

Homelessness and Policing

Submission to the Consultation on the Victoria Police Field Contact
Policy and Cross Cultural Training

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1. Executive summary

1.1 Overview

We refer to the Victoria Police Community Consultation regarding the Victoria Police Field Contact Policy and Cross Cultural Training (**Consultation**).

As an organisation that provides free legal services to clients who are homeless or at risk of homelessness, the PILCH Homeless Persons' Legal Clinic (**HPLC**)¹ sees first hand the impact of policing on homeless Victorians.

We appreciate that much of the Consultation is focussed on race-based discrimination and we wholeheartedly support this inquiry. We have taken this opportunity – while Victoria Police is reviewing its policies and practices with a view to improving its community interactions – to put forward the experiences of homeless Victorians.

Our submission is based on:

- evidence gathered from our day-to-day work as a specialist legal service for homeless clients – many clients report feeling targeted by police, being treated unfairly because of their circumstances and ultimately receiving an overwhelming number of fines as a result of their increased contact with Victoria Police officers;
- our consultation with 19 people experiencing homelessness who we presented with five questions about their experience with Victoria Police, including the frequency of contact, whether their experiences were positive or negative (and what made them that way), their knowledge of complaints mechanisms and their suggestions for improvement; and
- insights gained through the HPLC project, 'In the Public Eye – personal stories of homelessness and fines' (**In the Public Eye**). Through In the Public Eye, the HPLC captured the views and experiences of six people who have experienced, or continue to experience, homelessness and who ended up caught in Victoria's fines system.

Our submission addresses the following key areas of Victoria Police practice:

- Initiating contact with people experiencing homelessness, including when to approach people experiencing homelessness (part 4);
- If contact is initiated, how Victoria Police can deal with people experiencing homelessness in a respectful, appropriate way and how officers can be supported to exercise their discretion before fining or charging people experiencing homelessness (part 5); and
- Mechanisms for improving the understanding and accountability of Victoria Police in relation to their dealings with people experiencing homelessness, including through stronger training about homelessness and an effective complaints mechanism (part 7).

We believe that the Consultation has significant potential to increase the trust and confidence of the community in Victoria Police and we welcome the opportunity to contribute to it.

¹ Information regarding the HPLC is set out in Annexure 1 to this submission.

1.2 Recommendations

Five key recommendations for improving Victoria Police interactions with people experiencing homelessness

1. **Homelessness and public space protocol** – Victoria Police should work with government and non-government agencies to develop a protocol similar to the NSW Government Protocol for Homeless People in Public Places that aims to: avoid unnecessary interactions with people experiencing homelessness; make sure that where interactions do occur they are appropriate and respectful; and support officers to consider options other than fines and charges when dealing with people experiencing homelessness.
2. **Minimising unnecessary contact** – The distinction between public contacts and field contacts should be removed from Victoria Police policy and operations, so that officers need to have a 'reasonable suspicion' that a person has committed or witnessed an offence before asking a person for their name and address.
3. **Field contact receipt policy** – People who are stopped, questioned, moved on or searched by Victoria Police should be issued with a 'field contact receipt' that sets out key details about the contact, the reason for it and the outcome. Field contact receipts should note the person's housing status (although people should be informed that they are not required to provide this information). Field contact receipts should be clearly and plainly worded and should clearly identify that the person is not under arrest and the receipt is not a fine.
4. **Homelessness training** – Victoria Police should provide new recruits and existing officers with training about homelessness, its causes and its impacts on people's lives and conduct. The training should support officers to better understand homelessness, deal respectfully with people experiencing homelessness and exercise their discretion to choose options other than fining or charging people experiencing homelessness. Victoria Police should work with people with a direct experience of homelessness to implement this training.
5. **Effective complaints mechanism** – An effective accountability mechanism should be introduced which includes independent oversight of complaints about police conduct.

2. Background – the HPLC, homelessness and policing

There are 22,789 homeless Victorians including those staying in refuges, temporary accommodation or rooming houses, sleeping in cars or couch surfing and 1092 people who sleep rough.²

Through our work providing free legal services to people experiencing or at risk of homelessness, the HPLC sees that homeless Victorians have a disproportionate amount of contact with police and PSOs when compared with people in safe and secure housing.

Between 1 July 2012 – 30 June 2013, the HPLC took 310 enquiries from people seeking assistance with fines and infringements. We opened 166 new matters for clients needing legal assistance with fines and infringements directly related to homelessness. While by no means all of these fines and infringements were issued by Victoria Police, a significant proportion relate to ‘public space offences’, including begging, being drunk in public, possessing an open container of liquor, littering, using offensive language, and conduct on public transport (for example, not having a ticket, smoking on the platform or having feet on the seats) (**Public Space Offences**).

For our clients, Public Space Offences are directly related to homelessness. They often occur because people without safe and secure accommodation conduct their lives in public spaces and may experience one or more of the acute hardships that can accompany homelessness (including poverty, mental illness, disability or substance dependence).³ Because of these factors, homeless Victorians are highly visible to law enforcement officers.

Part 3 of this submission provides comments and insights from people who have experienced or continue to experience homelessness. Many report feeling targeted because of their appearance and the fact that they are living ‘in the public eye’.

It is in this context and with this background that we raise two key issues for Victoria Police to consider:

- The factors that inform officers’ decisions to initiate contact with homeless individuals; and
- When contact is made, the way in which officers deal with individuals, including how they communicate and whether or not a person is fined or charged for particular conduct.

² Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness 2011*, Australian Government, Canberra (2012).

³ A recent review of over 400 of the HPLC’s files revealed that of our clients: 24% have severe mental health issues; 23% have drug and alcohol dependence issues; and 17% have multiple complex needs. For the purposes of the file review, ‘multiple complex needs’ referred to more than one of: severe mental health issues, drug and alcohol dependence, cognitive impairment, domestic violence and challenging behaviour. We note that these needs are likely to be under reported as they were only recorded if the client’s needs were expressly identified on the file in the context of legal assistance provided.

3. Comments from Victorians with a direct experience of homelessness

3.1 HPLC consultations

In preparing this submission, the HPLC spoke with 19 people who contacted the HPLC for assistance in July and August 2013 or who had previously been in contact with the HPLC (**Consultation Participants**). Over the course of six weeks, we explained the Consultation to people and asked whether they would like to contribute on an anonymous basis. If they wanted to contribute, we presented the following five questions:

- Roughly, how many times (if any) have you been stopped by police or PSOs?
- Have you had a positive experience with police and/or PSOs? What made it positive?
- Have you had a negative experience with police and/or PSOs? What made it negative?
- Do you know what you can do if you feel you've been unfairly treated by police or PSOs? Are you aware that you don't have to go to your local police station to make a complaint?
- What do you think Victoria Police should do to improve how they treat people?

Thirty-seven per cent of the Consultation Participants were female and 63% were male. They were between the ages of 29 and 52 years.

The responses we received from the Consultation Participants have informed, and are included throughout, this submission.

3.2 In the Public Eye – personal stories of homelessness and fines

On 13 August 2013, the Attorney-General, The Honourable Robert Clark, launched the HPLC's project, 'In the Public Eye – personal stories of homelessness and fines'. We were delighted to have a number of members of Victoria Police present at the launch.

Through this project, we captured six personal stories of people who have experienced homelessness and been caught up in Victoria's fines system. The stories are told through films, photos, audio recordings and written words. While the focus is specifically on fines, in many cases, the participants provide candid insights that are relevant to Victoria Police practices.

Some of the themes that In the Public Eye participants spoke about included:

- being targeted by officers because of their appearance ('they target the homeless, they target the uni students and they target the school children');⁴
- receiving different treatment depending on the officer, with some treating clients with respect and others making clients feel demeaned on 'not human' ('a couple of times people giving the infringements have been nice, a couple of times it has been demeaning ... once they took me aside and photographed me for 'local records');⁵

⁴ PILCH Homeless Persons' Legal Clinic, *In the Public Eye – personal stories of homelessness and fines* (Richard) (<http://www.pilch.org.au/hplc/inthepubliceye/richard>).

⁵ PILCH Homeless Persons' Legal Clinic, *In the Public Eye – personal stories of homelessness and fines* (Hamish) (<http://www.pilch.org.au/hplc/inthepubliceye/hamish>).

- being ‘made an example of’ (‘I guess they used to try and make an example of you, especially if you were on the street or homeless ... They sort of make a bit of a scene in front of people’);⁶ and
- being issued with fines or charges without consideration of whether other options, such as using warnings or referring to support services, might have been more appropriate and effective (‘you get let out of the lock up after four hours, you walk around the corner ... walk 100 metres and get picked up again so ... what do you do’).⁷

Brief summaries of the participants’ stories and key quotes are contained in **Annexure 2**. However, the power of *In the Public Eye* is that the stories are told directly by people who have experienced homelessness and accrued thousands of dollars in fines for Public Space Offences. The accounts are compelling and we encourage Victoria Police to view the stories at www.pilch.org.au/hplc/inthepubliceye.

⁶ PILCH Homeless Persons’ Legal Clinic, *In the Public Eye – personal stories of homelessness and fines* (Emma) (<http://www.pilch.org.au/hplc/inthepubliceye/emma>).

⁷ PILCH Homeless Persons’ Legal Clinic, *In the Public Eye – personal stories of homelessness and fines* (Darren) (<http://www.pilch.org.au/hplc/inthepubliceye/darren>).

4. Initiating contact with people experiencing homelessness

This part 4 deals with the nature and frequency of contact between Victoria Police and people experiencing homelessness. Based on the HPLC's casework and the comments of the Consultation Participants and the In the Public Eye participants, we explain why unnecessary interactions between police and people experiencing homelessness should be minimised and how transparency regarding who gets approached by police and why could be improved.

4.1 Contact – field contacts, public contacts and frequency of contact

Victoria Police distinguish between:

- public contacts – 'general contact and communications with the community'; and
- field contacts – 'times where an officer approaches someone and requests details because the circumstances appear suspicious, or they have contact with an individual as a result of a specifically identified situation'.⁸

The submission of Smart Justice for Young People points out that this distinction is, for a young person, 'artificial and not apparent to them in their everyday lives'.⁹ We reiterate this point in the context of people experiencing homelessness. Further, in our view these remarks must be considered in light of how particular groups in the community engage with police and the history between these groups and the police. In particular, we refer to comments from our discussions with people who are homeless in relation to the nature of their engagement with the police (see part 5.1 below). Of the 19 people we spoke with, 16 identified a negative experience with police and reported harassment, disrespect, and at times, violence. We note comments from our project In the Public Eye in which people reported feeling targeted by police, being made an 'example', and being treated disrespectfully. In addition, through our casework we see how engagement with the police is very often followed by clients receiving fines and infringements.

