

CHAPTER 8

OTHER GROUPS WITH PARTICULAR NEEDS

8.1 The Committee heard that several socially disadvantaged groups are currently being denied adequate legal assistance, and that this neglect is compounding their state of disadvantage. The specific groups that were brought to the attention of the Committee were homeless people, young people, and the mentally ill.

Legal needs of the homeless

8.2 The Committee was told that in 1996 the Australian Bureau of Statistics estimated that there were over 105,000 homeless people in Australia on census night.¹ The Committee heard that in many cases the law and access to justice arrangements cause or contribute to homelessness and that very few people become homeless without some interaction with legal or bureaucratic institutions. These include the Residential Tenancies Tribunal in the event of an eviction or Centrelink in the event of the reduction or cancellation of welfare payments.²

8.3 The circumstances of these people leave them neglected in terms of legal assistance, not simply because they are often unable to afford legal assistance, but because they are also often not in a position to identify their own need or effectively seek assistance. Such people will often need outreach services that can assist them to help themselves when faced with a legal matter.

8.4 The PILCH Homeless Persons' Legal Clinic explained that it has Homeless Persons' Legal Clinics in Victoria and Queensland, and a clinic is proposed in NSW. These clinics provide civil, administrative and some summary criminal legal services at crisis accommodation centres and welfare agencies to encourage direct access by clients.³

Barriers to accessing justice

8.5 The Committee heard that there are four major barriers for access to justice for homeless people. These are:

- the limited availability of legal aid for homeless people in respect of civil and administrative law matters;

1 Mr Phil Lynch, Coordinator, Homeless Persons' Legal Clinic, *Committee Hansard*, 12 November 2003, p. 6.

2 *ibid.*

3 Homeless Persons' Legal Clinic, *Submission 13*, p. 10.

- lack of appropriately targeted and directed services for homeless people;
- lack of awareness on the part of homeless people that they may have a legal problem; and
- the lack of confidence or empowerment on the part of homeless people.⁴

8.6 Regarding the first barrier, the Committee heard that homeless people commonly experience civil or administrative law related matters such as fines and infringement notices, debts, tenancy issues, mental health law, discrimination, social security, and guardianship and administration.⁵ In Victoria, legal aid will not be granted in administrative matters unless the amount of the claim is \$5,000 or more (eg in the case of Centrelink pursuing debts or overpayments).⁶ The Committee was told that in civil law matters, Victoria Legal Aid will only grant assistance if the person's sole place of residence is at immediate risk in the action and there is a strong prospect of success, which by definition excludes homeless people from obtaining assistance in a civil matter in which they are the defendant.⁷

8.7 In the case of the homeless person as plaintiff, legal aid will not be granted if the plaintiff could obtain assistance under a conditional costs agreement, notwithstanding that many 'no win – no fee' arrangements require that the plaintiff make an initial outlay of up to \$2,000.⁸

8.8 Regarding the second barrier, the Committee was told that due to the pressing problems confronted by homeless people, legal issues are unlikely to be identified and addressed unless legal services are appropriately targeted and delivered in locations accessed by homeless people for more basic subsistence needs.⁹

8.9 The third barrier faced by homeless people is that they are often not aware that they have a legal problem or that they may have legal rights that are being infringed. The Committee heard that this lack of awareness is particularly evident among young homeless people, homeless people from culturally diverse backgrounds, Aboriginal and Torres Strait Islander homeless people, homeless people experiencing mental illness and homeless people with an intellectual disability.¹⁰

8.10 The Committee heard that the fourth barrier to access to justice for homeless people was their lack of confidence and empowerment to access legal services. This

4 Mr Phil Lynch, *Committee Hansard*, 12 November 2003, p.6.

5 *ibid.*

6 Homeless Persons' Legal Clinic, *Submission 13*, p.21.

7 *ibid.*

8 *ibid.*

9 Mr Phil Lynch, *Committee Hansard*, 12 November 2003, p.6.

10 *ibid.*

may be due to mental illness, language barriers or the perception that legal services are expensive. This may be compounded by negative past experience with the legal and court system.¹¹

Strategies to overcome the barriers to accessing justice

8.11 The Homeless Persons' Legal Clinic suggested five strategies to overcome the barriers that homeless people face in accessing justice. These were:

- the provision of pro bono civil and administrative law assistance;
- outreach service provision;
- court services;
- holistic advocacy and establishing relationships of trust and confidence; and
- community legal education.

