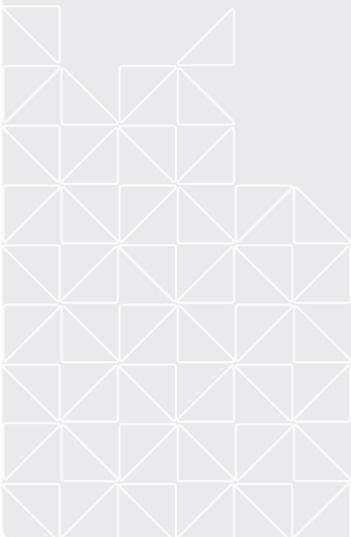


Debt and Tenancy Legal Help for Prisoners

Six month project report

March 2015



Acknowledgements

Justice Connect Homeless Law takes this opportunity to express our sincere thanks to:

- The Ian Potter Foundation for its generous funding of the Prisoner Debt and Tenancy Legal Help Project;
- G4S, for their partnership in the delivery of the Prisoner Debt and Tenancy Legal Help Project; and
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1. Executive summary

The Prisoner Debt and Tenancy Legal Help Project (**Project**) is a 12 month pilot program of Justice Connect Homeless Law. In its first six months, the Project enabled 38 prisoners at Port Phillip Prison to access civil legal advice and representation.

The Project was developed in response to the high level of unmet civil legal need of Victorian prisoners, utilising Homeless Law pro bono lawyers' expertise in debt, fines and tenancy matters. It recognises the links between homelessness and imprisonment: 35% of prisoners are homeless prior to entry into prison and, upon release, the rate of homelessness increases to 43%.¹ It also draws on research such as the 2006 study of ex-prisoners and homelessness in Victoria and NSW, which found that ex-prisoners are more than twice as likely to return to prison within nine months of release if they are homeless.²

The Project aims to prevent homelessness, reduce disadvantage and increase chances of successful reintegration of prisoners by:

- Sustaining tenancies for prisoners; and
- Reducing, resolving and managing debts and infringements.

The Project does this by providing prisoners in Port Phillip Prison with legal advice and representation from pro bono lawyers and by making referrals to other support services where non-legal needs are identified. Throughout the Project, Homeless Law is collecting data and insights regarding the impact of housing and debt issues on prisoners, with a view to informing Homeless Law's policy work around the link between unresolved civil legal issues, imprisonment and homelessness.

We are grateful for the support of The Ian Potter Foundation, G4S and Corrs Chambers Westgarth, which has enabled Homeless Law to:

- **Improve access to justice for prisoners in Port Phillip Prison** - From August 2014 to January 2015, 32 client appointments were held at Port Phillip Prison. All 36 available appointments were booked, with 4 unforeseen cancellations. 12 of the clients were sentenced and 20 were on remand. Of the 32 clients seen:
 - 27 presented with a credit and debt issue;
 - 13 presented with an infringement issue; and
 - 8 presented with a housing issue.

Six clients with urgent issues, the majority of which related to housing, had phone appointments with a Homeless Law pro bono lawyer, rather than waiting for the next monthly clinic.

Given the absence of other services providing civil law advice to prisoners, discussed in part 3 of this report, without the Project these 38 clients would not have otherwise been able to resolve their civil legal issues while in prison.

- **Resolve fines, debts and housing issues for prisoners, 70% of whom have already experienced homelessness** - 28 files have been opened for pro bono lawyers to provide ongoing advice and representation and three matters were dealt with by pro bono lawyers providing advice at the initial appointment.
- **Increase our understanding of the need for civil legal services in Victorian prisons** - As at 30 January 2015, the Project had received 120 referrals. 49 referrals were for sentenced prisoners and 71 were for prisoners on remand.

64% of the referrals were for prisoners with more than one legal issue. Of the 120 prisoners referred to the Project:

- 108 have a debt or credit issue;

¹ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (2012) 37.

² Eileen Baldry, Desmond McDonnell, Peter Maplestone and Manu Peeters, 'Ex-Prisoners, Homelessness and the State in Australia', *The Australian and New Zealand Journal of Criminology* 39 (2006) 20, 24.