In this context, it is perhaps understandable that for people experiencing homelessness, the distinction between public contact and field contact may seem somewhat artificial.

This lack of clarity about the type of contact can cause unease amongst people who find themselves being regularly approached by Victoria Police. For people who are vulnerable and who may have a history of unpleasant contact with the police, even general contact from Victoria Police can cause stress and a feeling of being targeted. Some people may react to this contact in a way that creates an offence where one previously did not exist (for example, using offensive language).

The broad scope of 'public contact' and the lack of clarity about when to initiate such contact means that there is increased potential for these general contacts to be used in a way that is discriminatory or arbitrary.

Of the Consultation Participants, almost 94% of respondents indicated they have been stopped by police at some stage in the past year. Twenty-one per cent indicated they had been stopped more than once a month,

⁸ Victoria Police, *Field Contact Policy and Cross Cultural Training: Victoria Police Community Consultation (2013) 4 (Consultation Paper)*.

⁹ See Smart Justice for Young People, *'Safeguards against Discriminatory Policing' – Response to the Victoria Police Community Consultation (31 July 2013) 10 (SJFYP Submission)*.

some as frequently as once per week. The majority had been stopped between one and five times in the past year.

Some of the comments made by the Consultation Participants included:

- ‘If you are in the wrong place at any time and you look like you’re not supposed to be there they’ll stop you’ (female, 45).
- ‘There is that type casting kind of thing – if you look a certain way you are going to get stopped. If I am going to be anywhere I’m not supposed to be I’ll dress nicer. It is again a race thing – if you are aboriginal you are going to get stopped’ (female, 40s).
- ‘Why should you get pulled over if you aren’t doing anything wrong’ (male, 46).

Through the Consultation Participants and the In the Public Eye participants, we have heard that clients often feel targeted by law enforcement officers. Based on our consultation, our casework and the personal accounts described in our project In the Public Eye, the HPLC suggests that homelessness (and the hardships that often accompany it, including poverty, mental illness and substance dependence) can impact on police decisions about when to approach a person.

While the HPLC appreciates the role of Victoria Police in ‘engaging with the community beyond simply dealing with crime’,¹⁰ we suggest that officers need to have a ‘reasonable suspicion’ that the person has committed or witnessed an offence before asking a person for their name and address. If no such suspicion exists and the officer is genuinely getting to know the community, there is no need for these details to be taken. The comments of three Consultation Participants supported this view when presented with the question ‘what do you think Victoria Police should do to improve how they treat people?’ One woman said, ‘Don’t ask for details if I have done nothing wrong’ and two others said that police should need to give a reason for stopping people, explain their reason for suspicion and don’t be aggressive.

We further suggest that Victoria Police should avoid unnecessary interactions with people experiencing homelessness, similar to the approach set out in the NSW Government Protocol for Homeless People in Public Places (**NSW Protocol**). Such an approach has the potential to reduce both actual and perceived discrimination by Victoria Police when making decisions about whether or not to initiate contact with people experiencing homelessness.

Responding effectively to homelessness – NSW Government Protocol for Homeless People in Public Places

The NSW Protocol aims to ‘help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status’ and to ‘provide a framework for interactions between officials and homeless people in public places’.¹¹

Signatories to the NSW Protocol are: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW.¹²

The NSW Protocol acknowledges that ‘like all other members of the public, homeless people have a right to be in public places ... at the same time respecting the right of local communities to live in a safe and

¹⁰ Consultation Paper, above n 8, 4.

¹¹ Family & Community Services Housing NSW, *Protocol for Homeless People in Public Places: Guidelines for Implementation* (May 2013) 4, 5 (**NSW Protocol**).

¹² *Ibid* 4.

peaceful environment’.

The NSW Protocol provides that **a homeless person is not to be approached unless:**

- they request assistance
- they appear to be distressed or in need of assistance
- an official seeks to engage with the person for the purpose of information exchange or provision of a service
- their behaviour threatens their safety or the safety and security of people around them
- their behaviour is likely to result in damage to property or have a negative impact on natural and cultural conservation of environment, including cultural heritage, water pollution and fire risks
- they are sheltering in circumstances that place their or others’ health and safety at risk (for example, staying in derelict buildings, high risk areas)
- they are a child who appears to be under the age of 16
- they are a young person who appears to be 16 to 17 years old who may be at risk of significant harm
- they are a child or young person who is in the care of the Director-General of the Department of Family and Community Services or the parental responsibility of the Minister for Family and Community Services.

The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn’t prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. It encourages officials to consider the individual’s circumstances when enforcing laws and to use discretion which takes account of ‘the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment’.¹³

Guidelines for Implementation have been published and it is recommended that the NSW Protocol is addressed in induction training for all new staff and in development training for existing staff. Housing NSW developed a ‘Protocol Training Package’ to support organisations to adopt and implement the protocol.

Signatories are also advised to conduct internal monitoring and review of the NSW Protocol and its implementation and impact. The Protocol will be reviewed every two years.

The HPLC submits that an agreement similar to the NSW Protocol could deliver significant benefits to Victoria Police (and other enforcement agencies) by providing clarity and guidance about when to approach people experiencing homelessness (and when not to) and what the particular circumstances, hardships and needs of people sleeping rough might be. The protocol would also provide guidance to officers about appropriate interactions and use of discretion, which are discussed below in part 5.

In summary:

¹³ Ibid 6.

