

Courting Justice

Integrated Criminal Legal Representation for Victorians Experiencing Homelessness

October 2018

Acknowledgements

Justice Connect Homeless Law takes this opportunity to express our sincere thanks to the Portland House Foundation for its generous, collaborative support, which has allowed us to create innovative and effective responses to the legal needs of people experiencing homelessness.

We also thank Laura Heffes for her work as the inaugural criminal lawyer at Homeless Law. She worked tirelessly in the first 20 months of the program to establish an effective pathway for Homeless Law clients to access criminal representation. Representation they would often have been unable to access without this program.



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1. Executive Summary

Justice Connect Homeless Law's 'Courting Justice: Integrated Criminal Legal Representation for Victorians Experiencing Homelessness' program (**Courting Justice**) seeks to improve the ability of complex clients to access the justice system and to deal with the range of legal issues that accompany the experience of homelessness.

Generously funded by the Portland House Foundation, the program recognises the barriers faced by clients who are homeless and have complex needs in navigating the justice system and accessing legal assistance.

In September 2015, the first criminal lawyer in Homeless Law's 15 year history joined the team. Since that time, Homeless Law has been able to provide civil and criminal legal casework, integrated with social work support, bringing to life the concept of holistic service provision.

In the first two years of Courting Justice, we assisted 152 Victorians who are homeless or at risk of homelessness with criminal legal casework, advice or in-court representation.¹ This included ongoing representation in criminal matters for 75 people. Of these clients, 88% would not have been eligible for legal aid funding for ongoing representation.

Of the 75 clients who we assisted with ongoing criminal legal casework, 55% had substance dependence issues and 68% had a mental illness; 91% also received legal help from Justice Connect Homeless Law for civil law matters (for example, in relation to eviction, housing debts or fines and infringements); and almost 50% received support from our in-house social workers.

The 75 clients we assisted with ongoing casework were assisted with a total of 127 sets of charges.

Reflecting on this work, we see Victorians who have complex, intersecting and multiple legal and non-legal needs. Their experience of homelessness makes it more likely they will come into contact with the justice system, while simultaneously making it more difficult for them to navigate it. As a result, our model is designed and implemented with the needs of this group of clients at the centre to ensure that clients receive integrated and intensive legal and non-legal support.

This is consistent with the findings of the Legal Australia-Wide Survey (**LAW Survey**), conducted by the Law and Justice Foundation of New South Wales:

The fragmented nature of legal services in Australia means that legal service provision is problem-focused rather than client-focused. This fragmentation can be a challenge for people with multiple legal problems, who often need to identify a separate legal service provider for different types of legal problems and to navigate the disparate eligibility criteria attached to each service provider. A problem-focused rather than client-focused approach can also mean that only some of the legal problems faced by an individual are detected and addressed.

A holistic, client-focused approach to legal service provision provides the best chance of resolving the multiple legal and non-legal issues disadvantaged people tend to face... Researchers have advocated the coordination of legal services with a wide variety of other human services, including health, housing, financial, social, welfare, family and crime victim services.²

¹ The reporting period is October 2015 to September 2017.

² 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) citing Kemp et al. 2007; Moorhead et al. 2006; Pleasence 2006; Pleasence et al. 2007a, 2007b, 2007c.



One of our pro bono lawyers summarised the benefits of Courting Justice:

[The clients I have referred to the criminal lawyer] have all had severe mental health issues which make it difficult for them to engage or trust the system and criminal lawyers. Having [the criminal lawyer] available to meet with a client who has such high vulnerabilities means that they can get help with their legal issues seamlessly and in cases where it is likely they wouldn't go independently to see a lawyer when at court, or contact the VLA help line for advice. It's such a great service for those people who wouldn't access a criminal lawyer any other way.

Sarah McMahon, Homeless Law's in-house social worker, said:

Without the Courting Justice program, many of my clients would struggle to prepare for and attend court. Flexible and simple access to a lawyer, face-to-face, with the ability to meet before court builds trust and reduces their anxiety. Phone advice or duty lawyers might work for the bulk of people with criminal matters but more complex clients really benefit from a direct service and as a result attend court and sort out their legal issues more efficiently ...[i]t has been invaluable to my work with people experiencing homelessness.

This report captures the outcomes, impacts and reflections from two years of combining civil and criminal legal representation with social work support for Victorians who are homeless or at risk of homelessness.



2. Five Systematic Issues and Recommendations for Reform

This report sets out the data and insights from working with 152 Victorians who were homeless or at risk of homelessness who found themselves caught up in the criminal justice system. Through this work, we have identified five key areas where the criminal justice system has a harsh and heavy impact on our clients.

- 1) **Criminal offending that is a direct symptom of homelessness.** Homelessness makes it more likely you will come into contact with the justice system. Nowhere is this clearer than through the experiences of our clients whose interactions with the criminal justice system were as a direct result of their homelessness:
 - A woman was charged with trespassing, having been evicted for falling behind in rent and returning to the home to seek shelter because she had no alternative accommodation.
 - A woman was charged with begging, having fled family violence to the relative safety of the streets. Her sign explained that she was seeking money for accommodation that night, but after being charged, she returned to her violent partner.
 - A man was charged with possessing a controlled weapon. He carried kitchen items, including a kitchen knife, while living out of his car.
 - A number of clients relying on their vehicle for shelter and to access support were charged with driving offences, including driving while suspended after their licence was suspended for unpaid fines.
- 2) **Restricted and inconsistent access to Diversion.** The Criminal Justice Diversion Program is a legislative scheme which empowers a court to deal with a criminal charge by 'diverting' the matter from the criminal justice system and thus avoiding a finding of guilt. Through our work it has become clear that many people who are appropriate candidates for receiving a Diversion do not. Although nine of our clients in the first two years accessed Diversion, only two of these applications were prompted by Police. Without the representation provided through the Courting Justice program, it is likely the other seven clients would have ended up with criminal records and the long-term impacts for their futures, particularly employment, that these records carry with them.³
- 3) **Licence suspensions for unpaid fines.** People experiencing homelessness are at a greater risk of losing their driver's licence, particularly because of the disproportionate impact of fines and infringements. For example, suspensions often occur through the following process:
 - During periods of homelessness, people are living their lives in public places. They are relying on public transport for shelter and to get to appointments, or on their vehicle for storage, shelter and safety. They are at greater risk of receiving fines for parking offences, driving on a toll road without an e-tag, not having a ticket on public transport or minor public space offences, such as public drunkenness.
 - Fines accrue and, because fines and reminders are being sent to an old address, the person is unable to keep track of them.
 - The fines remain unpaid and the person's licence is suspended either as a result of accrual of demerit points or through 'administrative sanctions' which allow a person's driver licence to be suspended because they haven't paid their fines.
 - The notification of the suspension is sent to an address that the person no longer lives at and they are unaware of this. Alternatively, a person is aware of their licence suspension, but can see no alternative to driving the vehicle they are living in and relying on as their last remaining safety net.

³ See also Emily Scott et al, Liberty Victoria's Rights Advocacy Program, *Justice Diverted? Prosecutorial Discretion and the Use of Diversion Schemes in Victoria* (2018).



- They are apprehended by Police for driving while suspended, which carries a risk of imprisonment.

4) Onerous expectations of justice system. The criminal justice system often sees someone’s interaction with the court as an opportunity to intervene and address issues that have led them to court in the first place. While well-intentioned, there is often limited recognition that ongoing interaction with the justice system can be a detrimental, rather than positive, aspect of a person’s rehabilitation or recovery. For many clients, the anxiety of not knowing the outcome of their matter for months on end can hold them back from moving ahead with their lives. For other clients, repeatedly attending court can be both physically and emotionally overwhelming. A number of the clients we have worked with would have benefited from knowing their sentence at first instance and being permitted to engage with services and supports without intervention via the sentencing process.

5) Falling through the cracks of our legal help landscape. For the clients Homeless Law is working with, their charges almost always fall into a category where they are not eligible for a grant of legal aid and therefore, if they are not in the catchment of a Community Legal Centre that practices in criminal law or eligible for assistance from the Victorian Aboriginal Legal Service, cannot access a lawyer in advance of court without paying. This is the case for most public space and other minor offences, even where the person has a history before the courts. Although people experiencing homelessness are prioritised for assistance by a duty lawyer at court on the day, the uncertainty in the lead up to the hearing can contribute to clients missing court and the one-off interaction with the duty lawyer can be difficult for clients with complex needs or previous negative experiences of the justice system. As the recent evaluation of the appropriateness and sustainability of Victoria Legal Aid’s summary crime program recognised, there are difficult challenges ‘assisting clients with complex needs and legal issues in the hectic, time-constrained environment of the [duty lawyer service].’⁴

Informed by our experience of the first two years of Courting Justice, we make the following five recommendations, which will go some way to reducing the negative impact of the law on people experiencing homelessness.