8.12 The first suggested strategy was that the Commonwealth contribute funding to the operation of specialist homeless persons' legal services.¹²

8.13 The Committee was told of the operation and funding of the existing clinics in Victoria and Queensland. For the Victorian clinic, it was explained that services are provided on a pro bono basis by various law firms and in-house legal departments. For the period 1 October 2001 to 30 June 2003, the Victorian clinic was funded by the Victorian Department of Human Services in the amount of \$76,000 and by the Victorian Department of Justice in the amount of \$43,000. In this period the clinic provided free assistance to 580 homeless clients. It received no Commonwealth funding.¹³

8.14 In regard to the Queensland clinic, funding consists of a non-recurrent grant of \$25,000 from the Queensland Law Society Grants Committee and in-kind assistance (in the form of a secondee solicitor) from Blake Dawson Waldron. Between 10 December 2002 and 10 June 2003 the clinic provided free assistance to 114 homeless clients. Again, no funding is provided by the Commonwealth.¹⁴

8.15 The second strategy suggested to overcome barriers for homeless people seeking access to justice was to improve outreach services. In order to effectively service the needs of homeless people, legal assistance needs to be offered in the places where they are likely to seek assistance for primary needs such as accommodation and food.

11 Mr Phil Lynch, *Committee Hansard*, 12 November 2003, p.6.

12 Homeless Persons' Legal Clinic, *Submission 13*, p. 31.

13 *ibid*, p. 29.

14 *ibid*.

The Committee heard that both the Queensland and Victorian PILCH Homeless Persons' Legal Clinics operate services out of targeted locations such as charity offices and crisis centres. It was noted, however, that due to a lack of funding the clinics are unable to offer legal services to homeless people in rural or regional areas. It was noted that this is despite the 1996 Australian Bureau of Statistics Census indicating that in Victoria there were 17,840 homeless Victorians in rural or regional areas.¹⁵

8.16 The third strategy that was suggested related to court services. The Committee was informed that the accessibility and location of courts was an important factor for homeless people seeking access to justice. It heard that in Los Angeles U.S.A, a homeless persons' court sits monthly in the downtown area.¹⁶ The focus of the sentencing in this court is rehabilitation and restoration, the idea being that rather than fining or incarcerating homeless offenders, the court refers them to an appropriate service provider to obtain vocational training, health care, housing, drug and alcohol treatment and so on.

8.17 The Committee was told that in Victoria, the Melbourne Magistrates' Court has recently adopted listing procedures in relation to people who have 'special circumstances' that contributed to them accruing unpaid fines. Such 'special circumstances' include mental illness, addiction, disorder or disability. The Special Circumstances List aims to identify and address the issues underlying the offending behaviour of people with special circumstances. The program which is funded by exclusively using state money, requires further funding to continue operating at current levels.¹⁷

8.18 The Committee heard that the Homeless Persons' Legal Clinic is currently preparing a discussion paper regarding the feasibility of establishing a homeless persons' court in Victoria. The idea being that the court could link misdemeanour adjudication with social service intervention to ensure that sentencing dispositions are tailored to address the underlying causes of such crime.¹⁸

8.19 The fourth strategy suggested by the Homeless Persons' Legal Clinic was to continue fostering holistic advocacy and establishing relationships or trust and confidence. In its submission, it explained that by dedicating each firm providing pro bono services to each specific outreach location, there is a holistic service delivery. This increases the seamlessness of service delivery, as well as improving the referral service for those matters that fall outside the civil, administrative or summary criminal area.¹⁹

15 Homeless Persons' Legal Clinic, *Submission 13*, p.35.

16 *ibid*, p.35.

17 *ibid*, p.36.

18 *ibid*.

19 *ibid*, p.37.

8.20 The fifth and final strategy proposed, was to continue and improve community legal education. The Homeless Persons' Legal Clinic explained that it provides training and education for pro bono lawyers involved in the PILCH program, as well as education and training for welfare workers and homeless people themselves through a bi-monthly newsletter *Street Rights*.²⁰ The clinic suggested that the Commonwealth should increase funding to CLCs to enable them to provide enhanced community legal education, including through publications and newsletters where appropriate.²¹

Committee view

8.21 The Committee considers that improving access to justice is essential to breaking the cycle that leads to homelessness and poverty. The inherently disadvantaged status of both homeless and mentally ill people means that additional strategies and measures must be undertaken to ensure that adequate assistance is provided to this disadvantaged class of citizens.

8.22 The Committee recognises the invaluable work done by those firms and individuals who offer pro bono services (discussed further in Chapter 10). The Committee commends these firms and individuals for their involvement in the PILCH Homeless Persons' Legal Clinics in Victoria and Queensland. The Committee also acknowledges the hard work of those involved in administering and running the PILCH Homeless Persons' Clinics.