- People experiencing homelessness often have a history of negative experiences with the police, including through receiving fines and infringements, being treated disrespectfully and being targeted while spending time in public;
- Previous negative experiences and ongoing vulnerability, mean that it is preferable for police to limit contact with people experiencing homelessness, unless there is good reason; and
- There is a need for a protocol to govern engagement between police and people experiencing homelessness.

The HPLC recommends:

- ▶ The distinction between public contacts and field contacts is removed from Victoria Police policy and operations, so that officers need to have a ‘reasonable suspicion’ that a person has committed or witnessed an offence before asking a person for their name and address.
- ▶ Victoria Police should work with government and non-government agencies to develop a protocol similar to the NSW Government Protocol for Homeless People in Public Places that aims to: avoid unnecessary interactions with people experiencing homelessness; ensure that where interactions do occur they are appropriate and respectful; and support officers to consider options other than fines and charges when dealing with people experiencing homelessness.

4.2 Improved accountability – receipts for people who are stopped

Receipting

A number of organisations have called for Victoria Police to complete a form and issue a receipt each time they stop, question, move on or search someone. It is recommended that data about people stopped and the outcome of the contact should be collected and made publicly available ‘as a clear monitoring and accountability mechanism ... and to increase transparency as to the use of stop and search powers by Victoria Police officers’.¹⁴

Smart Justice for Young People recommends that young people who are stopped, questioned, moved on or searched are issued with a ‘field contact receipt’ that sets out:

- Details of the officer stopping or searching the person, including name, rank and place of duty;
- Date, time and location of the contact;
- Race/ethnicity, age and gender of the person;
- Type of contact (for example, stop and search);
- Reason for the stop or search and why the person was selected for the stop or search;
- Link between the reason provided, the police conduct taken and the investigation of a criminal offence; and
- Outcome of the police conduct (for example, a fine issued, no action taken, arrest, no weapons found).¹⁵

¹⁴ Flemington Kensington Community Legal Centre and Arnold Bloch Leibler, *Submission to Victoria Police* (31 July 2013) 69 (FKCLC and ABL Submission). See also SJFYP Submission, above n 9, 18–19.

¹⁵ SJFYP Submission, above n 9, 19. See also FKCLC and ABL Submission, above n 14, 72–73.

Homelessness or housing status

We support the above recommendations in relation to all people stopped, questioned, moved on or searched by police. In addition, we recommend that the person's homelessness or housing status should be included in the receipt. A person should be informed that they are not required to disclose their living situation, but if they do or if the officer observes that the person has no fixed address and is experiencing homelessness, this should be noted on the receipt. While initially the HPLC was concerned that this identification of a person's housing status would be offensive to people experiencing homelessness or make them feel judged, the participants in *In the Public Eye*, while not commenting on this particular question, frequently referred to the need for officers to be more understanding of a person's situation and the reality of their day-to-day life. Recognising that a person is experiencing homelessness on the receipt would require Victoria Police to acknowledge this and would hopefully prompt them to consider the guidelines and training that the HPLC recommends are implemented in part 5 (in particular, regarding how to deal with people experiencing homelessness respectfully and appropriately and when to consider options other than fining or charging a person experiencing homelessness).

Including a notation about a person's housing status on the receipt will also allow Victoria Police to collect data on the numbers and proportion of its contacts that are with people experiencing homelessness. This data would form an evidence base for considering, for example, the policing of Public Space Offences and the extent to which these offences disproportionately impact on people experiencing homelessness. The receipting would also allow analysis of when officers exercise their discretion to use options other than fining or charging people experiencing homelessness, for example issuing a warning or linking a client with services. Further, receipting would enable Victoria Police to demonstrate the impact of homelessness on police capacity and resourcing and would potentially support a call for additional health and housing services to reduce the burden on police.

Improved access to advice, more accountability and better data collection

While there is some concern that the receipting requirement formalises an interaction that is otherwise informal, in the HPLC's view the benefits of this formalisation outweigh the risks. People who are homeless frequently approach the HPLC about interactions they have had with Victoria Police but have no record of that interaction. They are unsure whether they will receive an infringement penalty in the post. Often, even if an infringement notice is issued, they do not receive it because they have no fixed address. It would be significantly easier to advise people about whether or not they have a legal issue if they had a piece of paper recording the interaction.

Importantly, officers would be prompted to 'stop and think' about why they are stopping someone if they are required to provide a receipt. This has significant potential to reduce the impact of discrimination or stereotypes on officers' decisions to initiate contact with people because officers would need to be accountable to themselves, their supervisors and the individual.

The receipting process would encourage officers to make contact with people experiencing homelessness in justified circumstances. It would promote consistency in stop and search practices by members of Victoria Police and build trust and confidence in the community because there would be transparency about who is being stopped and why.