FIVE RECOMMENDATIONS TO REDUCE THE NEGATIVE IMPACT OF THE LAW ON VICTORIANS EXPERIENCING HOMELESSNESS	
1.	<p>Reduce our costly reliance on the criminal justice system to respond to homelessness</p> <p>The criminal justice system is a blunt and costly tool for responding to homelessness and its impact on people’s conduct, decision-making and options. To reduce the burden on our already over-stretched justice system, and to minimise the harsh impact on Victorians experiencing homelessness, we recommend:</p> <ul style="list-style-type: none"> • Victoria Police should consider cautions as a first option for people where the offending is directly linked to their homelessness. • Victoria Police should be trained and equipped to make referrals to appropriate services as an alternative to fines and charges.⁵ • Prosecutors should be given guidance to consider withdrawal of charges if a clear link can be drawn between the allegations and the person’s homelessness. • The offence of begging should be repealed.⁶ <p>If we can prevent people experiencing homelessness from entering the criminal justice system, or support them to exit without a formal finding of guilt and criminal record, we are supporting, rather than impeding, their pathway out of homelessness.</p>

⁴ Hugh M McDonald et al, Law and Justice Foundation for New South Wales, *In Summary: Evaluation of the Appropriateness and Sustainability of Victoria Legal Aid’s Summary Crime Program (2017) (VLA In Summary Report)* xx, 163–4.

⁵ The Victoria Police e-Referral (VPeR) pathway for homelessness services has been inactive since early 2016, which significantly limits the referral options that Police have for people experiencing homelessness.

⁶ See *Asking for Change: Calling for a More Effective Response to Begging (2016)* Justice Connect <https://www.facebook.com/JusticeConnect/videos/vb.605682672788823/1285054821518268/?type=2&theater>.



<p>2.</p>	<p>Make Diversion an accessible option that gives people the best chance for the future</p> <p>Diversion plays an important role in helping people exit the justice system without a criminal record. Barriers to Diversion, especially for people who are unrepresented, should be removed.</p> <p>Section 59 of the <i>Criminal Procedure Act 2009 (Vic)</i> should be amended to remove the requirement that the Prosecution consent to a Diversion. For someone who is unrepresented, the effect of this is that they rely almost exclusively on the Police to access this outcome. Diversion is often the best possible outcome for someone who has been charged with an offence. Even where represented, Police have complete discretion to consent to Diversion and there is no opportunity for the court or defence to intervene. Whether or not Diversion is appropriate should be a question for the court, which should be informed by the views of both defence and the Police.</p> <p>There should also be the option for courts to vacate pleas of guilty where it becomes apparent, after a plea is entered, that Diversion is the most appropriate outcome. Often people will enter a plea before becoming aware that Diversion is an option. The court accepts this plea before hearing anything about the allegations or the person's background. These people shouldn't miss the opportunity to access Diversion.</p> <p>These recommendations will reduce the inconsistency and arbitrariness that currently affects whether our clients are able to access Diversion and the opportunities for a future without a criminal record that it provides.</p>
<p>3.</p>	<p>Recognise the causes and consequences of licence loss for homeless Victorians</p> <p>As homelessness continues to rise, the system must adapt to reduce the punitive impact of fines and infringements, and licence sanctions, on Victorians experiencing homelessness. Reforms should include:</p> <ul style="list-style-type: none"> • Design and implement a process for notifying VicRoads that a person has 'no fixed address'. The system should also allow people experiencing homelessness to notify VicRoads of their circumstances so alternate means of contacting them are available (including text message or email).⁷ • Extend (or put on hold) the 14 day time limit for notification of change of address for people experiencing homelessness, recognising that a failure to notify of a change in address is currently an offence that carries with it a monetary penalty which further compounds disadvantage for people experiencing homelessness. • The Department of Justice and Regulation should monitor the impact of the <i>Fines Reform Act 2014 (Vic)</i> on people experiencing homelessness, particularly the significantly reduced timeframes and use of 'administrative sanctions' (including licence and registration suspension) for unpaid fines. Guidelines should be developed regarding the use of administrative sanctions to make sure that they are not applied to people experiencing homelessness; and, if they are, that there are clear mechanisms for people to have these sanctions lifted. While the intention of these changes may be to encourage early action to address fines, for people experiencing homelessness, such action is unlikely to have this effect and is likely to lead to further fines and offending, such as driving while suspended.
<p>4.</p>	<p>Court systems should acknowledge that prolonged judicial involvement can hold people back, rather than support them to move forward</p> <p>Ongoing engagement with court support services can and often does result in good outcomes for both the accused person and the community. However, it is important to recognise that this isn't always the case; sometimes protracted engagement with the court can be counter-productive for a person experiencing homelessness and the most effective role for the court can be a discrete one.</p> <p>Courts should be encouraged to recognise that, particularly for minor offences, monitoring all offenders isn't always the best solution. Magistrates should have a practice note,</p>

⁷ McDonald, above n 4, 255, Recommendation 7. This recommendation states '[t]he Department of Justice and Regulation should consult relevant stakeholders and review the operation of the relevant law and sentencing options for drive while suspended and drive while disqualified offences, and their impact on Magistrates' Court caseload, and consider law, court program and service reforms'.



	<p>training and guidance about evaluating and balancing the benefits of making orders based on a commitment to engage with services that does not need to occur via the sentencing process or ongoing engagement with the court.</p>
<p>5.</p>	<p>Invest in models of integrated legal representation</p> <p>Integrated legal representation, such as Courting Justice, provides an important service model for a small number of clients with complex needs. An integrated model enables complex clients to access ongoing and specialised criminal legal advice and representation throughout the court process, increasing their ability to attend court on the day through ongoing engagement with one specialised lawyer and a trained social worker. Integration also enables them to simultaneously access civil legal advice in relation to other legal issues including fines, tenancy and debt. This leads to improved legal and non-legal outcomes, including access to Diversion, sentences that properly contemplate their circumstances (such as manageable undertakings or Community Corrections Orders) and linkages with a range of non-legal services and supports by in-house social workers.</p> <p>As the VLA In Summary Report identified, provision of more intensive forms of legal assistance earlier on has wider system benefits, including saving court time.⁸ Client-centred models of service provision that meet a cluster of legal and non-legal needs – in this case civil legal issues (including eviction, housing debts, fines and infringements), summary criminal issues and non-legal needs connected to homelessness (including housing, mental health, drug and alcohol use and family violence) – provide significant benefits to complex clients and to the justice system more generally.</p> <p>These services are a worthwhile investment for government and should be funded as part of a fair and efficient justice system.</p>

⁸ Ibid 159.



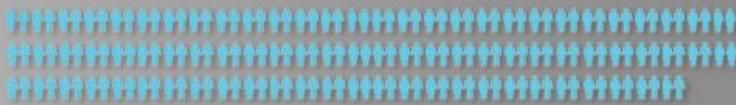
3. Key Figures and Outcomes in Our First Two Years

Courting JUSTICE

the first two years of Justice Connect Homeless Law's criminal lawyer

we have helped

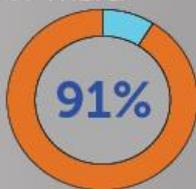
152 people with casework, advice or in-court representation



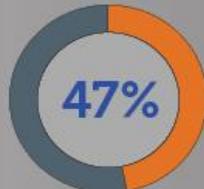
75 people with ongoing representation in one or more criminal matters



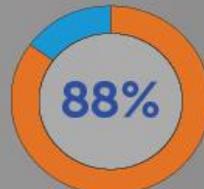
OF THESE:



also received civil legal help from Justice Connect Homeless Law



also received non-legal help from the Homeless Persons' Liaison Officer



would not have been eligible for Legal Aid funding for ongoing representation

OF OUR 75 ONGOING CLIENTS:



41 had substance dependence issues



51 had a mental illness



justice connect Homeless Law



4. Courting Justice: Background and Need

4.1 Homelessness and Legal Need

We know that homelessness is increasing. The 2016 Census identified that the number of homeless people in Victoria increased by 11% since the 2011 Census and now stands at 24,817. Over 1,100 of these people are 'living in improvised dwellings, tents or sleeping out'.⁹

Through our work, Homeless Law sees that homelessness almost inevitably brings increased contact with the law, while simultaneously making it harder to navigate the justice system and to access legal assistance. In practical terms, the law can push you into homelessness, impact disproportionately on you while you're homeless and present barriers to exiting homelessness.

