

# The Shopfront

## YOUTH LEGAL CENTRE

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### Submission to National Youth Commission Inquiry into Youth Homelessness - June 2007

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#### 1 Introduction

*My home could be anywhere or nowhere. My daily meal consists of anything or nothing. I am being. I am human. I am homeless ...*<sup>1</sup>

##### 1.1 The Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under.

The Shopfront is a joint project of Mission Australia, the Salvation Army and the private law firm Freehills. It was established in 1993 as a response to the Burdekin Report<sup>2</sup>, particularly those recommendations in Chapter 21 regarding the need for specialised legal services for young people.

The Shopfront now employs 4 solicitors (3 full-time equivalent), 3 legal assistants (2.6 full time equivalent), and is assisted by a number of volunteers.

The Shopfront is based in Darlinghurst in the inner city of Sydney. While remaining true to our “traditional” client base (homeless young people around the Kings Cross and inner city areas), we now service clients in most parts of the Sydney metropolitan area and, occasionally, clients outside Sydney.

We provide legal advice on a variety of issues, including criminal law, outstanding fines, victims’ rights and entitlements, family law, child welfare, and minor civil matters. We deal annually with about 500 – 600 new matters, about half of which involve new clients. These range from simple legal advice to court representation on serious and complex criminal cases.

The Shopfront aims to assist those young people who are the most vulnerable, including those in need of more intensive support and continuity of representation than the Legal Aid system can provide.

The Shopfront’s clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to most of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family

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<sup>1</sup> Anonymous quote from *Where did you sleep last night?*, a photographic exhibition by young people who are experiencing homelessness, Youth Accommodation Association, 2007.

<sup>2</sup> Human Rights and Equal Opportunity Commission, *Our Homeless Children: Report of the National Inquiry into Homeless Children*, (1989).

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dysfunction. Moreover, most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem, an intellectual disability and/or a substance abuse problem.

As well as representing and advising individual clients, the Shopfront provides legal information and training for young people, youth workers and lawyers. We have produced numerous legal fact sheets<sup>3</sup>, and contributed to books and publications<sup>4</sup>.

The Shopfront also performs systemic advocacy to help advance the rights and interests of people who are young, homeless, and disadvantaged. Over the years we have made submissions to a number of inquiries and legislative reviews, many of which will be referred to in this submission<sup>5</sup>.

## 1.2 Issues covered in this submission

In this submission we will:

- Briefly discuss the human rights issues associated with youth homelessness.
- Draw on our own experience and on relevant literature to illustrate how homeless young people are not being accorded basic human rights, especially in relation to involvement with the criminal justice system.
- Offer our opinion about what works (and what doesn't) in preventing and responding to youth homelessness.

There are some important limitations on the information we are able to provide:

- The Shopfront is only one among a myriad services working with homeless young people.
- The Shopfront's experiences are confined to New South Wales and, in most cases, to metropolitan Sydney.
- We do not keep detailed statistics (other than basic information about the client's age, referral source and type of legal problem). Therefore we are only able to provide rough estimates about the proportion of our clients with certain characteristics (eg intellectual disability, negative experiences with police).
- Because we work with clients who are already homeless, most of our discussion is about *responding* to youth homelessness rather than about *preventing* it. That is not to say we don't recognise the

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<sup>3</sup> Copies are available at [www.theshopfront.org/24.html](http://www.theshopfront.org/24.html)

<sup>4</sup> For example, *Youth Justice: Youth Guide to Cops and Court in New South Wales*, 3rd Edition 2003, Federation Press; *The Law Handbook*, Redfern Legal Centre Publishing, 9th edition 2004 (10th edition forthcoming)

<sup>5</sup> Copies of our submissions and policy papers, including those referred to in this submission, are available at [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html).

importance of prevention: a fence at the top of a cliff is always preferable to an ambulance at the bottom.

### 1.3 Youth homelessness as a human rights issue

The “Burdekin Report”<sup>6</sup>, published in 1989, documented the litany of human rights abuses suffered by homeless young people in Australia. We do not consider it necessary to restate these in this submission.

Perhaps coincidentally, 1989 was also the year in which the United Nations opened for signature its Convention on the Rights of the Child<sup>7</sup>. Australia ratified the Convention in the following year. The Convention sets out the rights to which every child is entitled, including shelter, education, health, protection from abuse and exploitation, and fair treatment within the juvenile justice system.