The mechanics of receipting

The HPLC supports the proposal that Victoria Police would use carbon copies of the form they complete to give to the person who has been stopped (which we hope will minimise the administrative burden on officers). We also support the recommendations in the submission of Flemington Kensington Community Legal Centre and Arnold Bloch Leibler (**FKCLC and ABL Submission**) that:

- the receipt should '[b]e limited to one or at most two pages' and be headed with words to the effect of 'YOU ARE NOT UNDER ARREST, STOP AND SEARCH FORMS ARE PROVIDED TO YOU FOR YOUR BENEFIT'. It should also be noted on the receipt that it is not a fine; and
- the introduction of receipting should be accompanied by a community education campaign including advertisements in trams and police stations and on bill boards, as well as education conducted through Victoria Legal Aid, community legal centres and community services.¹⁶

The HPLC recommends:

- ▶ People who are stopped, questioned, moved on or searched by Victoria Police should be issued with a 'field contact receipt' that sets out details of the officer stopping or searching the person, date, time and location of the contact, race/ethnicity, age and gender of the person, type of contact (for example, stop and search), the reason for the stop or search and why the person was selected for the stop or search, the link between the reason provided, the police conduct and the investigation of a criminal offence, and the outcome of the police conduct (for example, fine issued, no action taken, arrest).¹⁷
- ▶ Field contact receipts should note the person's housing status (although a person should be informed that they are not required to provide this information).
- ▶ Field contact receipts should be clearly and plainly worded and should clearly identify that the person is not under arrest and that the receipt is not a fine.¹⁸
- ▶ Introduction of receipting should be accompanied by a community education campaign including advertisements in trams and police stations and on bill boards, as well as education conducted through community legal centres and social services.¹⁹

5. Police interactions with people experiencing homelessness – appropriateness and discretion

Part 4 above deals with minimising unnecessary interactions between police and people experiencing homelessness and improving the transparency of these interactions through a receipting process. This part 5 deals with what happens when contact does occur, including improving the quality of interactions between Victoria Police and people experiencing homelessness and supporting officers to exercise their discretion when dealing with homeless community members.

5.1 Consumer feedback on interactions with Victoria Police

This section summarises the responses of the Consultation Participants when asked:

- Have you had a positive experience with police and/or PSOs? What made it positive?
- Have you had a negative experience with police and/or PSOs? What made it negative?

A number of Consultation Participants relayed positive experiences including being directed to housing services, being assisted home or being treated in a respectful manner by police or issuing officers.

¹⁶ FKCLC and ABL Submission, above n 14, 83.

¹⁷ SJFYP Submission, above n 9, 19. See also FKCLC and ABL Submission, above n 14, 72–73.

¹⁸ FKCLC and ABL Submission, above n 14, 83.

¹⁹ Ibid.

A survivor of domestic violence also expressed that she was happy with the way the police dealt with her concerns. Another woman who had been stopped on the street by police also indicated that even though they did not seem to understand addiction, they were very good when they assisted her with domestic violence issues.

Almost 36% of Consultation Participants indicated they have had no positive experiences with police.

In a couple of cases, where respondents indicated that they had been behaving inappropriately, they acknowledged that the police were 'just doing their job' or treated them 'nicely' given the circumstances; 'they are polite and they stick to the rules' (female, 45).

Only three Consultation Participants indicated they have had no negative experiences with the police. The remainder of Consultation Participants reported harassment, disrespect and at times violence.

Among complaints were: harassment, feeling misrepresented, bullied, not being taken seriously and the police being unnecessarily forceful, threatening and rude.

One respondent indicated they had been physically harmed by the police.

A woman who had been sleeping in her car due to homelessness reflected on the 'look of disgust' she was given by officers.

Some respondents who had previous interactions with the police believe they were 'sort of doomed' or 'condemned from the start' due to their previous histories.

On being evicted another woman recalls the police stating 'why don't you pay the f**king rent'.

5.2 Improving treatment of people experiencing homelessness

In light of the comments from the Consultation Participants, and based on our casework, the HPLC suggests that Victoria Police needs to implement training and guidelines to support officers to deal more appropriately and respectfully with people experiencing homelessness and disadvantage in the community.

There are of course already members of Victoria Police who approach people with respect, which was highlighted in a number of the positive comments of the Consultation Participants. It is important that this becomes the norm rather than the exception.

The HPLC acknowledges that members of Victoria Police are carrying out a complicated and difficult role in situations that often require quick decision-making in complex circumstances. This was recognised by one of the Consultation Participants who, when asked what Victoria Police could do better, said: 'It's a tough question – their whole role is to keep law and order. I get it. I don't know how they can change. I suppose everything should be judged on its merits. But you don't expect them to be counsellors. I'd hate to do their job' (male, 40). Another respondent said that the police need time in between jobs to 'take a breath and switch their attitude'. For example, if they have just had a bad experience with someone, 'sometimes it's like they approach the next job clouded with that same attitude even if they shouldn't' (male, 46).

Based on what we understand from our clients, stereotypes or assumptions about people experiencing homelessness can impact on police decisions about a range of things, including who to treat with dignity and respect, who to arrest and who to fine. Many of the Consultation Participants indicated that the police need to avoid judging people, treat them with respect and be fair.

The HPLC recommends:

- ▶ Victoria Police should provide officers with practical training and guidelines about how to deal appropriately with people experiencing homelessness and disadvantage. This training should equip

officers with the skills and understanding to make sure that homeless people are treated with dignity and respect by Victoria Police in a range of different and complex situations.

- ▶ Victoria Police should work with people with a direct experience of homelessness to implement this training.

5.3 The use of discretion

The HPLC appreciates the complex task Victoria Police officers have in balancing their duties to 'preserve the peace, protect life and property, prevent offences, detect and apprehend offenders and help those in need of assistance'.²⁰ Through our casework, we see daily that fining or charging people experiencing homelessness is rarely the way to achieve this difficult balance.

Victoria Police needs to work with legal services, community services, government and consumers to identify other options that might be available to deal with conduct by people experiencing homelessness, particularly Public Space Offences.