This is consistent with the findings of the Law Survey, conducted by the Law and Justice Foundation of New South Wales, the largest survey of legal need undertaken in Australia.¹⁰ This research shows that legal need amongst people experiencing homelessness is almost double that of the rest of the population. Over 85% of homeless people have experienced at least one legal problem over a one-year period, compared to 49% of people living in non-disadvantaged housing; and 50.5% of those who identified as homeless experienced three or more legal issues, compared to only 15.7% of people in other types of housing.¹¹

The study identified that there are considerable barriers to people experiencing homelessness accessing legal services, including the need to prioritise more basic human needs such as food or accommodation. Accordingly, it recommended that services assisting people experiencing homelessness require 'a holistic or client-focused approach, involving an integrated response from legal and broader human services'.¹²

These findings have been reinforced by a number of subsequent studies, helpfully brought together in the VLA In Summary Report:

*Legal problems do not exist in isolation, and tend to occur in clusters, often coexisting with other complex problems. Legal problems can escalate in severity and cascade, creating additional legal and social needs and reinforcing disadvantage. For example, in analyses of the national LAW Survey dataset Pleasence and McDonald (2013) found that experience of criminal legal problems co-occurred with civil legal problems and disadvantage, with alleged offenders experiencing a broad range of civil legal problems at higher rates than others.*¹³

4.2 Clients Facing Criminal Charges Falling Through the Cracks

Prior to Courting Justice, we observed through our work that many of our clients were coming into contact with the criminal justice system and were struggling to access representation in their criminal law matters.

Limitations on VLA's funding mean that their service model necessarily prioritises clients who are at risk of imprisonment and ordinarily won't provide funding for people charged with traffic offences under the *Road Safety Act 1986*.¹⁴ We observed that the majority of Homeless Law clients with matters in the Magistrates' Court were ineligible for grants of legal assistance from Victoria Legal Aid (VLA), so were unable to access funding for

⁹ 2049.0 *Census of Population and Housing: Estimating Homelessness* (14 March 2018) Australian Bureau of Statistics <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>.

¹⁰ Coumarelos et al, above n 2.

¹¹ Christine Coumarelos & Julie People, *Home is Where the Heart of Legal Need Is* (2013) Law and Justice Foundation of NSW [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ_23_HomeIsWhereTheHeartOfLegalNeeds_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_23_HomeIsWhereTheHeartOfLegalNeeds_FINAL.pdf).

¹² Ibid.

¹³ McDonald, above n 4, 19.

¹⁴ *Handbook for Lawyers – Criminal Law Guidelines* (September 2018) Victoria Legal Aid <https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines>.



ongoing representation. These clients were facing charges typically incurred as a direct result of poverty and homelessness, such as begging, other public space offences under the *Summary Offences Act 1966* (Vic), driving offences and minor drug or property offences.

Prior to the commencement of Courting Justice, our main option in many cases was to assist these clients to access VLA's duty lawyer service on the day of the hearing. The duty lawyer service provides valuable assistance to tens of thousands of people every year, with demand for services on the rise.¹⁵ However, our experience was that many of our clients – particularly those with negative experiences of the justice system – were highly anxious about attending court and struggled with the duty lawyer model. For some, the inability to obtain legal advice prior to the hearing (which can be months after charges are laid) created uncertainty, increased anxiety and resulted in failures to appear at court. Other clients struggled with the prospect of telling their story to an unfamiliar lawyer in the stressful court environment and elected to appear unrepresented without receiving legal advice. In some cases we referred clients to their local community legal centre in advance of the hearing, but the availability of this option is dependent upon the location of the client and the court hearing.

In a small number of cases, our clients were facing more serious charges and were eligible for a grant of legal assistance from VLA. In these cases, Homeless Law would assist with the civil legal issue and refer the client to VLA or a criminal law firm for assistance with the criminal matter. However, where clients are sleeping rough and/or have complex needs, we have observed the difficulty they face in keeping appointments with several different legal services.

The VLA In Summary Report acknowledged the gap between those ineligible for a grant of legal aid and those who can afford the cost of representation.¹⁶ Limitations of the duty lawyer service mean that some people who may get significant benefit from legal assistance often miss out. Examples of this include high need and less capable clients, clients who have a defensible case and clients who might have an opportunity to get a diversion or avoid a conviction.¹⁷ It is in this area that the addition of a criminal lawyer has been crucial in assisting Homeless Law clients to navigate the legal system and resolve their legal and non-legal issues.

¹⁵ See, eg, McDonald, above n 4, ix. In 2015–16 VLA's Adult Summary Crime Sub-program provided 56,034 duty lawyer services at Magistrates' Courts throughout Victoria for adult summary crim matters. In its 2017–18 Mid-year report, VLA reported a 5% increase in duty lawyer services provided in the 1 July – 31 December 2017 period. For the corresponding period in 2016–17, the increase was the same.

¹⁶ Ibid 18.

¹⁷ Ibid xxi.



5. The Homeless Law Model

The Courting Justice program sits within Homeless Law’s broader service delivery model, which is outlined in this part and includes:

- Specialist legal services, including pro bono partnerships;
- Two in-house social workers; and
- Co-locating staff at specialist homelessness and health services.

5.1 Homeless Law’s Specialist, Holistic Legal Service

Justice Connect Homeless Law is a specialist legal service for people experiencing or at risk of homelessness. Our staff work closely with approximately 500 pro bono lawyers from six member law firms to provide 500 people experiencing or at risk of homelessness with integrated legal representation each year. Our services are outreach-based and client-centred. We provide high quality, high impact assistance that meets the legal and non-legal needs of a group of Victorians who would otherwise slip through the cracks of the justice system.

In the 2016–17 financial year, Homeless Law opened 472 legal casework files. These clients received intensive legal representation, including advice, negotiation and representation; 143 people also received direct support from our in-house social workers and 121 evictions into homelessness were prevented. 60 clients were assisted with fines, infringements or charges related to homelessness. 60 clients were assisted through the Women’s Homelessness Prevention Project and 60 were Victorian prisoners.

This diagram depicts Homeless Law’s service model since the addition of our criminal law expert through Courting Justice.



5.2 Integrated Practice: Two In-House Social Workers

In 2010, funded by the Victorian Department of Justice and Regulation, Homeless Law became one of Victoria's first integrated legal practices through the addition of a social worker to our team. The aim was to provide a genuinely holistic service that addresses both the legal and non-legal needs of our clients.

The type and intensity of the support provided by the Homeless Persons' Liaison Officer (**HPLO social worker**) vary according to client need and includes support in addressing both legal and non-legal needs.¹⁸

The HPLO program aims to reduce the burden on the justice system presented by people cycling through courts and tribunals unassisted and unsupported. The HPLO social worker has a unique perspective on the intersection of legal issues and homelessness, as it is the only non-legal program in Victoria solely targeting this client group.

Homeless Law's Women's Homelessness Prevention Project (**WHPP**) is another holistic, integrated model of providing legal services that prevents homelessness through addressing both legal and non-legal issues. It keeps women and children in housing through a combination of legal representation and social work support provided by the WHPP Liaison Officer.¹⁹

In its first two years, the WHPP provided legal representation (including advice, negotiation and representation at VCAT) and social work support to 102 women with 157 children who were homeless or on the brink of it. 90% of these women had experienced family violence.

These integrated models create efficiencies within legal environments by addressing some of the underlying causes of clients' contact with the justice system, thus reducing the emergence of new legal issues. They acknowledge the significant interplay between legal and non-legal issues such as housing, financial stress, family/relationship concerns, family violence, substance addiction and mental health issues, which need to be addressed simultaneously in order to increase the potential for positive and sustainable outcomes for clients. In the first two years of Courting Justice 35 of our 75 clients with ongoing casework were also supported by our in-house social workers.

5.3 Co-locating at Specialist Homelessness Services

Homeless Law has a partnership with cohealth's Central City Community Health Service (**CCCHS**), which is a 'one-stop-shop' for health services for people experiencing homelessness in the City of Melbourne. This partnership involves, among other things, the co-location of the HPLO social worker at CCCHS one day per week.²⁰

Through this co-location, Homeless Law has seen a significant increase in the number of clients being supported to access Homeless Law and other appropriate legal services.²¹

The CCCHS partnership and co-location informed the establishment of a more recent co-location at Launch Housing as part of the Under One Roof program, again generously supported by the Portland House Foundation.²²

Since the commencement of Courting Justice, Homeless Law's co-location with Launch Housing has resulted in ongoing criminal law casework for eight clients, with 15 matters. These are people who would likely have

¹⁸ Assistance provided includes: assisting clients to access appropriate legal assistance at the earliest possible point before legal issues escalate; supporting clients to attend court or VCAT, including arranging accommodation prior to court, transport and accompanying clients to court; linking clients with long-term supports; supporting clients to sustain or access housing; providing periods of brief intense intervention to stabilise a client's situation whilst linking with services; liaising with services such as Centrelink, the Office of Housing and other current support providers to coordinate and collaborate for optimal outcomes.

¹⁹ See *Keeping Women and Children Housed: Two Years of Integrated Legal Representation, Ten Client Stories and Ten Calls for Change* (2016) Justice Connect Homeless Law. <https://justiceconnect.org.au/wp-content/uploads/2018/08/Keeping-Women-and-Children-Housed-web.pdf>

²⁰ See *Improving Access to Justice for Homeless Victorians* (16 July 2015) Premier of Victoria Media Release <http://www.premier.vic.gov.au/improving-access-to-justice-for-homeless-victorians/>.