18 years after the Burdekin report, most homeless young Australians are still missing out on the basic social and economic rights to which they are entitled under the Convention. As the Burdekin Report pointed out:

*Homelessness itself is the denial of rights theoretically guaranteed to our children and young people by the Commonwealth.*

It is also clear to the Shopfront that homeless young people face frequent infringement of their civil and political rights, by virtue of the way in which they are drawn into the criminal justice system, and the manner in which they are treated within that system. It is no coincidence that the strongest demand for our services comes from homeless young people who are in contact with the police or who are facing criminal charges.

The following story of “Jessica”<sup>8</sup> – born in the year of the Burdekin report, and turning 18 this year – is a composite case study based on the experiences of some of the Shopfront’s clients.

### 1.4 Jessica’s story<sup>9</sup>

Jessica is born in 1989, into an intact but struggling family. With affordable housing increasingly out of reach<sup>10</sup>, the family moves around from one place to the other, trying to escape rising rents. As for the Department of Housing waiting list – forget it!

By the time Jessica reaches Year 7, she has been to 8 different schools. Despite her intelligence and the best efforts of her teachers, she lags

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<sup>6</sup> Human Rights and Equal Opportunity Commission, *Our Homeless Children: Report of the National Inquiry into Homeless Children*, (1989).

<sup>7</sup> Available at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

<sup>8</sup> According to the NSW Registry of Births Deaths and Marriages website at [www.bdm.nsw.gov.au](http://www.bdm.nsw.gov.au), Jessica was the most popular name given to baby girls in NSW in 1995; and according to [www.babynames.com.au](http://www.babynames.com.au), Jessica was also the most popular name for baby girls in Australia in 1990 (we could not find any records for 1989).

<sup>9</sup> A similar version of this story was originally published in ‘Parity’, February 2007.

<sup>10</sup> The Australian Housing and Urban Research Institute (AHURI) has done extensive research on housing affordability. See, for example, *Housing Affordability in Australia*, AHURI Policy Bulletin No. 68, February 2006, [www.ahuri.edu.au](http://www.ahuri.edu.au)

behind in literacy and numeracy. And at home, things have gone from bad to worse. Dad has moved interstate; Mum is severely depressed and just isn't coping. Jessica's mum has tried to seek help through the Department of Community Services (DOCS) and the mental health system, but DOCS is flat-out dealing with urgent reports of serious child abuse<sup>11</sup>, and the mental health services just aren't resourced to give her the support she needs<sup>12</sup>.

Jessica is going to school without shoes, without breakfast ... pretty soon she is hardly going to school at all. DOCS has serious concerns for her welfare and makes a care application to the Children's Court, which results in an order placing her under the "parental responsibility of the Minister"<sup>13</sup>.

Jessica, now aged 14, is sent to live with a foster family. For a while it is OK, but she really misses her mum, and her foster carers are not exactly encouraging her to maintain the relationship. Then her 16-year-old foster brother starts hitting on her and it makes her feel really uncomfortable.

After a few months, Jessica leaves her foster home and goes back to Mum. This doesn't last very long because Mum is in and out of hospital and DOCS won't allow Jessica to stay at Mum's place on her own. DOCS tries to get Jessica to move back to her foster home but she refuses, saying that they won't let her see her Mum and her foster brother is a creep.

DOCS place her in a crisis refuge, but she can only stay there for a few weeks and has to move on. Her youth workers try to get her onto benefits, but this is difficult because she is still under 16 and, according to Centrelink, DOCS should be providing for her. Finally, after a few interviews with the Centrelink social worker, she gets onto Youth Allowance.

After getting into a medium-term refuge, Jessica enrolls at school, but she finds it really hard because she has missed out on so much school and the refuge is not a great environment for study. Plus her school is an hour away by train and the transit officers are always hassling her, even when she can afford to buy a ticket<sup>14</sup>.