Officers should be supported to consider alternatives to issuing fines and charging people experiencing homelessness, including issuing warnings or linking people with support services.

While the NSW Protocol does not provide clear guidance on the use of discretion, it creates awareness of the range of services that are available to provide support to people experiencing homelessness. In some cases, linking people with these services will be an alternative to fines or charges. A similar public space and homelessness protocol in Victoria could play a significant role in supporting officers to exercise their discretion in a way that prevents homeless people entering the criminal justice system when their needs could be more appropriately dealt with by health, housing and support services.

By way of example, in the HPLC's experience, in relation to homeless clients who are drunk in a public place (see part 6 below), a common outcome is that the person is put in lock-up until they are sober and then issued with an infringement penalty on or after their release. In some cases it may be necessary to take a person into custody because they are at risk of harming themselves and, unlike people with homes, cannot be easily moved into a private place. However, the HPLC asks Victoria Police to consider the utility of fining or charging people experiencing homelessness for conduct that is inextricably linked to that person's homelessness and/or substance dependence. We would welcome the opportunity to discuss with Victoria Police options for dealing with problematic conduct in public places that can avoid that person entering the criminal justice system and instead work toward effectively addressing the underlying causes of the person's conduct.

- ▶ **The HPLC recommends** that officers are provided with training and guidelines to assist them to better understand homelessness, deal respectfully with people experiencing homelessness and to choose options other than fining or charging people for Public Space Offences.

²⁰ Victoria Police, *Victoria Police Manual – Code of Conduct – Professional Standards and Conduct* (available at: http://www.police.vic.gov.au/content.asp?Document_ID=30299) (**Victoria Police Manual**).

6. Public drunkenness – a case study in police contact and decision-making

This case study deals with the policing of public drunkenness offences and highlights the role a person's homelessness can play in the decisions officers make about:

- whether to initiate contact with a person (part 4); and
- if contact is made, how to deal with that person (part 5).

We have included this case study to give practical context to a number of our comments and recommendations in part 4 and part 5 above. In addition, this case study provides a clear example of the way in which enforcement of particular laws can impact disproportionately on people experiencing homelessness.

The HPLC has been assisting a client, Scott,²¹ since mid-2010. Throughout that period, he has been issued with about 15 infringements for being drunk in a public place and one for possessing an open container of liquor. On most occasions he admitted to being drunk in public; he is homeless and battles chronic alcohol dependence. On others he indicated that he hadn't been drunk but had been targeted because he was conspicuous and known to the local police. On one occasion he reported that he had the flu and was feeling very unwell. He was also extremely stressed and having trouble sleeping so was looking quite 'worse for wear'. The local police misread this as drunkenness and issued him with an infringement notice of approximately \$500. Scott was demoralised and defeated by the situation and said: 'I'll just cop it on the chin, they know me so well, they won't give me a break'.

Victoria is the only Australian State where being drunk in a public place is a criminal offence.²² Despite several major reports recommending that public drunkenness be decriminalised,²³ section 13 of the *Summary Offences Act 1966 (Vic)* (**Summary Offences Act**) continues to provide that 'any person found drunk in a public place shall be guilty of an offence' punishable by a fine of up to eight penalty units.²⁴

There are clear links between homelessness and substance dependence – in that substance dependence can be both a cause and a consequence of homelessness²⁵ – and the offence of being drunk in public can impact harshly on homeless Victorians who may be battling an addiction without a safe and secure home.

In December 2009, changes to Summary Offences Act expanded the use of infringement notices for public drunkenness offences. These changes were part of 'an initiative by Government to give police greater

²¹ Name and identifying details have been changed.

²² See, eg, Report of Ombudsman Victoria and Office of Police Integrity, *Conditions for Persons in Custody* (July 2006) 18 (available at: <http://www.opi.vic.gov.au/index.php?i=85>) (**Ombudsman and OPI Report**). See also, Smart Justice, *Reducing Alcohol-Related Violence* (25 May 2010) (available at: www.smartjustice.org.au).

²³ See, eg, Ombudsman and OPI Report, above n 22; Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Public Drunkenness* (2001); Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into Strategies to Reduce Harmful Alcohol Consumption* (2006) xxvi.

²⁴ *Summary Offences Act 1966 (Vic)* s 13. 'Public place' is defined extremely broadly in s 3 of the Summary Offences Act and includes: public highways, roads, streets, bridges, footpaths, alleys or thoroughfares; parks, gardens and other places of public recreation or resort; railway stations, platforms or carriages; wharfs, piers and jetties; public vehicles 'plying for hire'; churches or chapels open to the public 'or any other building where divine service is being publicly held'; Government schools or their land; public halls, theatres or rooms 'while members of the public are in attendance at, or are assembling for or departing from, a public entertainment or meeting therein'; markets; licensed premises or authorised premises within the meaning of the Liquor Control Reform Act 1998 (Vic); race-courses, cricket or football grounds; and open places that the public are permitted to have access to, whether with or without payment for admission.

²⁵ See, eg, Australian Government, *The Road Home: A National Approach to Reducing Homelessness* (2008) 8 (available at: http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/the_road_home.pdf) referring to the fact that substance use can be both a cause and a consequence of homelessness.

powers to combat violence and antisocial behaviour'.²⁶ Under the new powers, between 16 December 2009 and 18 July 2012, 32,474 infringement notices were issued for being drunk in a public place.²⁷ In 2011/2012, 14,557 people were taken into custody where the custody reason was listed as 'arrest – drunk' (these arrests may or may not have resulted in criminal charges being laid).²⁸

The HPLC's casework statistics indicate the offence of being drunk in public has a massive impact on clients experiencing homelessness and can lead to significantly increased engagement with the police.