²¹ By way of example, in 2014–15, the HPLO social worker made approximately 76 referrals to legal services through the co-location at CCCHS. 21 were provided with legal representation by Homeless Law; 5 received telephone advice from Homeless Law; 2 were referred to Justice Connect's Seniors Law program; 10 were referred to Inner Melbourne Community Legal; 12 were referred to Victoria Legal Aid and 26 were referred to other legal or court based services. Of these people, all were experiencing or at risk of homelessness; 20 were sleeping rough and 29 were reliant on the Disability Support Pension. In the year ended August 2017 the HPLO social worker made 16 referrals to the criminal lawyer alone.

²² See *Under One Roof: Embedding Legal Services to Make Justice Accessible for Homeless Clients* (May 2016) Justice Connect Homeless Law, <https://justiceconnect.org.au/wp-content/uploads/2018/08/Homeless-Law-Under-One-Roof-12-Month-Report-May-2016.pdf>



otherwise had to deal with their legal matters without ongoing legal assistance. In surveys about the effectiveness of the co-location in the first two years, 89% of workers at Launch Housing who completed the survey indicated that the co-location had increased their understanding of the legal issues that affect their clients, and 100% of workers thought their clients got better outcomes as a result of seeking legal assistance.²³

²³ Ibid.



6. The Courting Justice Model

6.1 Who we Assist

The Courting Justice project is a service for new and existing Homeless Law clients. A person is eligible for assistance where they are receiving, or will be receiving, assistance from Homeless Law in relation to a civil legal issue within Homeless Law's areas of practice (tenancy and eviction prevention, infringements, guardianship and administration or credit/debt). Alternatively, they may be eligible if they are receiving assistance from Homeless Law's in-house social workers, or if they are referred through the Launch Housing co-location.

Eligibility for representation in a particular matter is subject to the following guidelines:

1. The matter must be listed in the summary stream at a Metropolitan Magistrates' Court (including all suburban courts) or the Geelong Magistrates' Court.
2. As a general rule, casework is limited to matters that are not eligible for a grant of legal assistance from VLA. This includes Magistrates' Court matters where there is no risk of imprisonment and appeals of non-custodial sentences to the County Court. The vast majority of our clients presenting with criminal matters have fallen into this category. For the small cohort who are eligible for a grant of aid, an exception to the general rule will be made where there is an existing relationship with Homeless Law (i.e. HPLO social worker support) and in circumstances where in-house criminal law representation will clearly benefit the client.

There are no guidelines or limitations around the type of charges a client is facing. We have seen clients with a broad range of charges including dishonesty offences, driving offences, drug offences and public space offences.

Annexure 1 is the Eligibility Flowchart, which is distributed to our partner agencies and other referral agencies.

6.2 How we Assist

There are a number of key steps for a client in receiving criminal legal help through Courting Justice:

- Generally, a new client with civil and criminal legal issues will attend an initial appointment at an outreach location after being triaged and booked in by the Homeless Law intake team. Where appropriate, both the civil pro bono lawyer and the criminal lawyer may attend. This often means that the client only needs to tell their story once. It also means that both lawyers are aware of the full picture of all legal and non-legal issues, can coordinate any related work (i.e. requesting materials from support services) and can obtain relevant updates from each other.
- If criminal legal issues are identified later, our criminal lawyer will meet face to face with the client separately to take instructions and provide advice to the client to ensure the client understands the process.
- If the lawyer identifies that the client has particular vulnerabilities or requires assistance attending court, our HPLO social worker can be engaged so supports and referrals can be arranged at the earliest opportunity. The social worker will often attend court with the client and facilitate court attendance.
- The model then involves ongoing representation for the life of the matter, whether admitted or contested (subject to merits assessment). Adjournments are requested where necessary and in the client's interests, without the constraint of funding considerations for additional appearances. The criminal lawyer has carriage of all criminal law files and will appear in most matters. Barristers are occasionally briefed on a pro bono basis where the criminal lawyer is unavailable.



6.3 Secondary Consultations, Direct Advices and the Pro Bono Model

In addition to casework, the criminal lawyer provides support and advice (“secondary consultations”) to Homeless Law’s 504 pro bono lawyers about criminal legal issues and related issues as required.²⁴ These consultations may be in the form of a single phone call, or they may involve several hours of assistance over a number of occasions. Where the issue raised requires direct advice to the client, the criminal lawyer contacts the client directly to provide the advice.

These consultations build the capacity of the 504 pro bono lawyers to deal with legal issues, as well as strengthening the impact of our legal work.

In the first two years of Courting Justice, the criminal lawyer provided 78 secondary consultations to the pro bono lawyers in relation to criminal legal issues and additional consultations in relation to infringements matters. The criminal lawyer also provided 40 direct advices to Homeless Law clients (where no ongoing criminal law casework was provided).

In October 2016, Homeless Law conducted an anonymous survey which was sent to all pro bono lawyers who had contact with the criminal lawyer in the preceding year. Asked whether the existence of an in-house criminal lawyer is useful for lawyers assisting Homeless Law clients, all responders answered yes.

We also sought some more detailed feedback from pro bono lawyers who worked closely with the criminal lawyer during 2016. We received the following response from one lawyer:

So often there is a blurred line between the work we are assisting our clients with and criminal issues they are facing.

For example, a previous client of ours, Steven, had issues with IVOs and Community Corrections Orders which impacted on the work we were providing in relation to tenancy issues. [The criminal lawyer’s] guidance on these issues meant that we could accurately make submissions to VCAT and speak to Steven’s circumstances. Being able to refer his criminal issues in-house also meant that Steven was able to access a full suite of legal assistance from the one organisation, and the referral process itself was seamless for us.*

Another pro bono lawyer said:

The presence of a criminal lawyer at Homeless Law has assisted me considerably.

Earlier this year I assisted a client with a tenancy dispute. The client had been charged with drug offences, including trafficking, and the Department of Housing sought to evict her on the basis of illegal use of the property. The two issues were clearly intertwined.

[The criminal lawyer] provided invaluable assistance in relation to the tenancy matter, whilst also assisting the client in relation to the criminal matter. She assisted me from the initial meeting until closure of the file, and attended VCAT hearings and meetings with the client.

[The criminal lawyer] was able to offer her depth and breadth of experience in criminal law to find solutions for the client that would not have otherwise been readily apparent.

The client also informed me, on several occasions, of how appreciative she was to have assistance from Homeless Law in relation to her criminal matter.

²⁴ For example, lawyers have made enquiries about helping clients deal with unpaid infringements while in custody, requesting sentence/remand information and other information from courts and Corrections, outstanding court fines, restitution and compensation orders, imprisonment warrants, intervention orders, illegal use matters, ex parte hearings, criminal records and infringement matters referred to court.



As this data and feedback indicates, the addition of a criminal law expert to Homeless Law's existing model of civil law and social work expertise, an experienced triage and intake team, and 504 pro bono lawyers running civil casework, has substantially strengthened the assistance Homeless Law is able to provide to our clients.

6.4 Capacity Building for Pro Bono Lawyers and Non-Legal Experts

Each year, our criminal lawyer runs sessions on confident appearances in courts and tribunals for Homeless Law pro bono lawyers. The sessions form part of Homeless Law's annual training program, which aims to build the skills and capacity of our team of pro bono lawyers.

The third year of Courting Justice will see the commencement of the Criminal Law Advocacy Program. This will build on the previous training completed by pro bono lawyers, a small group of whom will be assisting with straightforward criminal law appearance work under the supervision of our criminal lawyer. This will expand the capacity of the Courting Justice program while still providing the continuity of service for complex clients.

2016 also saw the development of a strong relationship between Homeless Law and Sacred Heart Mission's Journey to Social Inclusion program (**J2SI**). Our criminal lawyer, along with one of our in-house civil lawyers, provided two training sessions to J2SI staff about spotting and investigating legal issues. These sessions provide caseworkers with tools to speak to clients about legal issues and support them to make referrals to Homeless Law and other legal services to address their clients' legal needs. As a result of this relationship, J2SI case workers have called on the criminal lawyer on a number of occasions for further information and procedural advice to assist their clients.



7. The Impact of Courting Justice

7.1 Better Outcomes for Clients with Complex Needs

The Courting Justice model recognises that the clients we are working with require additional time and attention both at court and in the lead up to court due to their complex issues, which include one or more of primary homelessness, acute mental health concerns, family violence and substance dependence. These clients often require outreach and a high level of contact and flexibility from their legal representatives.