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<sup>11</sup> The serious structural and resourcing problems faced by the NSW Department of Community Services were recognised by a parliamentary inquiry in 2002. *Care and Support: Final Report on Child Protection Issues*, NSW Legislative Council, Standing Committee on Social Issues, December 2002, [www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/C94140E65FEB076CCA256CFD002A63C7](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/C94140E65FEB076CCA256CFD002A63C7)

<sup>12</sup> The deficiencies in NSW's mental health services are documented in *Mental Health Services in New South Wales, Final Report*, NSW Legislative Council, December 2002, [www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/F742B6B2E561ABDECA256C73002B7F87](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/F742B6B2E561ABDECA256C73002B7F87)

<sup>13</sup> New legislation in the late 1990s replaced the old terminology (eg "wardship") with "parental responsibility".

<sup>14</sup> In our experience, large numbers of young people in Sydney encounter problems with transit officers and railway-related fines. The NSW Ombudsman has expressed concerns about the conduct of transit officers and the inadequacy of RailCorp's complaint-handling process: NSW

It doesn't take long before she has dropped out of school again. The workers at the refuge tell her that unless she goes back to school, or starts looking for work, she'll have to leave. After a few disheartening trips to an employment agency, Jessica gives up and is soon kicked out of the refuge. And then Centrelink starts telling her she has to repay them more than a grand, because she hasn't been at school and didn't tell them she had left<sup>15</sup>.

Moving from refuge to refuge, and sometimes having nowhere to stay at all, Jessica finds herself hanging out with other homeless young people. Some of these kids have been through it all: sexual abuse, violence, out-of-control drug use, offending, detention. Jessica doesn't want to head down the same path, but it's hard to stay out of trouble when you're on the streets<sup>16</sup>.

Soon she starts getting picked up by the police. Sometimes there is a good reason for it – drug possession, shoplifting, trespassing - and she accepts the cautions the police give her. But now the police are getting to know her and she can't go anywhere without being searched, moved on, questioned or hassled in some way<sup>17</sup>.

Jessica has seen her friends arrested for giving lip to the police, so usually she tries to stay calm. But one day she snaps – she's had enough. Two police officers approach her in the park where she usually hangs out. One of them says, "Come on Jessica, I've told you you're not supposed to be here. Now are you going to move on or will I have to arrest you?". Jessica protests, "But I live here. Where else can I go?". The copper says, "That's not my problem. You can't just hang around here without a good reason."

The police officer gives Jessica a move-on direction but she refuses to go, so the copper warns her and threatens to arrest her. Jessica reaches for her mobile to ring the Legal Aid Hotline<sup>18</sup>. After a few encounters with the

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Ombudsman annual report, 2004/2005, p69,  
[www.nswombudsman.nsw.gov.au/show.asp?id=394](http://www.nswombudsman.nsw.gov.au/show.asp?id=394)

<sup>15</sup> The common youth allowance, introduced in 1998, was supposed to fix the problems encountered by young people moving in and out of education, and having to switch between Austudy and unemployment benefits. However, young people continue to experience problems with Centrelink debts: see *Runaway Youth Debt – no allowance for youth*, National Welfare Rights Network, October 2002 <http://www.welfarerights.org.au/policy/index.htm>

<sup>16</sup> Homeless young people are highly likely to end up in the juvenile justice system. According to recent research on NSW Department of Juvenile Justice clients, 36% of young people serving community-based orders and 33% of young people serving custodial orders did not live in their family home: *NSW Young People in Custody Health Survey*, Department of Juvenile Justice, 2003; *NSW Young People on Community Orders Health Survey*, Department of Juvenile Justice, 2006, [www.djj.nsw.gov.au/publications.htm#research](http://www.djj.nsw.gov.au/publications.htm#research). See also footnote about children in DOCS care.

<sup>17</sup> Anecdotal and empirical evidence suggests that young people are disproportionately affected by police harassment and the inappropriate use of police powers. See, for example, *Policing Public Safety*, NSW Ombudsman, November 1999.

<sup>18</sup> The Legal Aid Hotline for Under-18s was launched in 1998 following the introduction of the *Young Offenders Act 1997* (NSW). It provides free legal advice from 9am to midnight during the week and 24 hours during weekends, and is a significant enhancement of the service already provided by Legal Aid's Children's Legal Service.

police, she now knows something about her rights and is not going to let herself be pushed around any more.