The HPLC has assisted numerous people issued with fines for being drunk in a public place since December 2009. Rather than people outside nightclubs, leaving the footy or finishing up Friday night drinks, the HPLC's clients are drunk in public because their lack of housing means that they are forced to conduct their lives in public spaces. This increased visibility goes some way to explaining the disproportionate impact of fines and charges for public drunkenness on homeless Victorians, but we also ask Victoria Police to consider the role of stereotypes and assumptions in policing this offence (and others).

Based on our casework and the numerous comments from consumers about feeling targeted and judged, we suggest that a person's homelessness, and the appearance that sometimes comes with it, plays a role in officers' decisions about whether to approach a person and how to treat that person. By way of example, Scott explained (above) that on one occasion he was assumed to be drunk by officers, in the absence of evidence, when he was just unwell and appeared dishevelled. One of the Consultation Participants also recalled being upset when he was accused of being drug affected because the symptoms of his disability were wrongly interpreted by officers.

Where a homeless person is drunk in a public place, officers have the difficult task of deciding how to appropriately deal with that person. The recommendations in part 4 of this submission highlight the role receipting could play in ensuring that police are accountable for their reasons for initiating contact and the outcome of it. By including housing status in the receipting process, it would enable this circumstance to be identified and the outcome of the contact monitored for this cohort. In combination with the improved training and use of discretion recommended in part 5 and part 7, the HPLC suggests that the contact those experiencing homelessness have with police and the resulting outcomes could be significantly improved.

²⁶ Victoria Police, *Crime Statistics 2011/2012* (3 September 2012) 49.

²⁷ *Ibid.*

²⁸ *Ibid.*

7. Mechanisms for improving understanding and accountability

Part 4 and part 5 of this submission present a number of recommendations aimed at:

- Reducing unnecessary contact between Victoria Police and people experiencing homelessness and improving the transparency of who is approached and why; and
- Improving the quality of interactions between Victoria Police and people experiencing homelessness, including supporting officers to exercise their discretion to choose options other than fining or charging people.

Many of the recommendations in part 4 and part 5 focussed on stronger training and guidelines for Victoria Police and we reiterate these recommendations in this section. The HPLC submits that a stronger training programme for new and existing officers is critical to affecting cultural change within Victoria Police in relation to their dealings with people experiencing homelessness. In addition to these improvements, there is a need for greater accountability of officers when there are concerns about police conduct. With this in mind we recommend improvements to the complaints process.

7.1 The role for improved training on homelessness

As outlined in part 5 of this submission, the HPLC submits that Victoria Police should implement training and guidelines to support officers to deal more appropriately and respectfully with community members experiencing homelessness.

When asked how Victoria Police could improve how they treat people, a number of the Consultation Participants recommended specific training on homelessness, disability and/or mental illness. The following comments were made in relation to the need for training:

- ‘It kind of comes down to education doesn’t it’ (female, 45).
- ‘Police should be more involved with homeless associations and be more educated in the reasons why some people are homeless’ (female, 45).

The HPLC is of the view that the Victoria Police training course, ‘Introduction to Contemporary Policing’ would greatly benefit from the inclusion of specific training about homelessness, its causes and its impacts on people’s conduct and behaviour. The HPLC strongly recommends that both new recruits and existing officers are given this training by experts in homelessness and that the training incorporates direct insights from people who have experienced homelessness.

We are hopeful that if the Victoria Police training course incorporated insights from homeless people (such as those stories captured through In the Public Eye at www.pilch.org.au/hplc/inthepubliceye), it would have the potential to increase officers’ understanding of the circumstances of homeless Victorians and, through this, it would support officers to respond more appropriately when interacting with people experiencing homelessness.

The HPLC recommends:

- ▶ Victoria Police should be trained in what constitute ‘reasonable grounds for suspicion’ in order to eliminate the role stereotypes and assumptions play in decision-making.
- ▶ Training for both new recruits and existing officers should include a dedicated session on policing and homelessness, which involves hearing directly from people have experienced homelessness.

7.2 An effective complaints framework

It is important to the integrity of Victoria Police (both actual and perceived) that complaints against members are investigated by an independent body, such as the Independent Broad-based Anti-corruption Commission (IBAC).

When Consultation Participants were asked whether they knew what they could do if they felt they had been unfairly treated by police or PSOs (and whether or not they were aware that you don't have to go to your local police station to make a complaint), 68% knew how to lodge a complaint and, of those who were aware of the process, 28% had complained.

The majority of Consultation Participants who were aware of the complaints process didn't believe it was useful or that it would result in a positive outcome for them.

HPLC Participants provided the following comments about the current complaints framework:

- 'Why would you make it worse for yourself? Its not like they don't know straight away who made the complaint' (male, 46).
- 'I never have [put in a complaint] because I was always brought up believing you can't beat the system so you let the system beat you'.
- 'The police will just protect each other. Better off going to the media' (female, 45).
- 'It's blue protecting the blue' (male, 39).
- 'If they are getting their own to investigate them why would we bother ... it's a brotherhood. They are probably going to look after their own. No matter what they say I don't believe them. What happens afterwards? They know your address, they know everything' (female, 45).