Furthermore, 35 of our criminal law casework clients (47%) were also engaged with our in-house social workers to address non-legal issues, such as homelessness, family violence, mental illness and substance dependence. In all cases, the client's underlying non-legal issues were relevant to the charged offending. For example, many of our clients face driving and dishonesty offences that are directly related to their homelessness and poverty.

The benefit of having in-house social workers in a criminal law practice is increasingly well understood and cannot be underestimated.²⁵ In a specialist homelessness legal service, the availability of social workers with expertise in the homelessness sector is invaluable in three key areas:

1. Sentencing and preparation for court: Engagement with a social worker is crucial in preparing the client to be sentenced and in accurately presenting the client's situation and hurdles to the magistrate. Rather than waiting on the justice system to impose a therapeutic outcome or relying on the lawyer to coordinate referrals, the social worker is available to evaluate and address the client's non-legal issues from the first point of engagement with legal services.
2. Engagement and attendance at court: In many cases, we have observed engagement with the social worker to be integral to placing the client in a position where they are able to attend court and engage in the process. This often involves outreach, brokerage and considerable flexibility.
3. Compliance with court orders: Importantly, as the below case study demonstrates, the social worker can play a key role in assisting criminal law clients to comply with court orders such as Diversion Plans where assistance is required to prevent the client from re-entering the justice system.

Charlie: Launch client receives assistance with criminal charges, infringements and outstanding debt

Charlie* is a 24 year old man who was released from a short term of imprisonment into homelessness. He first came into contact with Homeless Law through our Launch co-location seeking assistance with a minor property damage charge.

At the intake appointment, Charlie advised that he had a number of fines that directly related to his homelessness and was also being pursued by a debt collector for unpaid bills.

The Criminal Lawyer was able to assist with the criminal matter for which Charlie received an adjourned undertaking. Civil lawyers were able to assist with Charlie's infringements and debts. Documents and instructions obtained in relation to the infringements and debt matter were able to be used in the criminal matter and vice versa.

*Name has been changed

²⁵ Coumarelos et al, above n 2, 217-21.



Annabell: First time offender assisted to attend court and access diversion

For her first 44 years, Annabell* had no trouble with the law. Annabell was unable to work after suffering a car accident in 2015. Soon after, her relationship broke down and she was in significant debt. She was evicted from her family home because she was unable to maintain her rental payments. Annabell had suffered family violence and was dealing with chronic alcohol addiction.

After obtaining a new rental property, in early 2017 Annabell was again evicted for rental arrears. Annabell had nowhere to go. She broke back in to the vacant rental property from which she had just been evicted because she needed shelter and felt comfort in the familiar surroundings. Annabell was charged with trespass.

Annabell found attending court particularly difficult. She was still dealing with her alcohol addiction and had begun addressing underlying mental health issues through a mental health care plan. She was unfamiliar with the court process and was sleeping on a couch in the outer north-western suburbs of Melbourne. It would take her several hours on public transport to get in to court.

The HPLO social worker was able to secure funding for a hotel room in the CBD for the night before court. The HPLO social worker attended court with the Homeless Law criminal lawyer, participated in the meeting with the diversion coordinator and provided assurances to the court that Annabell would receive ongoing support. Annabell was granted a diversion based around that ongoing support.

The following are examples of this holistic model leading to positive outcomes over the first two years:

1. Nine casework clients were placed on the Diversion Program, seven of which occurred as a direct result of our request and negotiation.
2. Many of our clients were able to avoid being sentenced to a Community Corrections Order in circumstances where they might otherwise have received one. This was due to comprehensive referral and service-engagement work done ahead of the hearing, very often with the support of the social worker. With a comprehensive network of supports in place, and a strong understanding of the homelessness sector, we are often able to present a plan for addressing underlying issues that reduces the need for intervention via the sentencing process.

Importantly, the social workers and criminal lawyer facilitated a large number of court appearances through regular reminders, Myki cards, taxi vouchers and even arranging for hotel rooms the night before a hearing.

Without this level of support, it is likely that a number of these clients would have failed to appear, resulting in warrants being issued for their arrest.

Some of our clients presenting with outstanding infringements also present with charges for minor offences against local laws (e.g. parking offences). Sometimes local Councils chose to have these matters brought before a court rather than issuing an infringement notice. We have three times succeeded in having these charges withdrawn by the Council on the basis of the same materials obtained in relation to the client's other infringements. Because we were acting in all matters we had the tools to achieve this outcome quickly and effectively. In particular, in two matters, we were able to have the charges withdrawn without the client needing to attend court at all.

7.2 Facilitating Engagement with Multiple Legal Issues

Our ability to assist with criminal law matters has a beneficial flow-on effect to the resolution of a client's civil law matters, particularly outstanding infringements. Commonly, an upcoming court date for criminal charges will be at the forefront of a client's mind and will be the only reason for their call to Homeless Law. However, once a client is



engaged with Homeless Law due to their criminal law issue, it is common for clients to disclose that they have outstanding infringements or debts directly related to their homelessness. Our ability to assist with both matters often acts to encourage clients to address their outstanding debts and infringements.

7.3 Addressing Overlapping Civil and Criminal Legal Issues

There are some cases where the client's civil and criminal law issues are inextricably linked. One example is where a client is facing eviction for alleged illegal use of their property. This almost always relates to criminal charges which are also before the courts. In those cases, our criminal lawyer is able to provide ongoing advice and assistance to the client in relation to the criminal charges as well as working closely with the pro bono lawyers to ensure the best possible outcome for the client. This case study demonstrates the benefit to the client where one organisation is assisting with both matters and relevant expertise can be easily shared.

Denise: Mother facing eviction from public housing sustains tenancy and avoids prison

Denise* had lived in her Office of Housing (OOH) property with her three children for 17 years. Her youngest son was still in school in the local area. She had battled a heroin addiction and was on the methadone program.

She sought help from Homeless Law when she received a notice to vacate for 'illegal use' of the property relating to alleged drug trafficking. At the time that the notice was issued, Denise had only recently been charged by Police, so the charges were yet to be heard at court and the evidence against her was yet to be disclosed.

The OOH declined to disclose in sufficient detail the basis of the allegations ahead of the VCAT eviction hearing. This meant that the first time Denise and her lawyers would hear the allegations was in the VCAT hearing itself. However, because Homeless Law's criminal lawyer was acting in the criminal matter, she was able to obtain the brief of evidence from Police, address the strengths and weaknesses of the Police case and also ensure that Denise's rights in the criminal matter were not undermined by the proceedings in VCAT.

The pro bono lawyer who was assisting Denise with her tenancy matter negotiated with the OOH on the basis of Denise and her family's rights under the Charter of Human Rights, raising concerns around an eviction on the basis of criminal charges that had not yet been proven. The OOH would not negotiate, but at the hearing, the VCAT member accepted a submission made by Homeless Law and held that the notice to vacate was invalid.

Homeless Law continued negotiations to avoid the OOH issuing a fresh notice, including on the basis that Denise was seeking support with her rehabilitation and mental health through the Court Integrated Services Program (CISP).

The Homeless Law criminal lawyer then represented Denise in relation to 23 charges, of which 10 were withdrawn. She was placed on a modest treatment-focussed Community Corrections Order which acknowledged the good work she had done on CISP. Had Denise been evicted into homelessness five months earlier, she would not have had the stability to focus on her rehabilitation and the outcome may have been very different.

*Name has been changed



7.4 Informing and Influencing Systemic Change

In addition to representation, advice and secondary consultations, Courting Justice also captures data and insights about the relationship between homelessness, criminal legal issues and civil legal issues and uses this evidence base to advocate for systemic change.

In the first 12 months of the program we focussed on the issue of begging, which is an issue that Homeless Law has been concerned with for the last 15 years. The criminal lawyer assisted as a duty lawyer in the Begging List in the Melbourne Magistrates' Court during March – April 2016. This involved meeting people charged with begging offences at court and assisting them on the day. With assistance from our HPLO social worker, we coordinated consumer consultations and data analysis to inform the Asking for Change campaign.

As part of Anti-Poverty Week, we joined with leading homelessness and community organisations to launch, *Asking for Change: Calling for a More Effective Response to Begging in Victoria* (**Annexure 2**).²⁶ The campaign combines data from 30 detailed interviews with people who beg, analysis of the outcomes of the City of Melbourne's 'Operation Minta' and a video featuring personal stories from people who beg. It has been endorsed by Launch Housing, Salvation Army, cohealth, Melbourne City Mission, Council to Homeless Persons, Street Smart Australia, VCOSS and Justice Connect, all of which supported the campaign on social media. The Facebook video has been viewed 3500 times and the position paper received media coverage via ABC Radio²⁷, The Age²⁸, Pro Bono News²⁹ and St Vincent de Paul Society's publication The Record³⁰. The *Asking for Change* position paper and alliance also informed Justice Connect Homeless Law's advocacy in helping to convince the City of Melbourne not to bring in tough new laws that would criminalise homelessness in 2017.