8.23 The Committee believes that due to the special disadvantage suffered by the homeless, and due to the need to break the cycle that leads to and compounds homelessness, the Commonwealth should help to support existing services that address their needs. Specialist programs such as that run by PILCH appear to be very valuable, but the Committee considers that the existing services provided by CLCs and LACs should be supported in terms of ensuring they have adequate funding to address the demands of their clients. The Committee considers the funding needs of CLCs in more detail in Chapter 11.

Mentally ill people

8.24 The Committee also heard from one organisation about the particular problems faced by mentally ill people in relation to their appearance before tribunals that have significant powers over them.

8.25 Advocacy Tasmania, a community-based advocacy organisation for people with a disability and those with a mental health disorder, amongst others, stated that legal aid was not available in Tasmania for appearances before the Mental Health

20 Homeless Persons' Legal Clinic, *Submission 13*, p.39.

21 *ibid.*

Tribunal or the Guardianship and Administration Board. Those agencies had significant powers:

- A person can be deprived of their liberty indefinitely, in blocks of six month periods based on a decision of the Mental Health Tribunal
- A person can be forcibly treated without consent based on a decision of the Guardianship and Administration Board
- A person can have their right to make decisions for themselves taken from them and granted to another based on a decision of the Guardianship and Administration Board.

Of the 121 persons who appeared before the Mental Health Tribunal in 2002/01, only two persons had representation and both were represented by the Launceston Community Legal Centre.²²

8.26 Advocacy Tasmania told the Committee:

There are people in mental health facilities who have been involuntarily held there for over a decade. They have never had representation, and each time their matter is reviewed before the Mental Health Tribunal, they are not represented.²³

8.27 By comparison, 'a person before the magistrate's court with a likelihood of a two month prison sentence can receive representation'.²⁴ Advocacy Tasmania argued that this was unjust and inequitable.

8.28 Advocacy Tasmania argued that in other jurisdictions there were 'funded organisations or Legal Aid specialist mental health units' to represent mentally ill people.²⁵ The Committee was also told that the Legal Aid Commission of Tasmania had stated that it would employ a specialist solicitor if Mental Health Services funded the position.²⁶

Committee view

8.29 The Committee did not receive sufficient evidence during this inquiry to enable it to assess the extent to which mentally ill people are deprived of legal representation throughout Australia. However, it views the statements by Advocacy Tasmania in relation to the situation in that state with great concern.

8.30 As noted above, there is often a link between mental illness and homelessness or other social and economic disadvantage. Vulnerable citizens need access to proper

22 *Submission 39*, p. 5.

23 *ibid*, p. 7.

24 *ibid*.

25 *ibid*, p. 5

26 *ibid*.

legal representation to protect and enforce their rights, whether that be in courts or other tribunals that can have a significant impact on their lives.

8.31 The Committee urges legal aid commissions and state and territory governments to ensure that appropriate services are provided.

Legal needs of young people

8.32 The Committee received submissions and evidence that highlighted the barriers that young people face in accessing justice. Submissions and evidence identified these barriers as well as outlining the difficulties that specialist youth legal services and CLCs are facing in trying to overcome these barriers.

8.33 One of the major submissions made to the Committee addressing the needs of young people, was made by the Youth Legal Service.²⁷ The Youth Legal Service is based in Western Australia, and seeks to develop and provide legal assistance and representation to young Western Australians by the following means:

- the provision of a state wide legal information and advice service (funded by the WA Department of Justice and the Commonwealth Attorney-General's Department);
- the provision of a metropolitan information and advice service based in Perth CBD (funded by the WA Department of Justice);
- the provision of legal representation in the main Perth Children's Court (funded by the Commonwealth Attorney-General's Department), and representation in selected metropolitan Children's Courts (funded by the Law Society of Western Australia – Public Purpose Trust).
- the provision of civil law services (funded by the WA Department of Justice and Commonwealth Attorney-General's Department); and
- the provision of an employment law service (funded through private sources).²⁸

8.34 The Youth Legal Service is funded by both recurrent funding and non-recurrent funding. In terms of recurrent funding, it receives \$68,752 from the Commonwealth and state funding of \$117,875.²⁹

27 Youth Legal Service, *Submission 1*.

28 *ibid*, p.5.

29 *ibid*, p.18.

