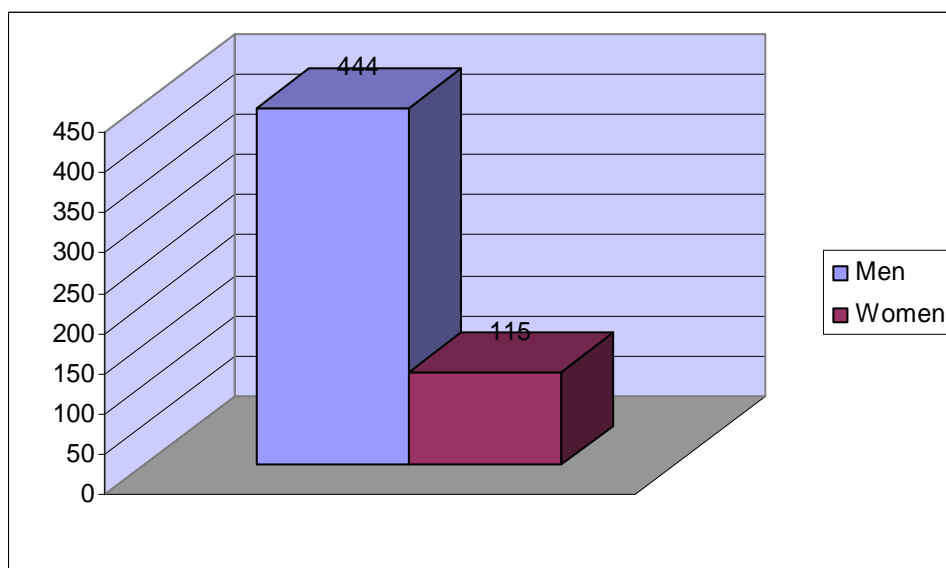
Between 10 December 2002 and 10 June 2003, the QPILCH Clinic provided free legal assistance to 114 homeless clients.

4.2 Gender

In Victoria, 79 per cent of all clients are men and 21 per cent are women.

The high proportion of men is attributable, in part, to the fact that the PILCH Clinic operates at two all-male crisis accommodation shelters (namely, Flagstaff Crisis Centre and Ozanam House), whereas it does not provide services at any all-female crisis accommodation facilities.

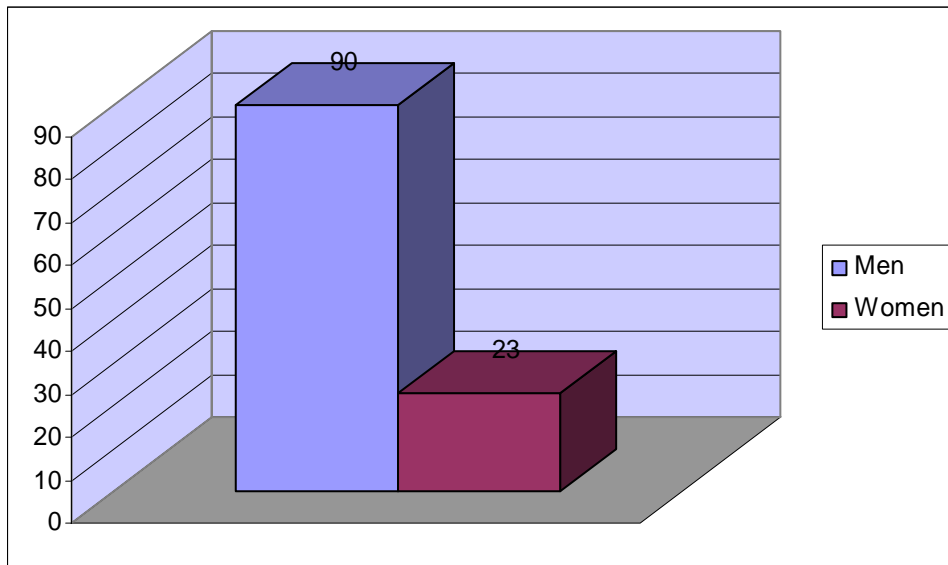
Table 1: Gender of PILCH Clinic clients



In Queensland, 79 per cent of all clients are men and 21 per cent are women.

The high representation of men is partly due to the fact that, for most of the period from 10 December 2002 to 10 June 2003, two of the four clinics operating were located at homeless men's hostels.

Table 2: Gender of QPILCH Clinic clients

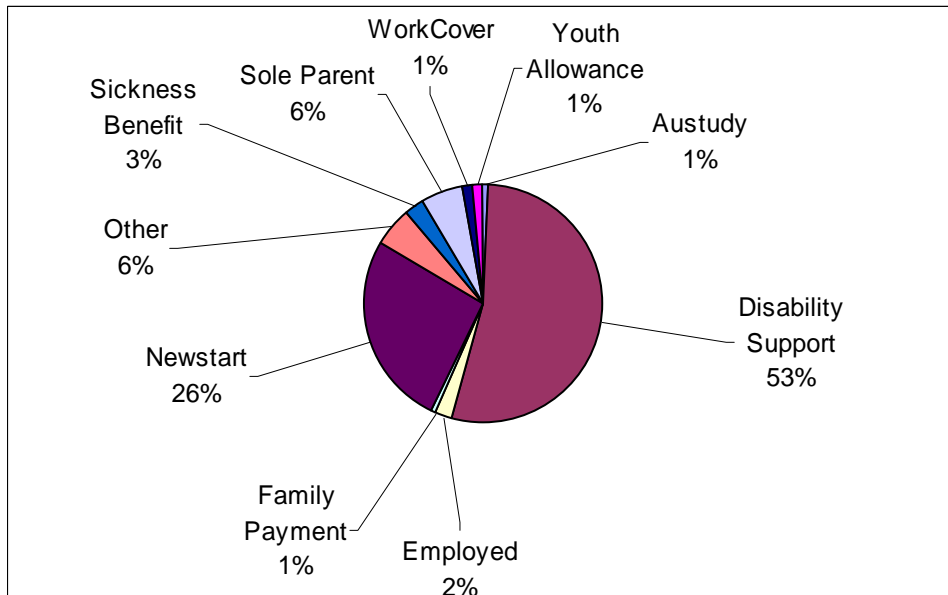


4.3 Primary Income

In Victoria, approximately 92 per cent of clients are social security recipients.

The Disability Support Pension is the primary source of income for 53 per cent of clients, while 26 per cent of clients rely on a Newstart Allowance.

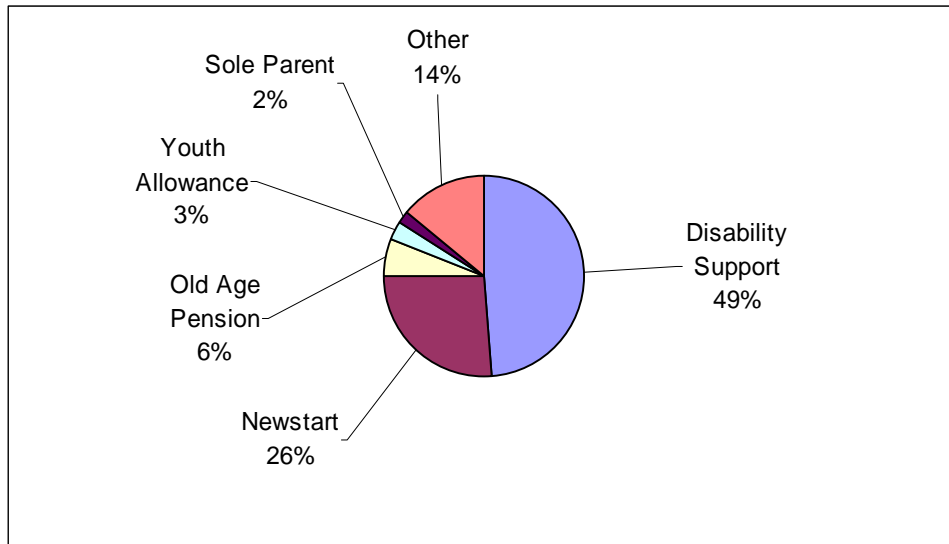
Table 3: Primary Income of PILCH Clinic clients



In Queensland, over 89 per cent of clients rely on a Centrelink payment as their primary source of income.

Of those clients in receipt of Centrelink payments, 49 per cent receive the Disability Support Pension and 26 per cent receive the Newstart allowance.