Informed by our growing body of evidence and insight from our criminal law casework, we will continue to engage in advocacy for systemic change. We will continue to work with our partners in the legal assistance sector, for example in relation to the VLA In Summary Report and Justice Diverted reports, which create an evidence-base and momentum to expand access to the criminal justice Diversion Program.

There are also emerging issues that we are monitoring, including the risk that bail reforms and the introduction by Victoria Police of body worn cameras will have a disproportionate impact on people experiencing homelessness.

²⁶ Justice Connect, above n 6.

²⁷ Tom Nightingale, *Homelessness Groups Push to Decriminalise Begging* (October 2016) ABC <http://www.abc.net.au/radio/programs/pm/homelessness-groups-push-to-decriminalise-begging/7944338>.

²⁸ Aisha Dow, 'Welfare Agencies Call for Begging to be Decriminalized in Victoria', *The Age* (online), October 2016 <https://www.theage.com.au/national/victoria/welfare-agencies-call-for-begging-to-be-decriminalised-in-victoria-20161019-gs61uz.html>.

²⁹ Lina Caneva, 'NFP Alliance Calls for Begging to be Decriminalised', Pro Bono Australia (online), October 2016 <https://probonoaustralia.com.au/news/2016/10/nfp-alliance-calls-begging-decriminalised/>.

³⁰ Laura Heffes, *Asking for Change* (December 2016) St Vincent de Paul Society <https://record.vinnies.org.au/2016/summer-2016-17/asking-for-change>.



8. Systemic Issues Identified Through Our Casework

8.1 Criminal Legal Issues as a Direct Symptom of Homelessness

Annabell's story in part 7.1 highlights that many of our clients' interactions with the criminal justice system is a direct consequence of their homelessness. Annabell was 44 years old and had never been charged with an offence. Her offence only occurred because she had no access to safe and secure housing. Police knew Annabell's circumstances at the time of the incident but chose to charge her anyway.

Many of our clients have little or no interaction with the Police until they experience homelessness. Low level criminal behaviour and public space offences in these circumstances are almost always a product of a person's circumstances. To deal with people in situations like this through the criminal justice system entrenches disadvantage through the inescapable long-term set-back that a criminal finding of guilt imposes.

The following is another example of how people experiencing homelessness can find themselves facing criminal charges.

Oliver: Weapon possession charges withdrawn on the basis of lawful excuse

Oliver* was living out of his car. He carried everything he needed to live with him. This included his clothing, toiletries, personal items, food and kitchen utensils.

Oliver was in his car in a shopping centre car park. Police approached him in his vehicle and could see a kitchen knife and searched his vehicle under the *Control of Weapons Act*. Oliver was charged with possession of a controlled weapon (a bread knife) and possession of a dangerous article (scissors). Weeks later there was a similar incident and another charge of possessing a controlled weapon in relation to a steak knife.

After negotiation with Police, the Homeless law criminal lawyer was able to ensure that Police withdrew each of these charges on the basis that Oliver had a lawful excuse for possessing these items.

*Name has been changed

8.2 Lack of Appropriate Access to the Diversion Program

Due to the nature of the charges faced by many of our clients – with offending often underpinned by poverty, mental illness and other life-challenges – the opportunity to participate in the Diversion Program is often a desirable and sensible resolution. However, we found that more often than not, this outcome was achieved by the request, negotiation and persistence of our criminal lawyer rather than Police initiation.

Seven of our casework clients (six of whom were women) were placed on the Diversion Program following our request and negotiation with Police, all in circumstances where the client was not previously aware of the Diversion Program. This means that if they had not been able to access our service or another community legal service, they would likely have had to represent themselves. Without being aware of the Diversion Program they would almost certainly have chosen to plead guilty and emerged with a criminal record. This reality is highlighted



by the fact that, in two years of the Courting Justice program, only two clients have received a Diversion based on a recommendation initiated by the Police.³¹

This raises important issues around inconsistent utilisation (and under-utilisation) of the Diversion Program and inequality of access due to the requirement of prosecutorial consent. Without representation, accused people often do not know what a Diversion is or that it is something they can negotiate with Police. In effect, they rely on Police initiation.

Many people who are willing to admit to the conduct that has led to their charge, who might be eligible for the Diversion Program, go into court unrepresented. As a result, they generally go into court and plead guilty before a decision maker knows anything about the facts that have led to the charge and anything about the person who is before the court. Without legal representation in advance of a court hearing, crucial opportunities to access diversion and avoid a finding of guilt are missed.

The VLA funding guidelines for adults charged with offences prioritise those at risk of imprisonment. Therefore an adult facing a minor charge with no criminal history is not likely to be able to get a grant of legal aid. For this person the potential benefit of legal assistance is enormous – a criminal conviction will have a serious detrimental effect on their future employment prospects.

The independent evaluation of the VLA summary crime program contemplated the need for legal services for clients with a prospect of diversion: 'Legal practitioners cited various circumstances where they thought that the relative impact of a criminal conviction on an individual was as important as the likelihood of imprisonment'.³² This was also noted as a limitation of the duty lawyer service.³³ An example that was provided for that evaluation was as follows:

It might be a young person, who might be in the space of a diversion, but they wouldn't even know what a diversion means... Well, they might see a duty lawyer who might give them that advice, but there will be circumstances where they're not availing themselves of a better outcome. (Advisory group member)³⁴

Below are two examples of meaningful outcomes through accessing Diversion for clients who would not otherwise have been represented.

³¹ See, eg, Scott et al, above n 3. That report discussed alternative ways that the diversion system could operate. We support the recommendations of this report.

³² McDonald, above n 4, 168.

³³ Ibid 176.

³⁴ Ibid 169.



Ella: Young woman who was sleeping in her car assisted to access Diversion and avoid having drug offences on her record

Ella* lost her employment and entered homelessness because she couldn't keep up with the rent. She sought assistance from a housing service and was placed in a rooming house, where she felt unsafe. She started sleeping in her car, which also came with safety concerns. She met a man who offered her protection, but was a drug user and exposed her to drug activity.

Ella was arrested twice by Police after being located in her car with a small amount of drugs. She was cautioned the first time, but the second time she was charged. She was not eligible for a grant of aid from Victoria Legal Aid.

Despite the low level nature of the offending (possession of a drug of dependence), she was not offered Diversion due to an old prior conviction for theft. However, Homeless Law's criminal lawyer was able to negotiate with the Informant's Sergeant to secure a Diversion recommendation. The lawyer then appeared on Ella's behalf and made submissions as to why her prior conviction should not preclude her from taking part in the Diversion Program, which were successful.

Ella therefore avoided having a drug conviction on her record, which would have impacted her employment prospects and ability to travel to America to visit her birth mother.

Charlotte: Single mother of two obtains Diversion which allows her to access employment

Charlotte* is a 24 year old Aboriginal woman and a single mother of two children aged under five. She was referred by her family violence support worker. Charlotte was charged with hindering Police due to her intervening with police when her partner was being arrested. Charlotte had received a job offer, but the pending charge had been flagged on a Police check. Her job offer was put on hold when her potential employer became aware of the pending charge.

Despite some initial resistance, at court the Homeless Law criminal lawyer was able to negotiate Police consent to a Diversion. Ultimately the Diversion was granted allowing Charlotte to commence her traineeship. Without representation Charlotte would almost certainly have been found guilty of the charge, ending up with a criminal record and missing out on her job opportunity.

The advocacy of the criminal lawyer allowed Charlotte to focus on providing for her children and contributing to her community.

*Name has been changed

8.3 Disproportionate Flow-On Effects of Infringements and Licence Suspension for People Experiencing Homelessness

People experiencing homelessness often depend on their car for shelter, safety and storage. They are also living their lives in public places. As a result, people often incur fines or infringements for using their car, public transport



or public places but are unable to keep track of these fines due to not having a fixed address. This in turn can lead to their driver's licence being suspended without the person being aware that this has occurred. People are then at risk of being charged in relation to driving while their licence is suspended. As recently as 2011 there was a mandatory minimum sentence of one month of imprisonment for a second or subsequent charge for driving whilst suspended or driving while disqualified. People charged with these offences are still at significant risk of imprisonment.³⁵ Despite the risk of imprisonment, driving whilst suspended charges don't ordinarily attract a grant of legal aid.

Recent fines reform also places people at greater risk of having their drivers licences suspended. Under the new *Fines Reform Act 2014* (Vic), the Director of Fines Victoria will have more extensive powers to apply driver and vehicle sanctions, which include the suspension of driver licences and/or vehicle registrations. The time before an unpaid fine enlivens this power has been significantly reduced as has the scope for people to have the sanction lifted.

Liam: Licence suspended for 18 months for fines which get discharged

Liam* had accrued a number of infringements while sleeping rough. He was sleeping out of his car and had been dealing with some significant mental health issues. With appropriate support Liam was able to obtain work and housing. He still had to deal with his fines.