- 41 have an infringements issue; and
 - 29 have a housing issue.
- **Increase our understanding of the factors that place prisoners at risk of homelessness upon release -** Based on the information provided by clients at their initial appointments, we know that of the clients we are assisting:
 - 70% have experienced homelessness;
 - 70% were receiving Centrelink benefits prior to entering prison;
 - 56% have, or have had, alcohol or drug dependence issues;
 - 40% have mental health issues, 33% have a physical disability, 13% have an intellectual disability, and 16% have an acquired brain injury.

During their initial appointments, 63% of clients told us their financial situation will place stress on their relationships when they leave prison and 56% are worried about their ability to obtain housing upon release. 53% of the clients reported feeling 'worried' or 'very worried' about the financial issues they will face when they leave prison and only 30% of clients feel prepared to deal with their financial issues upon release.

- **Collaborate with housing and case workers within Victorian prisons** – Since September 2014, 14 clients with housing matters have been referred to Homeless Law from the Metropolitan Remand Centre, Dhurrungile Prison, Hopkins Correctional Centre, Marngoneet Correctional Centre, Barwon Prison and Dame Phyllis Frost Correctional Centre. The majority of these matters have related to sustaining the tenancies while in prison. In the 12 months prior to commencement of the Project, 7 clients in prison were referred to Homeless Law, representing a 100% increase in referrals since the Project commenced. Homeless Law's expertise in working with prison-based clients has significantly increased the ability of Victorian prisoners to access legal assistance for legal issues related to housing.

This report discusses the research and experience that informed the Project and the practical benefits of the prison-based clinic model. It also explains the operation of the Project and summarises the outcomes achieved to date.

2. Background to the Project and legal need

2.1 Justice Connect Homeless Law

Justice Connect Homeless Law is a specialist legal service for people experiencing or at risk of homelessness. Homeless Law staff work closely with over 400 pro bono lawyers to provide legal information, advice and representation to hundreds of people experiencing or at risk of homelessness each year.

Homeless Law's services are outreach based and client centred. Our relationships with the homelessness sector enhance our capacity to understand and respond to clients with a range of non-legal needs. Our vision is to improve outcomes for clients through the provision of holistic legal services and evidence-based advocacy.

Homeless Law's significant experience in the homelessness sector has provided valuable first-hand insight into the difficulties that people experiencing homelessness can face when accessing legal assistance. This body of experience helps to inform Homeless Law's priority areas, as well as the ways in which our legal services are modelled and targeted to best suit the needs of our client group.

2.2 The relationships between disadvantage, legal need and imprisonment

Research shows that people who are or have been imprisoned are typically from highly disadvantaged backgrounds. In 2011, nearly two thirds of the Victorian prison population were unemployed prior to being imprisoned, less than one fifth had completed secondary education, almost two thirds had drug and alcohol problems, and almost a third were experiencing mental illness.³ There is also a growing body of research indicating that levels of arrest and imprisonment are much higher among people experiencing homelessness and those in debt than the general population.

It is well-established that disadvantage increases the likelihood of imprisonment and that people who are disadvantaged have a higher number of legal issues.⁴ If their legal issues are not addressed pre-release, the transition from prison to the community may be more difficult.⁵ Given this connection and the important role that legal services can play in sustaining tenancies, Justice Connect's view is that increasing legal assistance to prisoners and ex-offenders in relation to housing and debts may lead to greater housing stability and reduced homelessness which might in turn decrease the likelihood of returning to prison. Failure to resolve these issues pre-release can create difficulties for people leaving prison with re-engaging in the general community, finding housing and obtaining employment and government benefits.