Table 4: Social security payment type of QPILCH Clinic clients

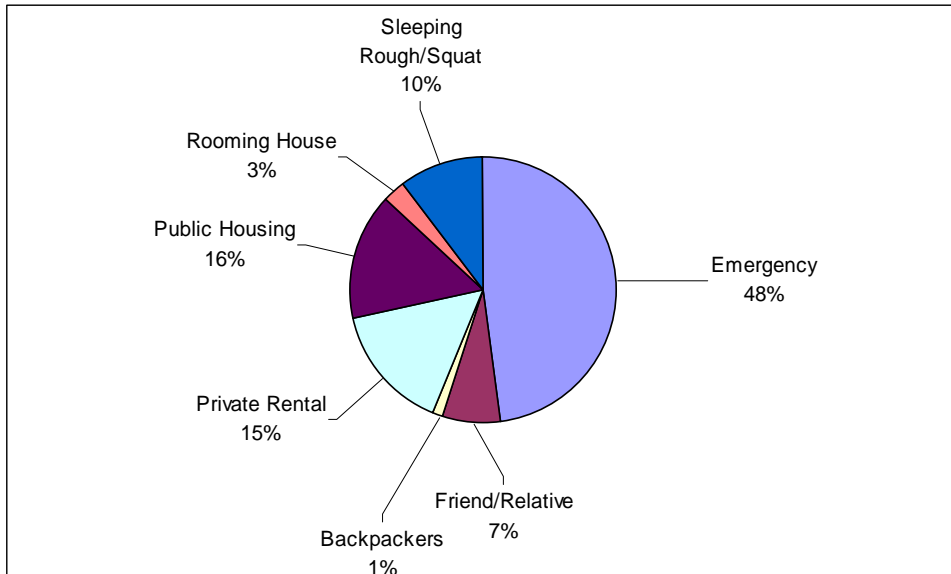


4.4 Accommodation

In Victoria, almost 50 per cent of clients were living in emergency accommodation when they first attended the PILCH Clinic. Sixteen per cent of clients live in public housing, ten per cent sleep rough or in squats, and seven per cent report that they are staying with friends or relatives. Only three per cent live in rooming or boarding houses.

The high proportion of clients residing in crisis accommodation is attributable, in part, to the fact that the PILCH Clinic outreaches to three crisis accommodation facilities (namely, Flagstaff Crisis Accommodation, Ozanam House and Hanover Welfare Services).

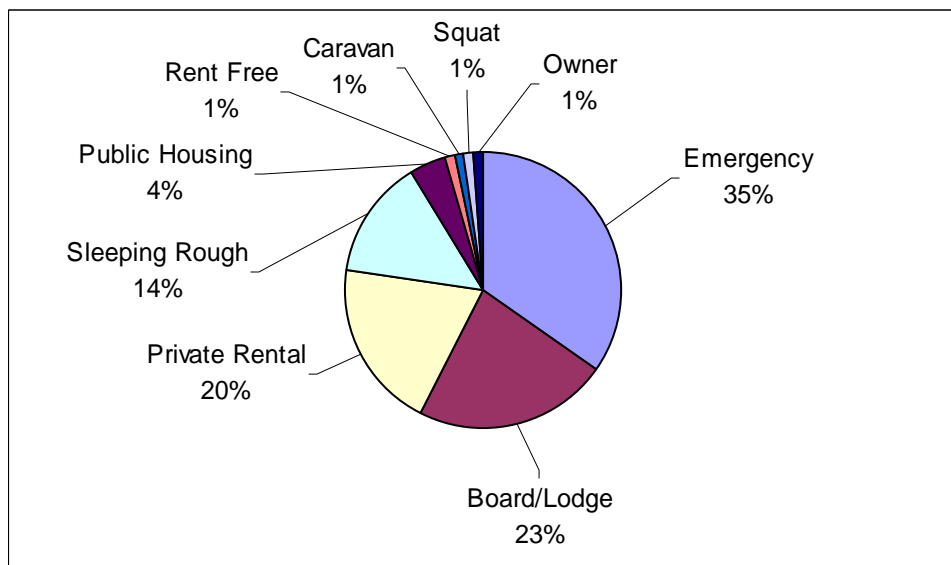
Table 5: Accommodation of PILCH Clinic clients



In Queensland, 32 per cent of all clients were living in emergency or crisis accommodation at the time they sought assistance from the QPILCH Clinic. It should be noted that the QPILCH Clinic outreaches to two crisis shelters for homeless men (namely, Salvation Army Pindari and St Vincent's Community Services Homeless Men's Hostel), while a third clinic is accessed predominantly by women staying at the Anglicare Women's Hostel in New Farm.

Clients who access the QPILCH Clinic also mostly stay in boarding houses (23 per cent), privately rent (20 per cent) or sleep rough (14 per cent).

Table 6: Accommodation of QPILCH Clinic clients

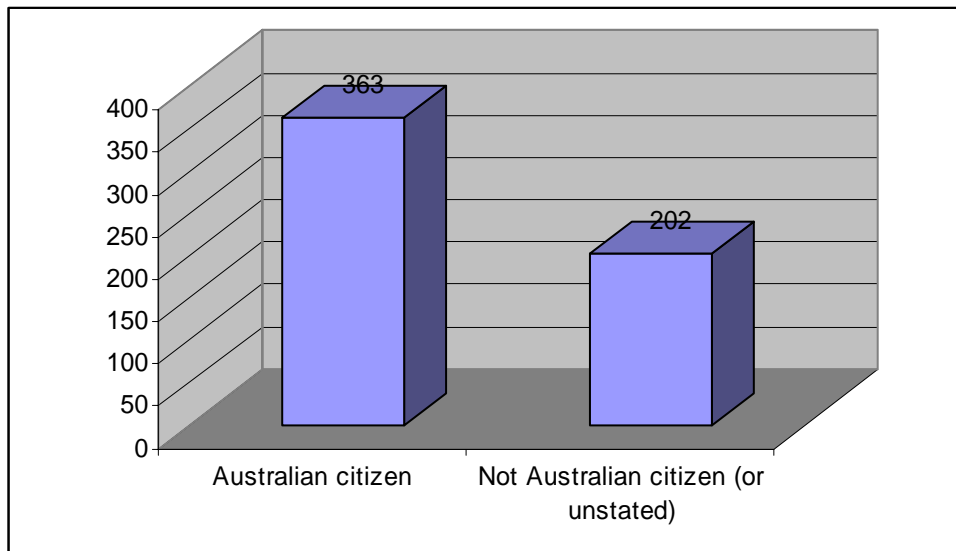


4.5 Citizenship

Approximately 64 per cent of PILCH Clinic clients in Victoria are Australian citizens.

A high proportion of clients come from culturally and linguistically diverse backgrounds. Countries of origin include Vietnam, Somalia, Iran, Eritrea, Ethiopia and the Sudan.

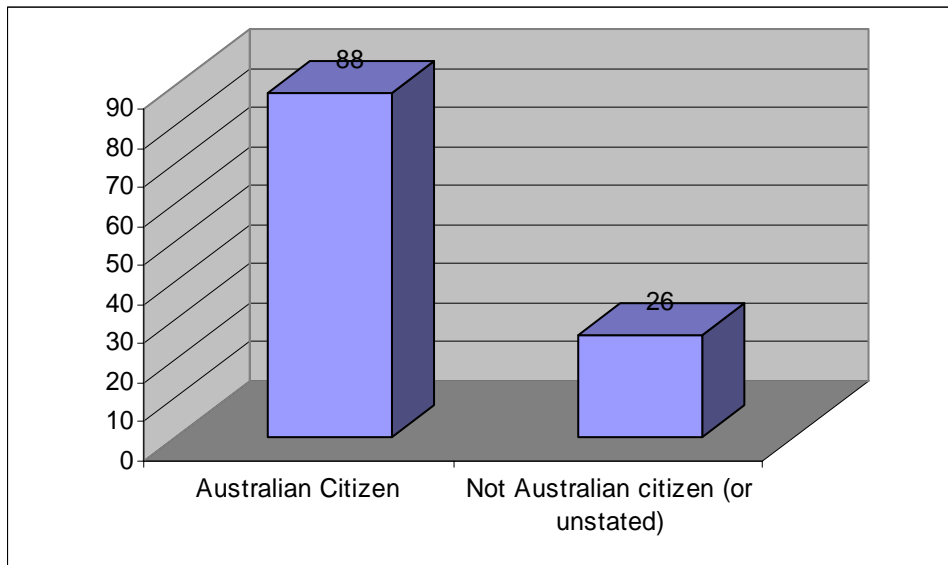
Table 7: Citizenship of PILCH Clinic clients



In Queensland, 77 per cent of all clients stated that they were Australian citizens. Approximately five per cent of clients disclosed that they were from culturally and linguistically diverse backgrounds, and eight per cent identified that they were Aboriginal, Torres Strait or South Sea Islanders.

A large number of clients did not identify whether or not they were Australian. It is therefore probable that the proportion of clients who are not Australian citizens is actually higher than recorded.

Table 8: Citizenship of QPILCH Clinic clients



5. Barriers to Accessing the Justice System

5.1 Introduction

This section discusses the barriers faced by homeless people in accessing systems of justice (that is, the barriers to homeless people accessing legal service providers and the courts).

5.2 Lack of Civil, Administrative and Summary Criminal Law Assistance

The availability of legal aid for homeless people in respect of civil, administrative and summary criminal law matters is very limited.