Liam's fines ended up being grouped together in two different groups within the Victorian fines management system. Liam's licence got suspended as a result of his unpaid infringements.

Liam arranged to go to court to have his fines dealt with. Having heard Liam's circumstances, the court discharged some of Liam's fines and then he was placed on a payment plan in relation to some of the other fines. Unbeknown to Liam, his other group of fines were still in the system and his licence was still suspended because of these.

Liam was intercepted by police while driving on two separate occasions. He was charged with driving while suspended on each occasion and ultimately pled guilty to each of those charges. He received a further fine for these offences. All up, Liam's licence was suspended for just short of 18 months in relation to these fines.

*Name has been changed

8.4 Onerous Expectations of Justice System and the Potential Negative Impact

Attending court is stressful. For many people, the criminal justice system is hard to understand.

In the first two years of the Courting Justice program, 68% of our criminal law clients experienced a mental illness, and a number articulated the impact that protracted court proceedings had on them.

³⁵ Between 1 July 2013 and 30 June 2016, in Magistrates' Courts in Victoria, 17.9% of people found guilty of driving while disqualified and 5.2% of people found guilty of driving while suspended received prison sentences. See *Sentencing Advisory Council Statistics Online*, SACStat, <https://www.sentencingcouncil.vic.gov.au/sacstat/home.html>



In a letter of gratitude one client noted:

I felt very overwhelmed and my health was beginning to suffer. [The lawyers] lighten[ed] my stress, and it was a good feeling to know that they were willing to help.

With the aim of addressing the underlying causes of a person's offending, courts sometimes require ongoing engagement, including regular reappearances before court. While well-intentioned, it is also important to recognise that this protracted and onerous engagement can have a negative impact for people. The stress of rigid requirements and penalties for non-compliance can exacerbate mental health issues, as can the burden of not knowing a final outcome. For people with chaotic lives, sleeping rough, keeping track of ongoing court commitments can be hard: to be more worried about your next meal than your next court date is understandable. A client spoke about this pressure in a thank you note he provided:

There are times when I thought about not showing up but [criminal lawyer] has put a different spin on things and calmed me down. I've been at court and [HPLO social worker] has been at court and she's come over to wish me luck. Just because people are homeless doesn't mean they don't deserve good, if not the best.

It is a balancing act and courts need to be encouraged to recognise that, particularly for minor offences, monitoring all offenders isn't always the best solution. Magistrates should have training and guidance about the benefits of making orders based on a commitment to engage with services that does not need to occur via the sentencing process or ongoing engagement with the court.

8.5 The Gaps in our Legal Help Landscape

If you aren't likely to go to jail, there is limited scope to obtain legal aid funding for ongoing representation or casework. If you can't afford a private lawyer, and you're not in the catchment area for a Community Legal Centre that provides criminal legal representation or eligible for assistance from the Victorian Aboriginal Legal Service, this means that the only access you might have to legal assistance will be on the day of court through the duty lawyer service. This high volume service may be limited to advice outside court, which is sometimes only procedural advice. As the VLA In Summary Report recognised, this doesn't always best meet the needs of more complex court users.³⁶

The VLA In Summary Report noted 'widespread concern over the volume of matters duty lawyers faced at some courts, in turn affecting the time available for each client'.³⁷ It further noted: 'Overall the Duty Lawyer Service was said to "work best" for clients who are more capable of helping themselves... (it) worked less well where there were complicating factors associated with ... high needs and less capable clients'.³⁸

Data from the report shows that after the changes to the summary crime guidelines, the number of people accessing the duty lawyer service increased by 20%. Over the same time, the number of homeless people accessing the duty lawyer service doubled.³⁹

The Courting Justice program is targeted at a particular group of clients – Victorians experiencing or at risk of homelessness with multiple legal and non-legal needs – who fall through these gaps.

For a small number of clients with complex needs, Courting Justice has provided holistic representation that has:

³⁶ McDonald, above n 4, 159.

³⁷ Ibid 175.

³⁸ Ibid 176.

³⁹ Ibid 92.



- Enabled them to access criminal legal advice prior to court from the lawyer that will continue to represent them.
- Increased their ability to attend court on the day, including through reduced anxiety, greater understanding and confidence about what to expect through receiving legal help in the lead up to the hearing and intensive support from the HPLO social worker (e.g. transport to court or, in some cases, accommodation for people sleeping rough to ensure a decent night's sleep before court).
- Enabled them to simultaneously access civil legal advice in relation to fines, tenancy and debt;
- Improved their legal and non-legal outcomes, including access to Diversion, sentences that properly contemplate their circumstances (such as manageable undertakings or Community Corrections Orders) and linkages with a range of non-legal services and supports by our in-house social workers.

Client-centred models of service provision that meet a cluster of legal and non-legal needs – in this case civil legal issues (including eviction, housing debts, fines and infringements), summary criminal issues and non-legal needs connected to homelessness (including housing, mental health, drug and alcohol use and family violence) – provide significant benefits to complex clients and to the justice system more generally.

These services are a worthwhile investment for government and should be funded as part of a fair and efficient justice system.



9. Annexure 1: Guide to Eligibility

Justice Connect Homeless Law's criminal law services

A guide to eligibility

Justice Connect Homeless Law (Homeless Law) is a specialist legal service that provides free information, legal advice and representation to people who are homeless or at risk of homelessness.

Homeless Law's criminal law service is a secondary service available to existing or new Homeless Law clients. This flowchart explains eligibility for Homeless Law, which would allow a client to access the criminal law service.

1. Is the client 'homeless' or 'at risk of homelessness'?

'Homelessness' includes where a person is without conventional accommodation (e.g. sleeping in a park or car), moving frequently between temporary accommodation (e.g. refuges/emergency housing or friends) or living in marginal accommodation on a medium to long term basis (e.g. rooming houses, transitional housing or caravan parks).

'At risk of homelessness' includes where a person has circumstances (e.g. mental illness, age, financial hardship or domestic violence) or a legal issue that make it difficult to access or maintain secure accommodation.

2. Does the client require assistance with a civil law issue within Homeless Law's areas of expertise?

Housing & Tenancy

Focusing on homelessness prevention eg:

- Landlord eviction proceedings/possession orders
- Landlord compliance orders
- Landlord compensation/debt claims
- Changes to fixed term lease due to family violence
- Creation and transfer of a tenancy

Fines & Infringements

Where 50% or more of the person's infringements are directly related to their homelessness eg:

- Public transport fines
- Being drunk in public
- Begging
- Littering
- Unregistered vehicle or parking fines

Guardianship & Administration

Assistance to people who want to change or amend a guardianship or administration order, or facing an application for such an order.

Credit & Debt

- Utilities and telco debts
- Consumer credit issues with financial institutions
- Judgment debts
- Debt collectors seeking payment

3. If the client is eligible for assistance with their civil law issue, they will also be able to access Homeless Law's criminal law program, provided that:

- Their matter is listed in the summary stream; and
- Their matter is listed at a metro Magistrates' Court, the Geelong Magistrates' Court or the Melbourne County Court (appeals only); and
- They are not eligible for a grant of legal assistance from Victoria Legal Aid (exceptions apply).

There is no limitation in relation to the type of charges the client is facing, provided the above criteria are met.

4. Confirming eligibility and booking an appointment

To confirm client eligibility, call Homeless Law on **8636 4408** or **1800 606 313*** (*free call from landlines).

Eligible clients will be booked into one of Homeless Law's 7 weekly outreach clinics and can receive ongoing legal representation, including advice, negotiation and representation at courts and VCAT. Clients may also be eligible for assistance from Homeless Law's two in-house social workers to help address their non-legal needs.



This is only a guide. Homeless Law's services are also subject to merits and means tests and capacity. Please contact Justice Connect Homeless Law to determine whether eligibility criteria are satisfied.



10. Annexure 2: Asking for Change Position Paper

asking for change

Calling for a more effective response to begging in Victoria



It is a crime to beg in Victoria.¹

Evidence and research over a 15 year period – including reports by Hanover Welfare Services (now Launch Housing), the Salvation Army and PILCH (now Justice Connect) – has consistently shown that people who beg experience high levels of hardship, including homelessness, mental illness, substance dependence, trauma, family violence and poverty.² *Image 1* captures evidence from recent consultations with 30 people who beg or have begged.

Despite this consistent evidence, media coverage and public commentary focus on questioning the vulnerability of people who beg, including persistent reports of professional begging. The small minority of people who beg aggressively also dominate conversations regarding begging and have shaped the response to begging in Victoria.

¹ *Summary Offences Act 1966* (Vic) s 49 provides: (1) A person must not beg or gather alms; (2) A person must not cause, procure or encourage a child to beg or gather alms. This offence is punishable by a maximum penalty of 12 months imprisonment.