2.3 Justice Connect's findings on the unmet civil legal need of prisoners

In 2010–2011 Justice Connect (then known as the Public Interest Law Clearing House) conducted a research project which considered access and barriers to legal assistance for prisoners. The report identified significant unmet need in civil law assistance for prisoners. In 2012, with the generous assistance of the Reichstein Foundation, Justice Connect undertook a scoping study which investigated the feasibility of the establishment of a targeted program at Justice Connect to provide civil law assistance to prisoners, using pro bono legal resources.⁶

The 2012 report found that Justice Connect was well-placed to expand its existing services to prisoners by establishing a more targeted program. The Project aligns with Justice Connect's work in assisting

³ See Victorian Auditor-General, *Problem-Solving Approaches to Justice: Victorian Auditor-General's Report* (April 2011) 2010–11:28, 1.

⁴ See, eg, Christine Coumarelos, Deborah Macourt, Julie People, Hugh M McDonald, Zhigang Wei, Reiny Iriana & Stephanie Ramsey, Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: legal need in Australia* (2012) (**LAW Survey**).

⁵ See, eg, Baldry et al, above n 2.

⁶ Justice Connect (formerly the Public Interest Law Clearing House), *Prisoners Scoping Study Investigating the feasibility of a PILCH civil law program for prisoners* (2012).

marginalised and disadvantaged clients. It also builds on Homeless Law's long history of working with people who are homeless or at risk of homelessness.

3. Project design and key features

Justice Connect's 2012 scoping study found that, in order to pilot the Project, Justice Connect required resources to:

- Train pro bono lawyers;
- Support pro bono lawyers to access the prison and their clients;
- Promote better understanding amongst pro bono law firms of the importance of this work and build capacity for this work;
- Continue to develop a good relationship with the sector and relevant authorities; and
- Develop expertise in legal and systemic issues commonly facing prisoners.

Each of these requirements were incorporated into the Project design, and are discussed below.

3.1 Training of pro bono lawyers

In August 2014, two training sessions on common legal issues for prisoners were delivered to pro bono lawyers by Homeless Law's Senior Lawyer, Samantha Sowerwine. The 17 pro bono lawyers participating in the Project have also completed Homeless Law's general training, which includes modules on tenancy law, credit and debt, infringements, and training from Homeless Law's social worker, the Homeless Persons' Liaison Officer. A dedicated Project handbook containing relevant procedures and legal information was produced for pro bono lawyers.

One of the pro bono graduate lawyers participating in the Project told us:

"My ability to interview clients and progress their various matters was very much assisted by the initial training provided by Samantha Sowerwine, of Justice Connect ... This session prepared me for the particular challenges of, and relaxed the concerns I had about, [these initial interviews]."

G4S has delivered induction training to pro bono lawyers who visit the prison and Homeless Law staff involved in the delivery of the service.

3.2 Supporting pro bono lawyers to access prisons and clients

Homeless Law and G4S staff work closely to arrange access for the lawyers attending the prison clinics. Homeless Law's Senior Lawyer attends each clinic with the pro bono lawyers and coordinates access and deals with logistical issues, including arranging appointments, room bookings and interpreters, as well as supervising the legal advice provided at the clinic.

Guidelines and procedures have been developed on how to contact and correspond with clients in the prison and how to maintain contact with clients who are released while their legal matter is ongoing.

3.3 Promoting the Project and capacity building

The Project was featured in the October 2014 edition of *Parity*, the national homeless sector journal published by the Council to Homeless Persons. It has also been widely profiled in Justice Connect publications, including the Homeless Law newsletter and the biannual Members Report. In September 2014 a presentation on the Project was made to the Victorian Pro Bono Secretariat meeting, a meeting of pro bono partners and practitioners from Justice Connect's member law firms.

3.4 Relationship building

Homeless Law staff have met with G4S staff, program providers at Port Phillip Prison and housing workers within the Victorian prison network. Justice Connect’s Director of Legal Services has quarterly meetings with Corrections Victoria’s Assistant Commissioner of Sentencing Management and is the chair of the Victoria Legal Assistance Forum (VLAF) Prisoners Working Group.

3.5 Developing expertise in legal and systemic issues commonly facing prisoners

Homeless Law has developed a handbook which deals with credit and debt, infringements and tenancy law as it relates to prisoners. A priority for Homeless Law in 2015 is the development of web-based information sheets and precedents.