State civil and administrative law matters in Victoria

In relation to civil and administrative law matters in Victoria generally, Victoria Legal Aid will not grant assistance unless the amount of the claim is \$5,000 or more. For plaintiffs, Victoria Legal Aid will not grant assistance if the plaintiff could obtain assistance under a conditional costs agreement, notwithstanding that many 'no win – no fee' arrangements require that the plaintiff make an initial outlay of up to \$2,000.¹³ For defendants in civil law matters, Victoria Legal Aid will only grant assistance if the person's sole place of residence is at immediate risk in the action and there is a strong prospect of success.¹⁴ By definition, this excludes homeless people from obtaining assistance for civil law matters in which they are a defendant.

The availability of legal aid in respect of the civil law matters in Victoria in relation to which, in the experience of the PILCH Clinic, homeless people most frequently require assistance is set out below.

¹³Victoria Legal Aid, *Legal Aid Handbook* (12th ed, 2001) 24.

¹⁴ Victoria Legal Aid, *Legal Aid Handbook* (12th ed, 2001) 24.

**Table 9: Availability of Victoria Legal Aid assistance
in state civil and administrative law matters**

Type of Matter	Availability of Victoria Legal Aid assistance
Personal injury	Not available unless the amount of the claim exceeds \$5,000 and the plaintiff could not obtain assistance under a conditional costs agreement, regardless of the up front payment required to enter into such an agreement
Debt	Not available unless the amount of the claim exceeds \$5,000, the person's sole place of residence is at immediate risk and there is a strong prospect of success
Tenancy	Not available
Guardianship and administration	Not available unless there are reasonable prospects of removing or preventing the appointment of a guardian or administrator
Wills and probate	Not available
Employment	Not available
Discrimination	Not available unless the case will result in broad public benefit
Mental health	Not available unless the person is an involuntary patient and there is a reasonable prospect of obtaining his or her release from a hospital
Police practices	Not available

State civil and administrative law matters in Queensland

The availability of legal aid in respect of the civil law matters in Queensland in relation to which, in the experience of the QPILCH Clinic, homeless people most frequently require assistance is set out below.¹⁵

**Table 10: Availability of Legal Aid Queensland assistance
in state civil and administrative law matters**

Type of Matter	Availability of Legal Aid Queensland assistance
Personal injury	Not available for claims arising under Commonwealth legislation unless the person's sole place of residence is at immediate risk and only available for claims arising under state legislation in no-costs jurisdictions
Debt	Not available for claims arising under Commonwealth legislation unless the person's sole place of residence is at immediate risk and only available for claims arising under state legislation in no-costs jurisdictions
Tenancy	Not available
Guardianship and administration	Not available
Wills and probate	Not available
Employment	Not available
Discrimination	Not available unless the case will result in broad public benefit
Mental health	Not available unless the matter is a criminal matter before the Mental Health Tribunal or an application to discharge or change conditions before the Patient Review Board
Police practices	Not available

Recommendation 1

The Commonwealth increase funding to state legal aid bodies to improve access to legal aid assistance in respect of civil and administrative matters arising under state laws.

Summary criminal law matters in Victoria

As discussed further below, the most common matters in relation to which homeless people in Victoria require legal assistance arise from fines and infringement notices, particularly for public space, public order and public transport offences. These are

¹⁵ Legal Aid Queensland, *Policy Manual* (2003) section 3.

typically strict liability offences where there is no issue as to guilt but in respect of which the client requires significant assistance to ensure that the matter is heard in open court and that an appropriate sentencing order is made having regard to the person's 'special circumstances'. Assistance from Victoria Legal Aid is not available for these matters, although a Victoria Legal Aid Duty Lawyer may assist with a guilty plea and sentencing submissions once the matter is before court.¹⁶

Summary criminal law matters in Queensland

In Queensland, the most common matters in respect of which homeless people require legal assistance are summary criminal offences, particularly public space or vagrancy offences, traffic offences and minor drug charges. Unless a conviction would be likely to result in imprisonment, assistance from Legal Aid Queensland is not available for these matters if the defendant intends to plead not guilty. Where the defendant intends to enter a guilty plea, representation may be available from a Legal Aid Queensland Duty Lawyer.¹⁷

Recommendation 2

The Commonwealth increase funding to state legal aid bodies to improve access to legal aid assistance in respect of summary criminal law matters arising under state laws.

Commonwealth civil and administrative law matters in Victoria and Queensland

In Victoria and Queensland, the availability of legal aid in respect of the Commonwealth civil and administrative law matters in relation to which, in the experience of the PILCH and QPILCH Clinics, homeless people most frequently require assistance is set out below.¹⁸

¹⁶ Victoria Legal Aid, *Legal Aid Handbook* (12th ed, 2001) 27.

¹⁷ Legal Aid Queensland, *Policy Manual* (2003) section 3.

¹⁸ Victoria Legal Aid, *Legal Aid Handbook* (12th ed, 2001) 39-40; Legal Aid Queensland, *Policy Manual* (2003) section 3.

**Table 11: Availability of Victoria Legal Aid assistance
in Commonwealth civil and administrative law matters**

Type of matter	Availability of Victoria Legal Aid assistance
Social security	Not available other than in restricted matters before the Administrative Appeals Tribunal
Discrimination	Not available unless the case will result in broad public benefit
Migration	Not available unless there are differences of judicial opinion which have not been settled by the Full Federal Court or the High Court, or if the proceedings seek to challenge the lawfulness of detention

The funding guidelines for Victoria Legal Aid and Legal Aid Queensland in respect of Commonwealth civil and administrative law matters are set by the Commonwealth Government. As can be seen from the table above, these guidelines are extremely restrictive. For example, legal aid assistance is not available for any appeal from a Centrelink decision to an Authorised Review Officer or even to the Social Security Appeals Tribunal. In order to obtain legal assistance in a social security matter, an applicant therefore needs to either pay for representation or appear unrepresented at these levels. This is a significant disincentive to appealing against a Centrelink decision, regardless of the merits of the appeal. The guidelines are similarly restrictive for equal opportunity and anti-discrimination cases, where legal aid is unlikely to be available unless the complainant alleges indirect discrimination.

Given that the expenditure of Commonwealth legal aid monies is largely limited to Commonwealth matters, the restrictive funding guidelines in respect of Commonwealth civil and administrative law matters have, reportedly, resulted in Victoria Legal Aid and Legal Aid Queensland retaining large surpluses of Commonwealth monies.

Recommendation 3

The Commonwealth divest authority in relation to the formulation and application of funding guidelines for civil and administrative law matters arising under Commonwealth laws to state legal aid bodies.

Recommendation 4

The Commonwealth authorise state legal aid bodies to expend Commonwealth legal aid monies on matters arising under state laws.

Community legal centres

The gaps in service provision arising from the inadequate coverage of Victoria Legal Aid and Legal Aid Queensland are filled, in part, by generalist and specialist

community legal centres. However, due to resource, staffing, capacity and financial constraints, many community legal centres are unable to provide a comprehensive casework service. Many community legal centres cannot provide representation in court or tribunal proceedings, while other centres are limited to the provision of 'once-off' advice rather than any ongoing assistance. Almost no community legal centres are able to act as the instructing solicitor in Supreme Court, Federal Court or High Court proceedings.

5.3 Location and Accessibility of Services

Given the pressing problems that many homeless people confront (such as lack of access to food, lack of access to adequate housing, mental health problems etc), legal issues are unlikely to be identified and resolved as a priority unless legal services are appropriately targeted and delivered. For this reason, it is crucial that legal assistance for homeless people is accessible at locations that they already frequent for more basic subsistence needs. Such locations include soup kitchens, crisis accommodation facilities, housing services and domestic violence refuges.

The current level of funding provided to Victoria Legal Aid, Legal Aid Queensland and to community legal centres is inadequate to enable them to regularly outreach to homelessness service providers.

Case study

Flagstaff Crisis Accommodation, an emergency refuge for homeless men run by the Salvation Army in North Melbourne, Victoria, is situated across the road from North Melbourne Legal Service. Despite this proximity, North Melbourne Legal Service sends an outreach lawyer to Flagstaff for two hours each Tuesday night to deal with the unmet criminal and family law need. The outreach lawyer assists an average of three new clients per week. Prior to the outreach lawyer attending Flagstaff, an average of three Flagstaff residents sought assistance at the offices of North Melbourne Legal Service *per month*.

The location and accessibility of courts, tribunals and court services is also an important factor in determining whether people experiencing homelessness can access justice.

5.4 Awareness of Rights and Knowledge of Law

A person's ability to access legal services or court or tribunal systems is contingent, at least in part, on that person being aware that they have a 'legal problem' or that they have 'legal rights' that are being infringed. Lack of awareness of legal rights, and a lack of understanding about 'the law', is a significant barrier to many homeless people accessing justice. This lack of awareness or knowledge is particularly evident among young homeless people, homeless people from culturally diverse

backgrounds, Aboriginal and Torres Strait Islander homeless people, homeless people experiencing mental illness and homeless people with an intellectual disability.