The copper grabs Jessica's phone, slides the back off, and says "Where did you get this?". Jessica says "It's mine, all right. It's not fucking stolen." The other officer says "Right, that's enough Jessica. You're under arrest for offensive language. And we're keeping the phone as well until you can prove it's yours". Both police officers grab Jessica. She struggles and screams, until they handcuff her and throw her on the ground so she can't struggle any more.

Back at the police station, she is told that she has used up all her cautions<sup>19</sup>, plus there is no adult available to come down and sit in on an interview, so they will just have to charge her and send her to court. The police decide to give Jessica's phone back, but they won't budge on the other stuff – she is charged with the "trifecta"<sup>20</sup>.

At first the police say they will have to refuse bail because they can't just release her onto the street, but eventually the senior sergeant grants her bail on conditions that she does not go within 500 metres of the park and that she reports to the police station every day.

About a week later, Jessica gets arrested for breach of bail, near the park. Nearly everything and everyone she knows is in the area: a crisis refuge where she can crash, eat or have a shower, a health centre where they understand her and she doesn't need her Medicare card, a place where she can get emergency food vouchers. She tries to explain this but the police won't listen, saying that there are other services in other parts of town.

Jessica spends a night in a detention centre and is taken to court the next day. The magistrate is very concerned about her being locked up, but won't release her without suitable accommodation. The magistrate notes that Jessica is a DOCS "client" and gives her bail on the condition that she reside as directed by DOCS<sup>21</sup>. Unfortunately, since her caseworker went on stress leave a few months ago, Jessica has been "unallocated" which means that it takes a while for DOCS to organise her some accommodation.

Four days later, Jessica is released to yet another refuge. Fortunately the youth workers are very supportive: they make sure she gets to court and gets a really good lawyer. Jessica knows that with one breach of bail under her belt, failure to appear at court would mean a warrant and more time in detention.

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<sup>19</sup> The *Young Offenders Act* was amended in 2002 to set an upper limit of 3 police cautions per young person.

<sup>20</sup> Offensive language, resist police, assault police.

<sup>21</sup> Children in DOCS care face special problems at all stages of the juvenile justice system. For example, they are more likely to come into contact with the police, less likely to have an adult support person available to attend the police station, more likely to be refused bail (often on "welfare" grounds), and more likely to receive a custodial sentence. See *Just Solutions – Wards and Juvenile Justice*, Community Services Commission, March 1999.

Jessica is found not guilty of offensive language (the magistrate says that “fucking” used as an adjective is not offensive according to current community standards)<sup>22</sup> but she gets found guilty of resisting and assaulting police. She is placed on a good behaviour bond with supervision by a Juvenile Justice Officer (JJO). Her JJO is not so bad – at least she gets a bit more support than she did from DOCS – but she is finding it really hard to stay out of trouble when the police keep hassling her all the time.

Jessica has a couple more Children’s Court appearances – nothing too serious, but she knows she is running out of chances. And when she turns 18, there will be no more Legal Aid Hotline, no more JJO: if she gets into trouble it will be adult court and, before too long, adult prison.

But for Jessica, there is an alternative future on the horizon. There are some great youth services out there, even for over-18s. With some really good support she can sort out her train fines, get rid of her Centrelink debt, see more of her mum, get her licence, and maybe even find a job ... and then her 18th birthday will really be worth celebrating.

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<sup>22</sup> For a discussion of offensive language and contemporary community standards, see *Police v Butler* [2003] NSWLC 2, decision of Heilpern LCM, NSW Local Court, 14 June 2002, [www.lawlink.nsw.gov.au/lcjudgments/nswlc.nsf/5727e65c31f4925c4a256cf50003b369/b10f03fb16745a2a4a256d97002e05f6?OpenDocument](http://www.lawlink.nsw.gov.au/lcjudgments/nswlc.nsf/5727e65c31f4925c4a256cf50003b369/b10f03fb16745a2a4a256d97002e05f6?OpenDocument) .

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## 2 Youth homelessness: its causes and barriers to overcoming it

*Home is not where you live, but where they understand you.*<sup>23</sup>

### 2.1 The incidence of youth homelessness in Australia

Estimating the number of homeless young people in Australia is notoriously difficult. The Burdekin report discussed the difficulties involved in counting the number of homeless young people in Australia. The report suggested that, at the time of its publication, a conservative estimate of homeless young people would be around 20,000 – 25,000; however, the opinion of another expert noted that, “the likely figure is actually 50,000 – 70,000 children and young people who are homeless or at serious risk”<sup>24</sup>.