If further funding is secured for the Project, a priority will be the scoping of the need for prison-based legal education and the delivery of sessions on common legal issues. For example, bankruptcy is an issue which appears to be misunderstood by some prisoners as a simple solution to dealing with debts. Legal education sessions on issues such as dealing with debts, potentially co-delivered with a financial counsellor, could be highly beneficial for prisoners prior to their release.

Through the work conducted to date, our lawyers are recognising a number of issues which will inform our advocacy and policy work. For example, issues of accessibility of video-link facilities for hearings at VCAT and accessing Corrections Victoria brokerage to pay subsidised public housing rent while in prison have arisen.

Homeless Law pro bono lawyers have seen numerous clients with infringements debt. Currently all sentenced prisoners have the option to ‘call in’ outstanding infringement warrants under section 161A of the *Infringements Act 2006* (Vic) (**Infringements Act**). This enables them to convert their fines to run concurrently with their term of imprisonment. Based on our discussions with prisoners, there is a good understanding of this mechanism among prisoners and most prisoners we have seen have opted to deal with their outstanding infringements in this way. Homeless Law is concerned that the repeal of section 161A of the Infringements Act will result in more prisoners being released with substantial debt and we continue to advocate for the retention of this important mechanism.

4. Project model



4.1 Referrals

Prisoners are referred for appointments through the Programs staff at Port Phillip Prison and via self-referral. The majority of referrals have been made by Port Phillip Prison's TAP Coordinators, Orientation Coordinator and housing pathways worker. Referral forms have been distributed throughout the prison units so that prisoners can self-refer to the service. The availability of the service is promoted by posters (example below) which have been placed in the prison units.

**debt & tenancy
legal help**

Customer Number 9035624 3
Bill Reference 3912-0382610
Date of Issue 21-May-2014
Enquiries 1300 85 66 88
Fax 1300 85 66 88
Email business_enquiries@commander

**Total Payable
\$2,195.82**

Payment Du
1-7

**Do you owe money?
Are family or friends struggling
to pay debts off for you?
Think you might still have
outstanding fines?
Issues with previous housing?**

**Free legal help with:
housing & tenancy | debt & credit | fines**

The **Debt and Tenancy Legal Help Project** can provide you with legal information, advice and representation.

Dealing with these issues now will mean you don't have them hanging over you when you're released.

To get an appointment with our lawyers, complete a referral form located in Programs and place in TAP Coordinators' pigeon hole, or talk to Julie Wasnig (Education coordinator) or Imogen Christou (Orientation coordinator).

We come out once a month on Wednesdays from 9.30am – 11.30am.



FREECALL 1800 606 313
justiceconnect.org.au/homelesslaw

4.2 Appointments

The Project's model was developed and is implemented with the clients as the primary focus to ensure that the service is relevant and appropriate to their legal needs. The initial face-to-face appointment is extremely valuable in terms of client engagement and building rapport.

Homeless Law pro bono lawyers have provided the following feedback:

"Making contact with clients inside the prison gives both them and us an opportunity to try to assist despite the limitations encountered by their imprisonment. This is important not only in terms of addressing the issues quickly and efficiently, but can also put their minds at ease to some extent. It also can make their lives outside of prison much more manageable."

"I think the face-to-face interviews are a great feature of the program. It allows for clinic lawyers to engage in an open dialogue, build rapport and earn the clients' trust (in contrast to the stilted and slightly artificial dialogue that occurs over [teleconferencing]). I imagine this is particularly useful in interviewing clients who are in prison as they may not have previously had any positive interactions with lawyers, and perhaps may have developed a distrust of lawyers."

"Most of my clinic interviews have been very candid, and clients did not seem to have any qualms about opening up about issues ..."

Each clinic is attended by four pro bono lawyers and a supervising Homeless Law Senior Lawyer. There are six appointments per clinic, with the pro bono lawyers seeing clients in pairs.