Case study

Barry is a homeless man who suffers from schizophrenia and chronic alcoholism. Over a three year period he accrued more than \$5,000 worth of fines for public space and public order offences such as drinking in a public place and begging. Despite his extenuating and special circumstances, Barry did not seek legal assistance until the sheriff attempted to execute a warrant in relation to the unpaid fines because, in his words, 'I keep getting 'em but there's nothing I can do about 'em is there?'.

5.5 Confidence to Access Services

A person's ability to access legal services or court or tribunal systems is also contingent on that person having the level of confidence and empowerment required to seek legal assistance. Many homeless people lack this level of confidence or empowerment. This may be due to factors including mental illness, language barriers or the perception that legal assistance is costly. Previous negative experiences with 'the law', law enforcement officers and the court system, including associating the court system with imprisonment, may also dissuade homeless people from seeking legal assistance.

Case study

Sunad is a homeless man from Eritrea. He suffers from diagnosed manic depression. As a newly arrived resident he is not entitled to social security payments and, by consequence, is often unable to purchase tram tickets. Sunad presented to the PILCH Clinic with over \$2,000 in fines for public transport offences. The PILCH Clinic advised Sunad that it could make an application for the revocation of these fines on the basis of his 'special circumstances'. Sunad was not prepared to instruct the PILCH Clinic to make this application, however, because he was afraid that when the authorities became aware of his mental state they would 'lock him up'.

6. Strategies to Overcome Barriers to Accessing the Justice System

6.1 Introduction

This section discusses strategies to address the barriers faced by homeless people in accessing systems of justice. It also makes recommendations to improve access to legal service providers and the courts for homeless people.

6.2 Provision of Pro Bono Civil and Administrative Law Assistance

As discussed above, the capacity of many community legal centres and the funding guidelines of Victoria Legal Aid and Legal Aid Queensland are such that many homeless people are unable to obtain assistance in relation to civil, administrative or summary criminal law matters.

Victoria – PILCH Clinic

The PILCH Clinic aims to redress this service provision gap by providing legal assistance to people who are homeless or at risk of homelessness in relation to civil, administrative and summary criminal law matters.

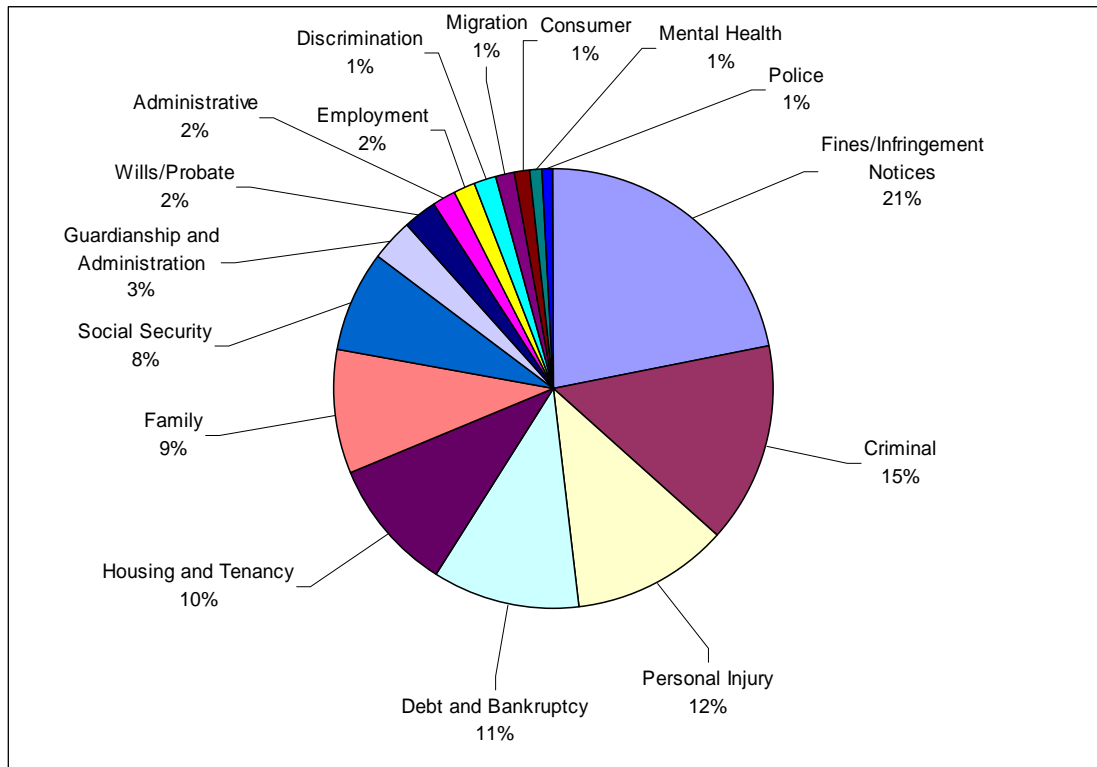
These services are provided by more than 150 volunteer lawyers from:

- Allens Arthur Robinson
- Blake Dawson Waldron
- Clayton Utz
- Hunt & Hunt
- Mallesons Stephen Jaques
- Minter Ellison
- National Australia Bank Legal Department
- Phillips Fox

Between 1 October 2001 and 30 June 2003, the PILCH Clinic provided free legal assistance to over 580 homeless clients.

The most common legal matters in respect of which clients required assistance are set out below.

Table 12: Legal matters in respect of which PILCH Clinic clients sought assistance from 1 October 2001 to 30 June 2003



During the period 1 October 2001 and 30 June 2003, the PILCH Clinic was funded by the Victorian Department of Human Services (Supported Accommodation Assistance Program Unit) in the amount of \$76,000 and the Victorian Department of Justice in the amount of \$43,000. On the basis of 580 clients being assisted during this period, the cost of the PILCH Clinic per client was approximately \$205 (including the costs of salaries, accommodation, administration, education, insurance, materials and public policy advocacy).

The amount of time contributed by volunteer lawyers on a pro bono basis between 1 October 2001 and 30 June 2003 was 9068 hours. The value of this contribution, at the commercial charge out rates of those lawyers, was in excess of \$2,300,000. This means that the value of work undertaken per client, at commercial rates, was approximately \$3,965.

The PILCH Clinic is now funded in the amount of \$75,000 per annum by the Victorian Department of Justice through the Victoria Legal Aid Community Legal Sector Program Fund. The actual operating cost of the PILCH Clinic is approximately \$96,000 per annum, with the \$21,000 operating deficit being met by donations of \$5,000 from each of Arnold Bloch Leibler and the National Australia Bank, a subsidy of approximately \$8,000 from PILCH, and the remaining \$3,000 being derived from interest and fundraising activities.

The PILCH Clinic does not receive any Commonwealth monies.

Queensland – QPILCH Clinic

The QPILCH Clinic is staffed by over 120 lawyers and 30 support staff from:

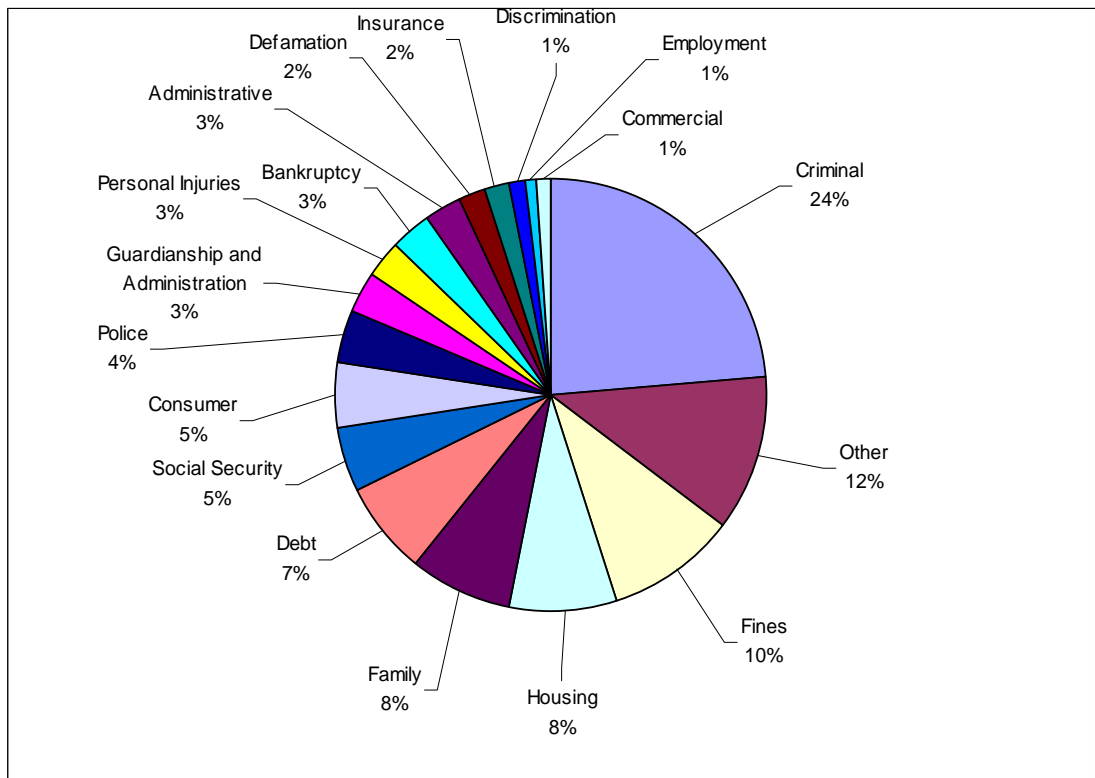
- Allens Arthur Robinson
- Blake Dawson Waldron
- Clayton Utz
- Freehills
- Hopgood Ganim
- Mallesons Stephen Jaques
- McCullough Robertson
- McInnes Wilson
- Minter Ellison
- MurphySchmidt.