The number of homeless people will of course depend on the definition that is adopted. Chamberlain and McKenzie’s categories of primary, secondary and tertiary homelessness<sup>25</sup> now appear to be generally accepted.

On census night 2001, it was estimated that 46% of homeless people across Australia were under 25<sup>26</sup>. The NSW figures tell a similar story: there were nearly 11,000 homeless people under the age of 25, representing 43% of the state’s homeless population<sup>27</sup>.

Based on comparative census data, Chamberlain & McKenzie estimated that the number of homeless teenagers in Australia had in fact risen by 8.4% between 1994 and 2001<sup>28</sup>.

### 2.2 Causes of youth homelessness

The causes of youth homelessness are complex, and it is beyond the scope of this submission to deal with these issues in detail.

Most of the Shopfront’s clients have become homeless due to serious breakdowns in family relationships (often involving neglect, abuse or

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<sup>23</sup> Anonymous quote from *Sound Bites: quotes for our times*, New Internationalist Publications, 1997

<sup>24</sup> Human Rights and Equal Opportunity Commission, *Our Homeless Children: Report of the National Inquiry into Homeless Children*, (1989), see especially pages 65 and 69.

<sup>25</sup> Chamberlain and McKenzie: *Youth Homelessness: Early Intervention and Prevention*, 1998, Australian Centre for Equity Through Education.

<sup>26</sup> ABS, Australian Census Analytic Program, Counting the Homeless 2001, November 2003.

<sup>27</sup> *No home, No Justice?: The legal needs of homeless people in NSW*, Forell, McCarron & Schetzer, Law & Justice Foundation of NSW, July 2005, p. 38, citing Australian Bureau of Statistics, *2001 Census, Basic Community Profile and Snapshot: NSW*, Canberra, 2002.

<sup>28</sup> *Youth Homelessness 2001*, C Chamberlain & D MacKenzie, RMIT University, Melbourne, 2002, cited in *No home, No Justice?: The legal needs of homeless people in NSW*, Forell, McCarron & Schetzer, Law & Justice Foundation of NSW, July 2005, p. 39.

domestic violence) and by a failure of state care and protection systems to meet both their practical and emotional needs.

In recent years, it appears that an increasing number of Australians have become homeless as a result of structural and systemic factors, primarily associated with either an increased lack of affordable housing<sup>29</sup> or long-term unemployment<sup>30</sup>.

The different “pathways” into homelessness have been explored in detail by Chamberlain and McKenzie<sup>31</sup>.

Young people who are homeless or at risk of becoming homeless are often required to deal with a complex range of issues, extending well beyond their needs for secure housing. These include isolation from family, disengagement from the education system, abuse of alcohol and other drugs, and mental illness<sup>32</sup>.

### 2.3 Child protection

Many of the Shopfront’s clients are, or have been, under the care or supervision of the Department of Community Services (DOCS). For a majority of these clients, their involvement with the care and protection system has been extremely negative: a substantial number have had numerous foster or residential placements which have broken down, resulting in them becoming homeless during their teens.

We acknowledge that many young people have had positive experiences with the child protection system (of course, these are not the ones who require a service like the Shopfront). However, the negative experiences are sufficiently frequent and severe to support the view that there is a

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<sup>29</sup> As the Productivity Commission noted in its 2004 report (i.e., Report No. 28, ‘*First Home Ownership*’, Melbourne), the increasing lack of affordable housing has become a major barrier towards the creation and maintenance of stable, secure home environments, particularly in Sydney. Moreover, Kate Incerti (Housing Information & Support worker, City of Port Phillip) notes in a paper for the 4<sup>th</sup> National Homelessness Conference (1 – 3 March 2006) that, “a lack of secure and affordable, accessible housing is detrimental to an individual’s health and well-being ... prolonged housing stress often precedes homelessness.” The Australian Housing and Urban Research Institute (AHURI) has done extensive research on housing affordability. See, for example, *Housing Affordability in Australia*, AHURI Policy Bulletin No. 68, February 2006, [www.ahuri.edu.au](http://www.ahuri.edu.au).