² See, eg, Michael Horn and Michelle Cooke, *A Question of Begging: A study of the extent and nature of begging in the City of Melbourne* (Hanover Welfare Services, June 2001); Philip Lynch, *Begging for Change: Homelessness and the Law* [2002] *Melbourne University Law Review* 35; Philip Lynch, *Understanding and Responding to Begging* [2005] *Melbourne University Law Review* 16; PILCH Homeless Persons' Legal Clinic, *We Want Change: Public Policy Responses to Begging in Melbourne* (June 2005); PILCH Homeless Persons' Legal Clinic, *We Want Change! Calling for the abolition of the criminal offence of begging* (November 2010); City of Melbourne, *Begging Engagement Pathways and Support Program Evaluation Report* (June 2015); Justice Connect Homeless Law, *Asking for Change: Understanding and Responding to Begging in Melbourne* (forthcoming).

We all want to reduce the number of people begging in Victoria. However, as a community, we continue to rely on the police and courts to tackle what is ultimately an issue of homelessness and poverty.³ *Image 2* shows just how complex, costly and ineffective this legal process is.

Through using the justice system to respond to begging, we:

1. Impose a significant burden on police and the courts;
2. Cause highly vulnerable people to be caught up in the justice system as a result of homelessness and poverty; and
3. Fail to reduce the number of people who beg.

Informed by the evidence, consumer perspectives and direct work with people who have begged, seven leading organisations are calling for a more effective response to begging in Victoria.

Here are seven steps that – if embraced by specialist homelessness and health services, Victoria Police, local councils, local businesses and the Victorian Government – will help Victoria move toward a fairer, more sensible and more effective approach to begging and the acute hardship that underpins it:

³ In the last 5 years, 841 charges have been laid against people for begging (statistics obtained from the Crime Statistics Agency for the period January 2011 – December 2015).



1. Accept that the current response is not working.
2. Acknowledge that the vast majority of people who beg are experiencing high levels of vulnerability, including one or more of homelessness, mental illness, substance dependence, family violence, trauma and poverty.
3. Commit to effectively tackling the underlying causes of begging by investing in a service-based response to begging, which focusses on access to housing and support (while not everyone who begs is experiencing homelessness, the significant majority are and access to housing with support is a critical component of an effective response to begging).⁴
4. Repeal the offence of begging aims to prevent reliance on a costly and ineffective enforcement-based response to begging.
5. Resist the temptation to implement or encourage responses that focus on a minority of people begging aggressively – this small number of people can be dealt with by existing justice mechanisms (e.g. using threatening words in a public place).⁵
6. Present evidence-based messages to the public on begging and its causes to provide leadership rather than fuel knee-jerk reactions.
7. Evaluate the effectiveness of the new response, compared to the well-worn path of cycling people through our courts.

Victoria can do better than an old fashioned law and a dated response to homelessness and poverty.

Let's genuinely address the underlying causes of begging: poverty and homelessness.

Let's strengthen what works: long-term housing and access to services.

It's time for change.

Watch our video and share:

justiceconnect.org.au/askingforchange

#askingforchange



⁴ See, eg. Council to Homeless Persons, *Pre-Budget Submission 2016–2017* (November 2015) and VCOSS, *State Budget Submission 2016–17. Putting people back in the picture* (2015) regarding Permanent Supportive Housing.

⁵ *Summary Offences Act 1966* (Vic) s 17.



who begs and why

In the last two years, Justice Connect Homeless Law has consulted with 30 people who beg or have begged.¹ The results showed:



77% were experiencing homelessness²

had a mental illness

87%



77% were experiencing drug or alcohol dependence

had been unemployed for 12 months or more

80%



33% had experienced family violence

reported childhood trauma or abuse

37%



Image 1

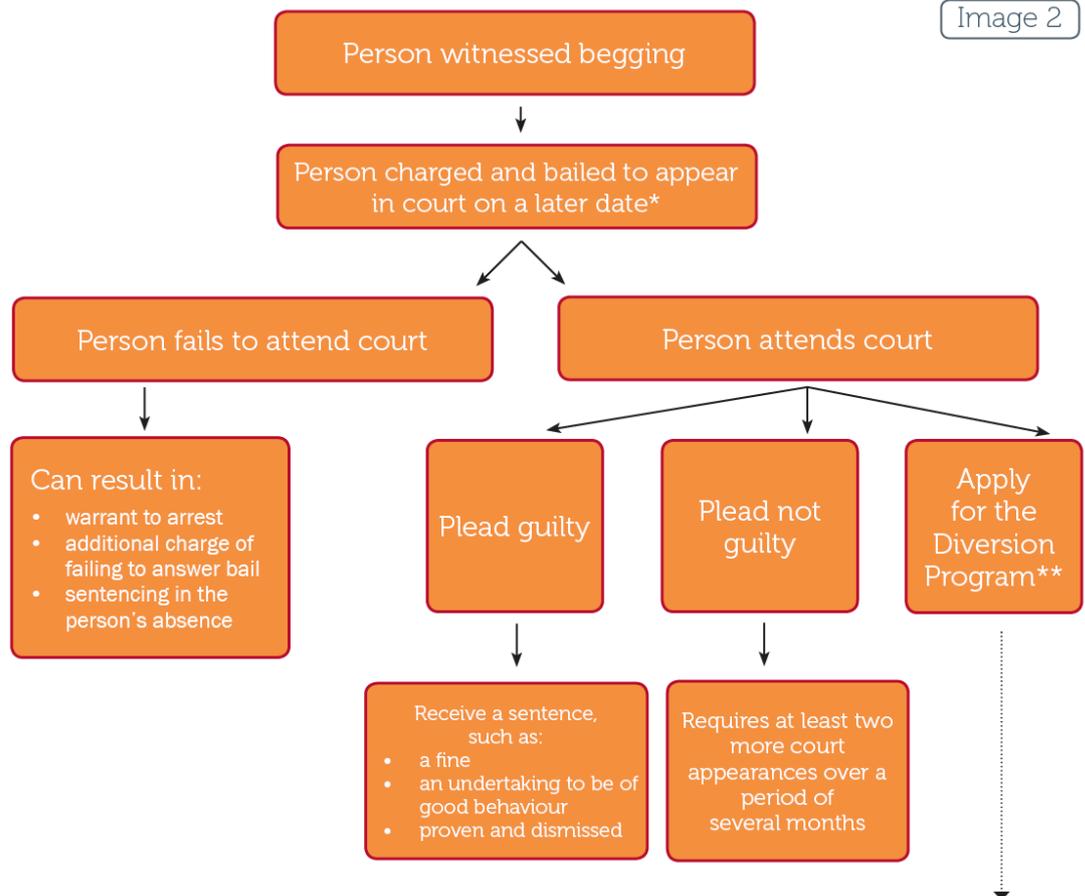
¹ Twenty one people were clients represented by Homeless Law in the 2014 and 2016 Begging Lists at the Melbourne Magistrates' Court, after they were charged with begging during Operation Minta. The remaining nine participants were engaged through a voluntary consultation process.

² Homelessness includes where a person is without conventional accommodation (e.g. sleeping in a park or car), moving frequently between temporary accommodation (e.g. refuges/emergency housing or friends) or living in marginal accommodation on a medium to long term basis (e.g. rooming houses, transitional housing or caravan parks). 63% of study participants reported that they were sleeping rough.



Being charged for begging: the typical process

Image 2



Example: Operation Minta and the Begging List - 2016 Outcomes*:**

- **26** people charged as part of Operation Minta and referred to the begging list at the Melbourne Magistrates' Court
- **8** were placed on the Diversion Program****
- **1** chose not to apply for diversion
- **17** failed to appear at the diversion hearing - their matters were adjourned to a second court date
- Of the **17**, **14** failed to appear on the second court date and warrants were issued for their arrest

All of these pathways highlight the issues with using the justice system to address begging:

- It imposes a significant cost burden on the court, police and lawyers
- It is ineffective. People end up with fines, criminal records or arrest warrants for failing to appear - none of which address the person's reasons for begging
- It causes highly vulnerable people to be caught up in the justice system as a result of homelessness and poverty

* Police may also exercise their 'move-on' power under the *Summary Offences Act 1966* (Vic) as part of the interaction.
 ** The Criminal Justice Diversion Program is governed by s 59 of the *Criminal Procedure Act 2009*. Only available in limited circumstances and on Police recommendation.
 *** Operation Minta is a coordinated enforcement-based response to begging by the City of Melbourne, Victoria Police and the Salvation Army, with some involvement from other agencies including the Melbourne Magistrates' Court and Homeless Law. The Operation has now run for four consecutive years, with the most recent round occurring in March-April 2016. The overwhelming majority of our 2014-2016 study participants who had been charged during Operation Minta described begging passively with a hat or a sign.
 **** If the person complies with their Diversion Plan, the charge is dismissed at the end of the diversion period. If the person fails to comply, the matter returns to court.