QPILCH is currently seeking the help of another firm to supplement existing services.

Between 10 December 2002 and 10 June 2003, the QPILCH Clinic provided free legal assistance to 114 homeless clients.

The most common legal matters in respect of which clients required assistance are set out below.

Table 13: Legal matters in respect of which QPILCH Clinic clients sought assistance from 10 December 2002 to 10 June 2003



The amount of time contributed by volunteer lawyers on a pro bono basis between 10 December 2002 and 10 June 2003 was 650 hours. The value of this contribution, at the commercial charge out rates of those lawyers, was almost \$200,000. This means that the value of work undertaken per client, at commercial rates, was approximately \$1,750.

As discussed above, the QPILCH Clinic is currently supported by a non-recurrent grant of \$25,000 from the Queensland Law Society Grants Committee and in-kind assistance (valued at approximately \$22,000) in the form of a secondee solicitor from Blake Dawson Waldron. The funding received from the Queensland Law Society Grants Committee and the support of Blake Dawson Waldron for the coordinator's position will enable the Clinic to operate until 3 October 2003. From then it will be necessary to access additional funding or a replacement secondee solicitor to ensure the continued viability of the project. In this respect, the QPILCH Clinic has applied to the Queensland Attorney-General's Department for funding in the amount of \$52,330 to allow the project to continue operating until the end of the 2003/2004 financial year.

The QPILCH Clinic does not receive any Commonwealth monies.

Recommendation 5

The Commonwealth formally acknowledge the outstanding commitment and contributions of pro bono lawyers to ensuring access to justice for people who are homeless or at risk of homelessness, including by taking those contributions into account in the consideration of tenders for governmental work.

Recommendation 6

The Commonwealth contribute monies to the operation of specialist homeless persons' legal services in Victoria, Queensland and New South Wales to ensure the continued financial viability of those services and to enable those services to continue providing access to justice for people who are homeless or at risk of homelessness.

6.3 Outreach Service Provision

Legal Services – Victoria

As discussed above, homeless people are unlikely to access legal services unless they are appropriately tailored and delivered. The PILCH Clinic seeks to overcome this barrier to accessing justice by providing legal services on-site at homelessness service providers so as to encourage and facilitate direct access by clients.

At present, the PILCH Clinic is operating on a weekly basis at the following eight locations:

- **The Big Issue** (148 Lonsdale Street, Melbourne)

The Big Issue is an independent, current affairs magazine sold on the streets of Melbourne, Sydney, Brisbane and Bendigo by vendors who are homeless or long-term unemployed. The Big Issue exists to help its vendors earn their own income.

The PILCH Clinic operates at the offices of The Big Issue on Monday from 10.00am – 11.00am and is staffed by lawyers from **Clayton Utz**.

- **Melbourne Citymission Western** (214-216 Nicholson Street, Footscray)

Melbourne Citymission Inc operates a collaborative support service for persons who are homeless or disadvantaged at Melbourne Citymission Western. The PILCH Clinic at Melbourne Citymission Western also provides services to clients of The Salvation Army Women's Support and Accommodation Service in Kensington and women from Regina Coeli Community in North Melbourne.

The PILCH Clinic operates at Melbourne Citymission Western on Monday from 10.30am – 1.30pm and is staffed by lawyers from **Mallesons Stephen Jaques**.

- **Ozanam House** (179 Flemington Road, North Melbourne)

Ozanam House is a crisis accommodation facility and support service operated by the Society of St Vincent de Paul for adult males who are homeless or severely disadvantaged.

The PILCH Clinic operates at Ozanam House on Monday from 9.00am – 12.00pm and is staffed by lawyers from **Minter Ellison**. Lawyers from **North Melbourne Legal Service** attend Ozanam House at the same time to provide criminal and family law advice to clients.

- **Urban Seed** (174 Collins Street, Melbourne)

Urban Seed is a non-profit organisation which engages in and raises public awareness about issues including homelessness. It provides support and services to homeless people who live in the city. These services include Credo Café, which provides free meals to Melbourne's homeless, particularly those with mental health or substance abuse issues.

The PILCH Clinic operates at Urban Seed on Tuesday from 12.00pm – 1.30pm and is staffed by lawyers from **Clayton Utz**.

- **Flagstaff Crisis Accommodation** (9 Roden Street, West Melbourne)

Flagstaff Crisis Accommodation is a crisis accommodation facility and support service operated by The Salvation Army for adult males who are homeless or in crisis situations.

The PILCH Clinic operates at Flagstaff on Tuesday from 5.30pm – 7.30pm and is staffed by lawyers from **Minter Ellison** and **Hunt & Hunt**. Lawyers from **North Melbourne Legal Service** attend Flagstaff at the same time to provide criminal and family law advice to clients.

- **St Peter's Eastern Hill** (15 Gisborne Street, Melbourne)

Anglicare operates a breakfast and food distribution program for homeless persons at St Peter's Eastern Hill. Anglicare provides an extensive range of support services throughout metropolitan Melbourne and Gippsland for children, young people, families and the broader community.

The PILCH Clinic operates at St Peter's Eastern Hill on Wednesday from 7.30am – 9.00am and is staffed by lawyers from **Blake Dawson Waldron** and the **National Australia Bank Legal Department**.

- **Hanover Southbank** (52 Haig Street, South Melbourne)

Hanover is a housing, information, support and research agency which provides a range of services, including crisis accommodation and casework, to people who are homeless or at risk of homelessness.

The PILCH Clinic operates at Hanover Southbank, a crisis accommodation facility, on Wednesday from 5.30pm – 7.30pm and is staffed by lawyers from **Phillips Fox**. Lawyers from **St Kilda Legal Service** attend Hanover at the same time to provide criminal and family law advice to clients.

- **Argyle Housing Service** (2/107 Cambridge Street, Collingwood)

Argyle Housing Service is a housing information and referral service. It facilitates access to emergency accommodation, transitional housing and priority public housing for people who are homeless or at risk of homelessness.

The PILCH Clinic operates at Argyle Housing Service on Thursday from 12.00pm – 2.00pm and is staffed by lawyers from **Allens Arthur Robinson**.

The accommodation of the PILCH Clinic at homelessness agencies, combined with the valuable input of workers from those agencies, ensures that the PILCH Clinic provides a service that is appropriate to homeless people and consistent with the agencies' aim to provide a holistic response to poverty and disadvantage.

Legal Services – Queensland

At present, the QPILCH Clinic is operating at the following six times and locations:

- **Mission Australia** (216 Brunswick Street, Fortitude Valley)

Mission Australia provides support, services and reduced cost meals to homeless and marginalised people who live in Fortitude Valley through its Community Café.

The QPILCH Clinic operates at the Community Café every Thursday from 9:00am – 11:00am and is staffed by lawyers from **Freehills** and **Minter Ellison**.

- **Red Cross** (397 Adelaide Street, Brisbane)

Red Cross operates a café for young people under 25 years of age at the Red Cross City Steps Café in the basement of Brisbane City Hall every Tuesday and Thursday evening. The café provides food, clothing, toiletries and support and referral services to young people.

The QPILCH Clinic operates at the Youth Café every Tuesday from 7:00pm – 9:00pm and is staffed by lawyers and support staff from **Mallesons Stephen Jaques** and **Hopgood Ganim**.

- **Salvation Army** (28 Quarry Street, Spring Hill)

The Salvation Army operates a crisis accommodation facility and support service for adult males who are homeless or disadvantaged at Pindari.

The QPILCH Clinic operates at Pindari fortnightly on Tuesday from 9:30am – 11:30am and is staffed by lawyers from **Clayton Utz**.

- **St Vincent's Community Services** (48 Peel Street, South Brisbane)

St Vincent's Community Services (now known as Ozcare) operates a crisis accommodation facility and support service for adult males who are homeless or disadvantaged at the Homeless Men's Hostel in South Brisbane.

The QPILCH Clinic operates at the Hostel every Tuesday from 8:30am – 10:30am and is staffed by lawyers from **Blake Dawson Waldron** and **MurphySchmidt**.