The clinic runs one Wednesday each month from 9.30 am to 11.30 am. Given the number of referrals has far exceeded available appointments, priority is given to prisoners with an approaching release date and, all other factors being equal, in order of referrals. While our aim was to see around 50% sentenced and 50% remand prisoners, the large remand prisoner population at Port Phillip Prison, and the greater number of referrals from remand prisoners, has meant that the majority of clients have been on remand.

Three clients have received advice at their initial appointment and there has been no need for ongoing work. All other clients have open files, which are discussed below.

5. Legal issues

5.1 Credit and debt

The most common legal issues for clients of the Project are credit and debt issues. One pro bono lawyer told us:

"The main issue facing the three clients I met was debt. The impression I formed was that debt issues – including minor, unquantified debts – are a pressing concern for prisoners who are soon to be released. As the training literature suggests, these issues ... can have real effects on their mental health."

Common creditors include the Office of Housing, Centrelink, Australian Taxation Office, utility providers, banks and phone companies. The pro bono lawyers are able to provide advice to the clients on the options for dealing with these debts and, in most cases, will provide ongoing assistance to assist the client to resolve the debt. These matters typically take some months to resolve and can be further delayed by the difficulty prisoners have in obtaining documentation about their debts and accessing copies of their identification documents.

Clients with debts have expressed numerous concerns regarding the impact that these issues will have on their ability to re-establish themselves financially upon release, for example in applying for private rental or community housing, getting a new mobile phone, or applying for a bank loan or credit card. One client explained to his lawyers that he believed that unless his debts were sorted out, he was not confident he would be in a position to secure housing, which in turn would prevent him being able to care for his young son.

The stories of clients George and Edward, set out below, show that credit and debt issues can take some time to resolve. Most clients do not have paperwork or clear information about their

debts so the pro bono lawyers typically start by making enquiries with credit reporting agencies, debt collectors, creditors and the client's family members to get a clearer picture of their debts.

George – help with bank and phone debt

George is 30 years old and in prison for breaching his parole conditions. He has a long history of homelessness, mental illness and drug dependence. George first met with his pro bono lawyer in November 2014 seeking assistance with debts to his bank and mobile phone provider. His lawyer is currently negotiating with the bank, which has agreed not to list the debt on George's credit history report while negotiations continue. George's lawyer experienced some difficulty getting a clear picture of his phone debt, as George had no documentation, couldn't remember his phone number and the phone company claimed to have no record of the debt. His lawyer requested a credit report which revealed that there is an existing phone debt which had already been sold to a debt collector and entered on George's credit history report. George has since moved to another prison and his lawyer is continuing to negotiate for both debts to be waived or reduced on the basis of his substantial hardship.

Edward – assisted with identifying and dealing with debts

Edward is 40 years old and has been in and out of prison for the past decade. When he hasn't been in prison, he has experienced homelessness. Edward came to his appointment thinking he had a small debt to a credit cooperative, but upon obtaining a credit report, Edward's pro bono lawyer found he had a phone debt of nearly \$1000 which had been sold to a debt collector. His pro bono lawyer requested further details of the debt and a copy of the phone contract and found that the phone service had been connected while Edward was in prison. To date the matter has still not been resolved, as the debt collector is seeking further information from the phone company.

He also thought he had a \$10,000 debt owed to the Office of Housing which was preventing him making a successful application for housing upon release. Upon speaking to the Office of Housing, his pro bono lawyer learnt that there was no debt listed in Edward's name and that his most recent housing application had not been approved for administrative reasons, not because of a debt. His lawyer referred Edwards to a housing worker for advice and assistance with completing a housing application.

5.2 Infringements

The second most common legal issue is fines and infringements. As noted above, based on our discussions with prisoners, there is a good understanding of the calling in mechanism enabled by section 161A of the Infringements Act. For prisoners who are on remand or whose infringements have not yet proceeded to warrant stage, our lawyers generally provide advice on the options for dealing with the fines. These options depend on the client's circumstances and can include applying for revocation of the fines on the basis of the client's special circumstances, seeking a payment plan or extension of time to pay, or waiting until they are sentenced to call in their fines.