These comments suggest that there is a perception in the community that complaints that are internally reviewed by Victoria Police will not lead to fair and just outcomes.

It is imperative that complaints concerning police are referred to an independent body. This will ensure that police are accountable for their conduct and will increase the community's confidence in the complaints process.

The HPLC recommends:

- ▶ The Victorian Government should implement legislative reform requiring IBAC (or an equivalent agency) to investigate all complaints of police misconduct.
- ▶ The Victorian Government should ensure that IBAC (or an equivalent agency) is properly resourced to investigate complaints about Victoria Police.

Annexure 1: PILCH and the Homeless Persons' Legal Clinic

The Public Interest Law Clearing House (**PILCH**) is an independent, not-for-profit organisation. We exist to help build a world that is just and fair – where systems are more accessible and accountable, rights are respected and advanced and laws are fairer. Our unique contribution to this vision is to partner with pro bono lawyers to develop and strengthen pro bono capacity and strategically match this with unmet legal need.

PILCH facilitates pro bono legal services in Victoria and New South Wales to individuals and organisations in need, and addresses injustice through law reform, policy work and legal education.

The Homeless Persons' Legal Clinic (**HPLC**) is a program of PILCH.

The HPLC is a specialist legal service for people experiencing or at risk of homelessness.

Free legal services are offered by the HPLC on a weekly basis at eight outreach locations that are already accessed by people experiencing homelessness, including crisis accommodation centres and social and family services.²⁹

Since its establishment in 2001, the HPLC has provided assistance to over 5000 people experiencing or at risk of homelessness.

In addition to providing legal services, the HPLC undertakes a range of law reform and public policy activities. These activities are intended to identify and seek to change laws and policies that impact in a disproportionate or discriminatory way on people experiencing homelessness.

The HPLC also conducts a range of capacity building activities, including community legal education and consumer participation activities.

In 2005, the HPLC received the national Human Rights Law Award conferred by the Human Rights and Equal Opportunity Commission in recognition of its contribution to social justice and human rights. In 2009 it received a Melbourne Award for contribution to community in the City of Melbourne.

²⁹ Host agencies include Melbourne Citymission, Ozanam House, Flagstaff Crisis Accommodation, VACRO, HomeGround Housing Services, Northside Geelong, Central City Community Health Centre and Salvation Army St Kilda Crisis Contact Centre. Legal services are provided at our host agencies by volunteer lawyers from law firms: Allens Linklaters, Clayton Utz, Corrs Chambers Westgarth, Herbert Smith Freehills, King & Wood Mallesons, Minter Ellison and Harwood Andrews.

Annexure 2: In the Public Eye – personal stories of homelessness and fines

This Annexure contains short quotes and brief background for the six participants in In the Public Eye. Their full stories are available at: www.pilch.org.au/hplc/inthepubliceye

Anthony

“Being homeless and living on the streets, whatever self-confidence I had was wiped ... you actually don’t get looked at as a human being”.

Anthony became homeless in his late 20s. He slept rough and couch surfed for about two years and he received about \$3000 in fines for travelling on public transport without a ticket, having his feet on the train seat and possessing an open container of liquor. Anthony now feels hopeful about his future. He is in recovery, has stable housing and is looking forward to returning to work or study.

Emma

“Being a young woman on the streets is quite dangerous, I guess you do have to protect yourself ... I got a lot of fines during my time being on the streets due to not having a ticket ... then there was also the fines for beg alms”.

Emma became homeless at 16. During her time sleeping on the streets she got fines for not having a tram ticket and for begging. Emma now has two young sons. She is still in unsafe housing but hopes that with the right support she will move to safety soon. Other than her housing issue, she is doing well.

Richard

“I didn’t have money for food. I didn’t have money for the tram. I tried to go on the tram without getting caught. What I’ve noticed is that they target the homeless and the uni students”.

Richard was homeless for four years after his relationship broke down. He got \$4500 in fines for travelling on trams without a ticket. Richard now has stable housing in shared accommodation. He lives close to shops and services and tops up his Myki card with \$20 every fortnight.

Julia

“When you are unemployed or on a pension, it’s pretty difficult to survive as it is ... you don’t have a spare \$200 to give to a fine and if you’re homeless as well it’s even more stressful because it’s already stressful not having a place of your own”.

Julia* found herself homeless after having to leave private rental. During her time staying in emergency accommodation and couch surfing she accrued about \$2000 in fines for travelling on public transport without a ticket and failing to vote. Julia hopes to move into stable housing in the next 12 months and go back to university.

Darren

“I’d cop another one and another one and it just got overwhelming. I was unable to pay due to the fact I was only on Newstart at that time and living in boarding houses which were pretty much a third of my payment.”

Darren has been homeless on and off for almost 15 years and has struggled with alcohol addiction since his teens. A combination of these two factors has resulted in him getting about \$15,000 in fines. He is now in stable accommodation; working on his recovery and moving towards a better life.

Hamish

“It’s a bit upsetting when you are on a tram or train and you find that whenever there is a ticket officer they immediately bee-line their way to you. It does something to your self esteem”.

“Getting the fines sorted was like a weight lifted, like going to the dentist and having the pressure released. It’s a good feeling. It encourages me to get my stuff a bit more organised and together, start working again.”

Hamish* has been homeless since his mid-teens. He got about \$13,000 in fines on public transport. He hasn't had any fines in two years.

*Names have been changed