- **Wesley Mission Brisbane** (140 Ann Street, Brisbane)

Wesley Mission Brisbane provides an Emergency Relief Service at Wesley House for people who are homeless or at risk of homelessness. Support is available in the form of food parcels or vouchers, and assistance in paying rent, prescriptions and bills.

The QPILCH Clinic operates at Wesley House fortnightly on Tuesday from 10:00am – 11:00am and is staffed by lawyers from **Allens Arthur Robinson**. **McInnes Wilson** also provided lawyers to this clinic until the commencement of the 4AAA Kiosk clinic.

- **West End Community House** (4 Norfolk Road, West End)

West End Community House is a service of the Uniting Church and offers a wide range of services and activities for local residents, including housing advice and information services. West End Community House also provides this service as an outreach program at the 4AAA Kurilpa Kiosk at Boundary Street Community Park, 155A Boundary Street, West End. Drug-Arm provides free outreach support and health services from the back of mobile vans to people who are not currently accessing mainstream health and welfare services.

The QPILCH Clinic operates out of the 4AAA kiosk on Boundary Street, West End at the time a Drug-Arm mobile van stops there to provide health and other services. It operates weekly from 12.30pm – 1.30pm every Friday and is staffed by lawyers from **McCullough Robertson** and **McInnes Wilson**.

Recommendation 7

The Commonwealth formally acknowledge the outstanding commitment and contribution of homelessness agencies and welfare workers to ensuring access to justice for people who are homeless or at risk of homelessness, including by taking those contributions into account in the allocation of monies for the homelessness and related service systems.

The civil and administrative law assistance provided by the PILCH Clinic at Ozanam House, Flagstaff Crisis Accommodation and Hanover Welfare Services is supplemented by a simultaneous criminal and family law outreach service provided by North Melbourne Legal Service at Ozanam House and Flagstaff and by St Kilda Legal Service at Hanover. At present, no criminal or family law outreach is provided at QPILCH Clinic locations. The collaborative arrangement between the PILCH Clinic and community legal centres ensures that clients are provided with a full service on-site. This is important because many clients who attend the Clinic locations which are not co-staffed by community legal centres do not go on to take up referrals to community legal centres, Victoria Legal Aid or Legal Aid Queensland.

Recommendation 8

The Commonwealth increase funding to community legal centres and legal aid to enable them to provide increased outreach legal services in the areas of criminal and family law at crisis accommodation facilities and welfare agencies.

Due to funding constraints, the PILCH Clinic is unable to offer any legal services to people who are homeless or at risk of homelessness in rural or regional areas. This is despite the 1996 Census disclosing that over 5,750 (or 32 per cent) of a total of 17,840 homeless people in Victoria live in rural or regional areas.

QPILCH is exploring the possibility of opening clinics in regional centres, such as Toowoomba, but is hampered by funding constraints.

Recommendation 9

The Commonwealth increase funding to community legal centres in rural and regional areas to enable them to provide increased outreach legal services at crisis accommodation facilities and welfare agencies.

Court services

As discussed above, the location and accessibility of courts and tribunals is also an important factor in determining whether people experiencing homelessness can access justice. For example, in Los Angeles, USA, a homeless persons' court sits monthly in the PATH Mall in downtown Los Angeles. PATH (People Assisting the Homeless) is a collaboration of homelessness organisations offering counselling,

housing information and referrals, emergency accommodation, education, training, medical treatment, personal grooming and legal services under the one roof. The court seeks to identify and address the causes of a homeless person's 'offending behaviour' by linking misdemeanour adjudication with social service intervention. A person who is homeless and pleads guilty to an offence may be referred to the court for 'sentencing'. The focus of sentencing is rehabilitation and restoration. Only persons who make the commitment to taking the long road to putting their lives back on track are eligible for referral to the court. Thus, rather than fining or incarcerating homeless offenders, the court refers them to an appropriate service provider to obtain vocational training, health care, housing, drug and alcohol treatment, family counselling or gambling support as necessary.

In Victoria, the Melbourne Magistrates' Court has recently adopted listing procedures in relation to people who have 'special circumstances' that contributed to them accruing unpaid fines. 'Special circumstances' include mental or physical illness, addiction, disorder or disability. The Court does not consider that homelessness or mere inability to pay constitute 'special circumstances'. The Special Circumstances List sits at Melbourne on the first and third Thursday of every month and aims to identify and address the issues underlying the 'offending behaviours' of persons with special circumstances. The Special Circumstances List hears and determines over 60 cases per month and has been extremely successful in tailoring sentencing orders to special needs. For example, a magistrate presiding on the list recently ordered that a homeless alcoholic man who had accrued more than \$50,000 of fines for drinking intoxicating liquor in public attend a residential rehabilitation unit for two months. At the completion of the residency, the magistrate dismissed all of the fines. At present, the Melbourne Magistrates' Court employs one Enforcement Review Officer to manage the Special Circumstances List. The program, which is funded exclusively using state monies, requires further funding to continue operating at current levels.

No such listing procedure exists in the Queensland Magistrates' Courts.

Recommendation 10

The Commonwealth provide funds to ensure the continued operation of the Special Circumstances List at Melbourne Magistrates' Court and the introduction of a similar list at Brisbane Magistrates' Court.

The PILCH Clinic is currently preparing a discussion paper regarding the feasibility of establishing a homeless persons' court in Victoria. Such a court could link misdemeanour adjudication with social service intervention to ensure that sentencing dispositions are tailored to address the underlying causes of so-called 'offending behaviours'.

Recommendation 11

The Commonwealth provide funds to undertake further research to determine the feasibility of establishing a specialist homeless persons' court in Victoria and in other metropolitan centres of Australia.

6.4 Holistic Advocacy and Establishing Relationships of Trust and Confidence

The Clinics adopt a number of strategies to overcome the barriers to accessing legal services presented by a homeless person's lack of confidence or empowerment.

As discussed above, the Clinics provide outreach services at locations already frequented by homeless people for other more basic needs. These are generally locations with which clients are familiar and in which they feel more comfortable than in, for example, the confines of a legal aid office. The Reverend Tim Costello reports that:

The provision of services at Credo Café has been a significant factor in people making use of it and complements our other services which aim to improve people's self-esteem, community connectedness and self-reliance.

Similarly, Ted Salerno of the St Vincent de Paul Society writes that:

The service provided by the Legal PILCH Clinic has been a resounding success from day one. The Support Team feel they are better equipped to provide a more comprehensive service for each individual.

Each outreach location is staffed by lawyers from only one or two participating law firms. For example, only lawyers from Clayton Utz provide services to clients of The Big Issue. This has resulted in the development of a close, co-operative, collaborative relationship between the law firm, the agency and clients. It also means that Clayton Utz lawyers have developed an understanding of The Big Issues' service delivery model such that legal assistance is provided in a manner consistent with the provision of other services to The Big Issue vendors.¹⁹ Clients feel confident and comfortable with this seamless service delivery model. As one client remarked, 'No-one has ever helped me like this before'.

The Clinics are committed to holistic service delivery. While their focus is on the provision of services in civil, administrative and summary criminal law matters, clients who present with legal matters outside the scope of the Clinics or with non-legal matters are referred appropriately.

Recommendation 12

The Commonwealth encourage and assist in the development of collaborative relationships between lawyers and welfare agencies to enhance the access of

¹⁹ At Credo Café, which provides a free lunch program to people who are homeless or at risk of homelessness in inner-city Melbourne, Clayton Utz lawyers often provide legal services to clients over a bowl of Tuesday spaghetti!

marginalised and disadvantaged clients to appropriately targeted and tailored legal services.

6.5 Community Legal Education

Both the PILCH Clinic and QPILCH Clinic work extensively to educate volunteer lawyers, welfare workers and homeless people about legal rights and how to identify and resolve legal problems. This is important because, as discussed above, lack of awareness of legal rights, and a lack of understanding about ‘the law’, is a significant barrier to many homeless people accessing justice.

Education for lawyers and welfare workers

The PILCH Clinic conducts bi-monthly training in areas of law and practice management relevant to people experiencing homelessness. Topics covered include:

- Introduction to homelessness
- Overview of PILCH Clinic policies and procedures
- Communication skills and tips for dealing with clients
- Fines and infringement notices
- Housing and tenancy
- Social security law and advocacy
- Debt and bankruptcy
- Victims of crime assistance
- Guardianship and administration
- Mental health

Attendance at training is compulsory for all lawyers who volunteer with the PILCH Clinic. The training is also open to workers from host agencies, community lawyers and people who are homeless or at risk of homelessness. The training seminars are intended to be interactive and provide ample opportunity to share information, critically reflect and provide feedback on the operation of the PILCH Clinic, and receive further training in relevant areas of law. This ensures the development of efficient and effective strategies for dealing with the legal issues faced by clients.