For those prisoners who wish to apply for revocation of their fines for public space offences, based on their special circumstances, Homeless Law can assist them with making those applications but will generally wait until the client is released and is able to access the required documentary evidence of their special circumstances.

Edward cont. – identifying and resolving infringements

Edward came to his appointment believing he had numerous traffic infringements, despite not having a driver's licence or car. His pro bono lawyer contacted the Infringements Court and obtained details of the outstanding fines which confirmed that all of the infringements were for driving offences that occurred while Edward was in prison. His lawyer is now providing Edward with advice on his options for dealing with the fines.

5.3 Housing

Several clients have received advice about issues related to housing, for example goods left behind and compensation matters. A number of clients have received notices to vacate, usually for rental arrears or 120 day 'no reason' notices.

Where the client's matter is too urgent to wait until the next monthly clinic, Homeless Law has facilitated telephone advice and assistance. Homeless Law has provided:

- advice and representation to assist a young client to avoid eviction for falling behind in his rent (set out in the case study of Geoffrey below);
- advice and representation for a client to successfully challenge a notice to vacate on the basis that he was alleged to have committed drug offences at the property;
- advice and representation for a client facing a possession order under a 120 day 'no reason' notice to vacate where, unfortunately, the tenancy could not be saved but the client maintained his position on the early waiting list for housing;
- phone advice to a prisoner who instructed that he had been evicted without knowledge of the possession order made against him; and
- assistance for two clients seeking extensions to their 6 month temporary absences on the basis of their extenuating circumstances.

An example of how Homeless Law pro bono lawyers assisted a young prisoner to avoid eviction for falling behind in his rent is set out in the case study below.

Geoffrey – first time prisoner avoids eviction

Geoffrey is a 28 year old man who had lived in an Office of Housing property for seven years before entering prison. Geoffrey underwent treatment in the psychiatric ward of the prison for most of his sentence.

Geoffrey had a six month temporary absence approved by the Office of Housing which enabled him to pay the reduced rate of \$15 per week for the first six months of his sentence. However because his sentence was longer than six months, his rent returned to normal after his temporary absence expired. As a result, Geoffrey fell into arrears. He was issued with a notice to vacate and faced the immense stress of a hearing at VCAT. The stress was compounded by not being in a position to sort out his belongings if he was ultimately evicted. Geoffrey was referred to Homeless Law by a Housing Pathways worker.

Geoffrey's pro bono lawyer successfully negotiated with the Office of Housing to have the VCAT hearing withdrawn and negotiated a payment plan to enable Geoffrey's family to assist with payment of the rent and the arrears until his release. Upon his recent release, Geoffrey was able to return to his property.

As discussed throughout this report, the links between homelessness and imprisonment are increasingly well-known: research shows 35% of prisoners are homeless upon entry and 43% exit prison into homelessness;⁷ and a study of ex-prisoners in Victoria and NSW found that they were more than twice as likely to return to prison within nine months of release if they were homeless.⁸ Data gathered through the Project is consistent with these findings with 70% of the clients that Homeless Law has assisted identifying that they have previously experienced homelessness.

The provision of pro bono legal representation that enables tenancies to be sustained and prisoners to exit prison into safe housing has a significant role to play in closing the revolving door between prison and homelessness.

6. Evaluation

All Justice Connect programs and services, including the Prisoner Debt and Tenancy Legal Help Project, have a 'Theory of Change'. The Theory of Change model enables Homeless Law to evaluate the Project in light of its overall aim: preventing homelessness, reducing disadvantage, and increasing chances of reintegration.

The following monitoring questions have been developed for the project:

1. How effective is the service delivery model?
2. Were the legal services provided to prisoners appropriate?

⁷ Australian Institute of Health and Welfare, above n 1.

⁸ Baldry et al, above n 2.

3. What difference did having legal assistance make?
4. How has our understanding and communicating of the legal issues facing prisoners improved?
5. How has our understanding of the links between prison and homelessness improved?

The monitoring questions will be assessed through feedback from clients, pro bono lawyers and prison staff, and from the outcomes of the matters opened. We aim to gather and analyse this information by the end of May 2015.