Barriers to access to justice

8.35 The Youth Legal Service noted in its submission that there are numerous barriers for young people seeking legal assistance. These include:

- the prohibitive cost;
- their own lack of legal knowledge;
- the lack of knowledge of youth workers in accessing legal services;
- problems and limitations of duty lawyer schemes; and
- the alien nature of the court system.³⁰

8.36 The Youth Legal Service argued in its submission that legal representation is crucial to children understanding why the criminal justice system operates as it does, and to help them understand their rights and responsibilities. It argued that if a child can see that their rights are being protected, and their responsibilities are clear, they are more likely to develop a lasting respect for the law.³¹

8.37 The Committee heard in evidence that as with homelessness, the inherently disadvantaged nature of young people can compound the negative experience that they have with the law. Ms Janet Loughman, Principal Solicitor, Marrickville Legal Centre, told the Committee that there is significant research indicating that children and young people in care experience poor life outcomes, which is reflected in:

- high levels of placement breakdown;
- lower levels of education;
- prevalence in the juvenile justice system;
- greater risk of homelessness;
- mental illness; and
- substance abuse and criminal activity.³²

8.38 Evidence suggests that the rate of children in care is increasing. The Committee heard that at June 2001 there were over 7,000 children in care in NSW, which was a significant increase from just over 5,000 in 1997.³³

30 *ibid*, p.5.

31 *ibid*.

32 *Committee Hansard*, 13 November 2003, p. 93.

33 *ibid*.

8.39 The Committee also heard that the rate of Indigenous young people in detention is increasing, and that in NSW the percentage of Indigenous young people in detention has increased from 26 per cent of young people in detention in 1990 to over 35 per cent.³⁴ (These issues are also discussed in Chapter 5.)

Strategies to overcome the barriers

8.40 Various suggestions were made in relation to overcoming the barriers for young people seeking access to justice. These included:

- improving funding for outreach services;
- a holistic approach that takes into account the underlying social problems faced by young people;
- increased funding for specialist services for young people.

8.41 As with homeless people, the Committee heard that to effectively provide legal services to young people, an outreach or targeted service is required. It was explained that legal representation is important for young people, both because it can prevent them being caught up in the system to begin with, but also because it helps them understand the boundaries of acceptable behaviour and the need to accept responsibility. To support this point, the Youth Legal Service quoted the Chief Justice of the WA Supreme Court, who stated in correspondence to the Director General of the WA Justice Department:

The provision of legal representation to young people plays an important role in preventing further crime. ...the lack of legal representation and advice ..creates a danger of alienating young people, and thereby encourages further offences, in two ways.

First, the absence of legal representation encourages young people to plead guilty, thereby drawing them into the criminal justice system. Secondly, representation and advice serve a role in explaining to individual young people the boundaries of acceptable behaviour and the need to accept responsibility.³⁵

8.42 The Youth Legal Service submitted that there needs to be further funding of its service to be able to extend its outreach programs into areas of need. It noted that in the case of Western Australia, the majority of population growth is expected to occur in areas that are currently identified as areas where young people are at extremely high risk of offending.³⁶

34 *ibid.*

35 Youth Legal Service, *Submission 1*, p. 12.

36 *ibid.*, p. 7.

8.43 As with homeless people, it was argued that the special needs and difficulties that are faced by young people mean that in delivering legal assistance a holistic approach that addresses the underlying social causes of certain behaviour is required. The Youth Legal Service noted that youth debt matters are becoming an increasing issue for it. It noted that in 2000/01 45 per cent of its work related to youth debt, but by the following financial year it had risen to 76 per cent.³⁷

8.44 The Youth Legal Service noted that whilst the funding it receives has remained relatively stable, the matters referred to the service are becoming increasingly complex and serious. It also noted that with 66 per cent of its clients currently referred by WA Legal Aid, this trend is likely to continue.³⁸

8.45 The Youth Legal Service argued that due to inadequate funding it is experiencing difficulties in relation to software needs, administration support, printing costs for publications, travel costs, staff training and development, and law library demands.³⁹

8.46 Whilst the Youth Legal Service in Western Australia lamented the difficulties that insufficient funding was causing, the Committee also heard from the Marrickville Legal Centre that there is no Commonwealth funded youth advocacy service dedicated to NSW. It also lamented that state governments had failed to provide funding for such a service despite more than a decade of lobbying.⁴⁰

Committee view

8.47 The Committee believes that as with the homeless, young people seeking legal assistance are a particularly vulnerable group, and need focused or directed outreach services to ensure they receive adequate legal assistance or representation.

8.48 The Committee commends the work performed by specialist services such as the Youth Legal Service. Such specialist services are well placed to break the cycle of poverty and institutionalisation that many young people, particularly those in care, can face.

8.49 The Committee believes that the Government should consult with state legal aid commissions over the need for increased Commonwealth funding for youth legal services.

37 *ibid*, p. 15.

38 *ibid*, p. 16.

39 *ibid*, p. 18.

40 Marrickville Legal Centre, *Submission 53*, p. 8.

Recommendation 47

8.50 The Committee recommends that the Government consult with state and territory legal aid commissions about the need for increased Commonwealth funding to youth legal services.