The QPILCH Clinic conducts regular training in the following areas:

- Consumer debt and bankruptcy
- Social security law
- Tenancy and housing law
- Fines
- Introductory criminal law

- Guardianship and administration law
- Police powers and responsibilities
- Interview techniques for dealing with homeless people
- Indigenous sensitivity training

Education for welfare workers and people experiencing homelessness

In addition to conducting training seminars, the PILCH Clinic seeks to educate welfare workers and, importantly, homeless people themselves through the publication of a bi-monthly newsletter and the distribution of posters advertising the PILCH Clinic. The newsletter, *Street Rights*, is distributed broadly to agencies and clients, including via street outreach. It is designed to provide information about legal issues affecting homeless people, information on services working with homeless people, and information about opportunities for homeless people to participate in public policy formulation and contribute to law reform.

The QPILCH Clinic has sought funding through the Queensland University of Technology to develop legal information fact sheets designed for homeless people, a seminar series to educate homeless people on their legal rights, and a training package for organisations that provide services to homeless people on legal issues.

Recommendation 13

The Commonwealth increase funding to community legal centres to enable them to provide enhanced community legal education, including through regular publications and newsletters where appropriate.

7. Barriers to Accessing Substantive Justice

7.1 Introduction

This section discusses the barriers faced by homeless people in accessing substantive justice (that is, the deficiencies of current arrangements in relation to ensuring that the formulation and application of the law with respect to homeless people is fair).

7.2 Lack of Participation

All people have the right to have a say in their civil, political, economic, social and cultural governance and development. The right to participate in public affairs is an important component of social inclusion, political empowerment and civic responsibility. Participation is particularly important to marginalised and disadvantaged groups, whose interests and concerns may be quite different to the broader population.

The right to participate in public affairs, including exercise of the right to vote, is denied to many people experiencing homelessness. Of the approximately 88,000 homeless people who are eligible voters in Australia,²⁰ it is estimated that between 33 and 90 per cent are not registered to vote.²¹ This suggests that between 29,000 and 80,000 homeless people did not vote in the 2001 Federal Election. This exclusion arises from both the terms and the application of the *Commonwealth Electoral Act 1918* (Cth).

In many cases, this exclusion results in the enactment and enforcement of discriminatory laws without regard to socio-economic status.²² Legislation that prohibits begging – a demeaning but harsh necessity for some people experiencing homelessness – is the starkest example of this.²³ Other examples include social security provisions that impose onerous payment access requirements with which many homeless people are unable to comply. The discriminatory impact of the law will persist until homeless people and their advocates are empowered to participate in

²⁰ Michael Horn, *Social and Democratic Exclusion: Giving Voice to the Homeless* (Hanover Welfare Services: Melbourne, 2001).

²¹ Hanover Welfare Services estimates that approximately one third of homeless people are not registered to vote (Michael Horn, *Social and Democratic Exclusion: Giving Voice to the Homeless* (Hanover Welfare Services: Melbourne, 2001)), while the Australian Federation of Homelessness Organisations estimates that more than 90 per cent of homeless people are not registered to vote (Australian Federation of Homelessness Organisations, 'Proposals Threaten Voting Opportunities for Homeless and Young Australians' (Press Release, 27 June 2001) <www.afho.org.au/afhone/news/mediareleases/200110727.htm>).

²² Philip Lynch, 'Begging for Change: Homelessness and the Law' (2002) 26 *Melbourne University Law Review* 690, 692-7.

²³ Begging is prohibited in Victoria by sections 6(1)(d), 7(1)(a) and 7(1)(b) of the *Vagrancy Act 1996* (Vic) and in Queensland by sections 4(1)(k) – 4(1)(n) of the *Vagrancy Act 1931* (Qld).

the legislative process – to have a say in the formulation of laws and policies that affect them.

7.3 Discriminatory and Unequal Laws

As discussed above, the discriminatory laws that result from a lack of participation by homeless people in the political process constitute a significant barrier to accessing substantive justice. Some examples are set out below.

Public space laws

Homelessness can ‘criminalise’ behaviours that would be lawful if performed in a home.²⁴ Laws that criminalise conduct such as sleeping, bathing, lying down, drinking or storing belongings in public space impact on homeless people on the ground of their housing status and the necessary location of their conduct. For example, Andy, an elderly homeless client of the PILCH Clinic who suffers from an acquired brain injury and chronic alcoholism, received more than \$100,000 in fines over a five year period for begging, drinking sleeping and swearing around Flinders Street Station, Melbourne. In each case, it was the location rather than the nature of Andy’s conduct that rendered it unlawful. Andy would not (and could not) have been charged had he been drinking, swearing or urinating in a conventional home. While we all have an interest in pleasant public places and safe streets, this interest will only be realised through the development and implementation of solutions to homelessness, not through its criminalisation.

Anti-discrimination laws

The inadequacy of anti-discrimination legislation in protecting the rights of disadvantaged socio-economic groups, along with the lack of access of such groups to legal representation or redress, is another factor impeding access to substantive justice for the homeless.²⁵ These factors combine to mean that the rights of many homeless people are violated by individuals or organisations who can act with relative impunity.²⁶ In fact, discrimination on the ground of homelessness, unemployment, being a social security recipient or socio-economic status is *lawful* at both a state and

²⁴ Philip Lynch, ‘Begging for Change: Homelessness and the Law’ (2002) 26 *Melbourne University Law Review* 690, 697-701. See also National Coalition for the Homeless, *Illegal to Be Homeless: The Criminalisation of Homelessness in the United States* (National Coalition for the Homeless, Washington DC, 2001); National Law Centre for Homelessness and Poverty, *Out of Sight, Out of Mind: A Report on Anti-Homeless Laws, Litigation and Alternatives in 50 United States Cities* (National Law Centre for Homelessness and Poverty: Washington, 1999).

²⁵ Philip Lynch, ‘Begging for Change: Homelessness and the Law’ (2002) 26 *Melbourne University Law Review* 690, 703-05.

²⁶ See, for example, *Hate: A Compilation of Violent Crimes Committed Against Homeless People in the US in 2001* (National Coalition for the Homeless, Washington DC, 2002).

Commonwealth level throughout Australia.²⁷ Discrimination against the homeless is particularly widespread in the areas of public transport, accommodation and the provision of goods and services.²⁸

²⁷ This is contrary to the obligation of all Australian governments to guarantee, by law, equal and effective protection against discrimination, including on the ground of social origin or status, as set out in article 26 of the *International Covenant on Civil and Political Rights* ('ICCPR').

²⁸ See generally, Philip Lynch and Bella Stagoll, 'Promoting Equality: Homelessness and Discrimination' (2002) 7 *Deakin Law Review* 295.

8. Strategies to Overcome Barriers to Accessing Substantive Justice

8.1 Introduction

This section discusses strategies to address the barriers faced by homeless people in accessing substantive justice. It also makes recommendations to improve access to substantive justice for homeless people.

8.2 Addressing Lack of Participation: Electoral and Welfare Law Reform

People experiencing homelessness must be empowered to participate more fully in public affairs and decision-making processes. This requires amendment of the *Commonwealth Electoral Act 1918* (Cth) to ensure that homeless people can exercise their right to vote, and amendment of the *Social Security Act 1991* (Cth) to ensure that homeless people have access to an income adequate to participate in civic life rather than focusing exclusively on survival.

***Commonwealth Electoral Act 1918* (Cth)**

The Joint Standing Committee on Electoral Matters tabled its 'Report of the Inquiry into the 2001 Federal Election and Matters Related Thereto' in Federal Parliament on 23 June 2003. In the Report, the Committee makes over 30 recommendations to increase voter participation, improve electoral management and maintain the integrity of the electoral roll.

The franchise of homeless people – as discussed in the submissions of the PILCH Clinic, The Big Issue and the Council to Homeless Persons – is considered in detail in the Report at pages 83-95. In particular, the Committee acknowledges that up to 80,000 homeless people who may have been eligible to vote in the 2001 federal election did not do so due to voter registration requirements. The Committee makes several recommendations in relation to the enfranchisement of homeless people, including:

- that the itinerant elector provisions outlined in section 96 of the *Commonwealth Electoral Act 1918* (Cth) ('the Act') be amended to clearly apply to homeless people;
- that the Australian Electoral Commission ('AEC') simplify its itinerant elector application form to assist homeless people; and
- that the AEC target homeless people in a public awareness campaign, informing them about itinerant elector enrolment.

In response to these recommendations, the AEC has undertaken to include homeless people as a target group in its public awareness campaign for the next federal election. The AEC has also foreshadowed that it will work with welfare agencies to ensure that enrolment forms and registration assistance are available on-site.

In the PILCH Clinic's view, it is imperative that the Government accepts and implements the recommendations of the Committee. In particular, the PILCH Clinic considers that section 96 of the Act should be amended in the following ways:

- Section 96(2A) of the Act should be amended so that itinerant electors are registered to vote in the electorate with which they have the 'closest connection'. Registration in an electorate in respect of which an elector has a 'close connection' is more appropriate than registration in an electorate in which the applicant last had an entitlement to be enrolled or has a next of kin. It is important that homeless people be able to enrol in the electorate in which they live, so as to directly choose those who represent them.
- Section 96(8) of the Act should be amended to increase the period of time that an itinerant voter may have a 'real place of living' from one month to six months. Many homeless people live in accommodation such as a friend's house, a caravan, a crisis shelter or a domestic violence refuge for up to six months. Notwithstanding the temporary and insecure nature of such accommodation, they constitute 'real places of living' within the current definition in the Act and people who stay in such accommodation for more than one month are ineligible to enrol as itinerant electors. Homeless people should be able to reside in one 'real place of living' for up to six months rather than only one month before they become ineligible as an itinerant elector.
- Section 96(12) of the Act should be amended such that a person shall be taken to reside at a place if, and only if, the person has his or her 'real place of living' at that place *and* that place of living constitutes safe and secure housing within the meaning of section 4 of the *Supported Accommodation and Assistance Act 1994* (Cth). This would ensure that homeless people who live in non-conventional accommodation such as cars, squats, shelters or refuges for a period of longer than six months are not ineligible as itinerant electors.

The right to vote is a fundamental human right, the effective exercise of which is necessary to ensure that the voices of marginalised and disadvantaged groups are heard.²⁹ The Clinics implore the Federal Government and the AEC to work with homeless people and welfare agencies to ensure that homeless people are able to participate in the democratic process and to have their say.

Recommendation 14

The Commonwealth implement Recommendation 7 of the Joint Standing Committee on Electoral Matters in their 'Report of the Inquiry into the 2001 Federal Election and Matters Related Thereto' in such a way as to ensure the maximum possible homeless voter registration and vote casting.

²⁹ The right to vote is enshrined in the *ICCPR*, which states at article 25 that every citizen is to have the opportunity to participate in the public affairs of the country, including the right to vote.

Social Security Act 1991 (Cth)

The amendment of social security legislation is also crucial to ensure that the Commonwealth's welfare reform goals of social inclusion and self-reliance are met through the development and implementation of an integrated package of social assistance aimed at addressing underlying causes of homelessness.

At present, social security payments are pegged at a level well below the poverty line. For many people, social security payments are inadequate to access the basic subsistence requirements of life, including adequate food, housing, clothing and health care. In a recent study conducted by Hanover Welfare Services in conjunction with Victoria Police and the City of Melbourne, it was found that over 90 per cent of persons observed to begging in the Melbourne CBD were social security recipients.³⁰ In 2002, the Australian Institute of Health and Welfare reported that 83 per cent of people accessing SAAP-funded homelessness services listed social security as their primary income source.³¹ This indicates that, at current levels, social security payments are insufficient to enable people to access an adequate standard of living and may contribute to instances of homelessness.³²

Recommendation 15

The Commonwealth amend the Social Security Act 1991 (Cth) to include an integrated package of social security assistance to people who are homeless or at risk of homelessness that includes housing, employment assistance and personal support to ensure sustainable outcomes and facilitate public participation.

8.3 Reform of Discriminatory and Unequal Laws

As discussed above, discrimination on the ground of homelessness, joblessness, being a social security recipient and socio-economic status is lawful at a Commonwealth and state level across Australia.

This issue was addressed at the 3rd National Homelessness Conference in Brisbane. The Conference was held from 6-8 April 2003 and was attended by over 1,000 delegates. In relation to the issue of 'homelessness and discrimination', the Conference resolved as follows:

- Discrimination is a major causal factor of homelessness.

³⁰ Michael Horn and Michelle Cook, *A Question of Begging: A Study of the Extent and Nature of Begging in the City of Melbourne* (Research Paper, Hanover Welfare Services, 2001) 14-15.

³¹ Australian Institute of Health and Welfare, *Homeless People in SAAP: Data Collection Annual Report* (2002).

³² This constitutes a breach of Australia's obligations under the *International Covenant on Economic, Cultural and Social Rights* ('ICESCR'). Article 9 of the ICESCR recognises the right of everyone to receive social security. Article 11 recognises the right to an adequate standard of living, which includes adequate housing.

- Discrimination can systemically exclude people from access to goods, services, the justice system, housing, employment and other things which can result in homelessness.
- Equal opportunity and anti-discrimination legislation should be amended and strengthened to prohibit discrimination on the ground of 'social status'. This would constitute a significant step towards protecting socially and economically disadvantaged groups and reducing homelessness.

The failure of Commonwealth legislation to provide any protection from, or redress for, discriminatory treatment on the ground of homelessness is inconsistent with international human rights law, anti-discrimination developments overseas, progressive public policy and any meaningful notion of substantive justice.

Recommendation 16

The Commonwealth introduce legislation to prohibit discrimination on the ground of a person's 'social status', including that person's status as homeless, unemployed or being a recipient under the Social Security Act 1991 (Cth).

The Victorian Department of Human Services is currently developing a Charter of Rights and a strengthened complaints mechanism for people who are homeless or at risk of homelessness and who access the homelessness and related service systems. This excellent initiative should be replicated at a Commonwealth level.

The development of a Charter of Rights and the establishment of a homeless persons' ombudsman or homeless persons' commissioner (possibly as part of the office of the Commonwealth Ombudsman) with powers to investigate and make recommendations in relation to the violation or alleged violation of homeless people's rights would constitute a significant step towards the promotion and protection of the fundamental human rights and dignities of such people.

Recommendation 17

In consultation with homelessness service providers and with people who are homeless or at risk of homelessness, the Commonwealth develop a Charter of Rights for people who are homeless or at risk of homelessness.

Recommendation 18

The Commonwealth appoint an independent and impartial Homeless Persons' Commissioner to promote and protect the rights and interests of homeless people, to assist homelessness service providers to achieve 'best practice' standards, and to critically examine all proposed legislation for the purpose of assessing its potential impact on people experiencing homelessness, including by directly consulting such people.

9. Conclusion

People who are homeless or at risk of homelessness experience multiple barriers to accessing justice.

In some cases these barriers are procedural and inhibit access to legal assistance, to representation, and to redress in courts and tribunals. Procedural barriers include: the extremely limited availability of legal aid in respect of civil, administrative and summary criminal law matters; the location and accessibility of legal services; homeless people's knowledge of the law and their legal rights; and homeless people's ability, in light of more pressing concerns, to vindicate their legal rights.

In other cases, homeless people confront substantive barriers to accessing justice. Homeless people's lack of participation, their social exclusion and their limited socio-political resources mean that the law is often enacted and enforced without regard to socio-economic means or status. This can result in unfair and unjust laws and outcomes.

In both Melbourne and Brisbane, homeless persons' legal clinics have been established to facilitate homeless people's access to legal assistance and to conduct public policy advocacy on behalf of homeless people. A similar service is proposed for Sydney. The Homeless Persons' Legal Clinics in Melbourne and Brisbane receive substantial legal and financial support from the private profession and the welfare sector. The PILCH Homeless Persons' Legal Clinic in Melbourne also receives limited financial assistance from the Victorian Government. The Commonwealth does not contribute any monies to homeless people's access to justice.

The Commonwealth has both a moral and legal obligation, including under international human rights law, to facilitate access to justice and to ensure that all people are equal before the law in both a procedural and substantive sense.

The PILCH Homeless Persons' Legal Clinic, the QPILCH Homeless Persons' Legal Clinic and the individuals and organisations listed at Part 10 consider that the Commonwealth should accept and implement the recommendations of this submission to discharge this obligation.

10. Endorsements

This submission is endorsed by the following organisations and individuals:

Council to Homeless Persons

North Melbourne Legal Service

Public Interest Advocacy Centre

Public Interest Law Clearing House (NSW)

Public Interest Law Clearing House (Vic)

Queensland Public Interest Law Clearing House

St Vincent de Paul, Aged Care and Community Services

St Vincent de Paul, Homeless Services

Support and Accommodation Rights Service

Urban Seed

Samantha Burchell, Co-Executive Director, Public Interest Law Clearing House

Livia Carusi, Advocate, Support and Accommodation Rights Service

Sue Coleman, Advocate, Support and Accommodation Rights Service

Jane Dimsey, Manager, Law Institute of Victoria Legal Assistance Scheme

Andrea Durbach, Executive Director, Public Interest Advocacy Centre

Cassandra Goldie, Director, Homeless Persons' Legal Rights Project

Sue Hogan, Partnership and Links Coordinator, Urban Seed

Tony McCosker, Executive Manager, St Vincent de Paul Homeless Services

Paula O'Brien, Co-Executive Director, Public Interest Law Clearing House

John Patone, Chief Executive Officer, St Vincent de Paul Aged Care and Community Services

Paul Ronalds, Executive Director, Urban Seed

Susannah Sage, Manager, Victorian Bar Legal Assistance Scheme

Sandra Stevenson, Manager, Public Interest Law Clearing House (NSW)

Deb Tsobaris, Chief Executive Officer, Council to Homeless Persons

Tamara Walsh, Lecturer of Law, Queensland University of Technology

Tony Woodyatt, Executive Director, Queensland Public Interest Law Clearing House