<sup>30</sup> Fopp, R. (2002) *The causes of homelessness – an unpopular account of a popular case! Parity* 15(9), p. 14 – 15. Sustained unemployment/underemployment have, indeed, been deeply corrosive towards the pursuit of stable and secure housing in Australia’s major cities (Commonwealth Advisory Committee on Homelessness (2001) *National homelessness strategy – a discussion paper*, Canberra, Department of Family and Community Services).

<sup>31</sup> These are conveniently summarised by the NSW Law & Justice Foundation in its report *No Home, No Justice?* Forell, McCarron & Schetzer: *No Home, No Justice? The legal needs of homeless people in NSW*, NSW Law & Justice Foundation, July 2005, pages 58-63.

<sup>32</sup> As noted by the Law and Justice Foundation of NSW, the issues faced by homeless people may “change as they move through homelessness” (Emily McCarron & Suzie Forrell, Law and Justice Foundation of NSW), ‘*No Home, No Justice? Meeting the legal needs of homeless people*’ (Paper presented at the Australian Federation of Homeless Organisations Conference), Sydney, 2006)

serious problem with NSW's child protection and out-of-home care systems.

Over the years there have been many inquiries, reviews and calls for reform of the child protection system. The NSW Parliament Standing Committee on Social Issues conducted an inquiry into child protection services in 2002. Many of the Shopfront's concerns were expressed in our submission to that inquiry<sup>33</sup>.

The report of the inquiry highlighted some key flaws in the system, including high rates of staff turnover and burnout. The report commended that "the demands of the forensic and investigative work of the Department of Community Services has persistently undermined its other roles" and described out-of-home care as "the overlooked arm of the care and protection system"<sup>34</sup>.

Since the inquiry, DOCS has received funding increases and has worked hard to address its staffing and management problems, but many of the problems persist. Despite the existence of some good services such as the Kings Cross Adolescent Unit, DOCS still struggles to provide an adequate service to its adolescent clients.

With limited resources available to DOCS, we acknowledge that priority must be given to younger children, who are generally more vulnerable. However, we see many adolescents with very high needs, who are at risk, and who have not been able to receive adequate assistance from DOCS.

Many adolescents who are in care, or in need of care, become homeless due to a lack of suitable accommodation and support. The situation is worse for young people with behavioural problems, disabilities, mental illnesses and/or substance abuse problems. For such individuals, foster care is usually not an option, whilst refuges are not always resourced to deal with such a complex state of affairs. And of course, most of these young people lack the skills to be able to live independently.

On some occasions, DOCS has attempted to solve the accommodation crisis by "housing" young people in motels, often for weeks or months at a time. Even more troubling is the fact that many young people spend time on remand in detention centres because DOCS is unable (or in some cases unwilling) to find them appropriate accommodation. The link between children in care, homelessness, and the criminal justice system will be discussed in detail later in this submission.

A recent longitudinal study on wards leaving care found that ex-wards fared badly compared to young people in the general population. In summary:

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<sup>33</sup> Shopfront Youth Legal Centre: *Child Protection Services* (Submission to Standing Committee on Social Issues, NSW Parliament 2002), [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

<sup>34</sup> *Care and Support: Final Report on Child Protection Issues*, NSW Legislative Council, Standing Committee on Social Issues, December 2002, [www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/C94140E65FEB076CCA256CFD002A63C7](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/C94140E65FEB076CCA256CFD002A63C7) ; see especially Chapter 6, *Out-of-home care*.

*The overall picture for these young people 4-5 years after leaving care is one of mobility, poor quality accommodation, unemployment, early parenting, difficulties in “making ends meet” and establishing and maintaining relationships. limited support and family contact, loneliness and mental health problems<sup>35</sup>.*

One pleasing development in recent years has been the increased funding of after-care services, generally run by NGOs and available to 18-25-year-olds who have been in care. The Shopfront works with many young adults who are involved with after-care services, and we are impressed with the level and quality of the support they provide. It is a pity that DOCS is apparently unable to provide the same level of service to young people in their teens.

## 2.4 Accommodation

While homelessness is about more than just housing, accommodation is of course essential in preventing and overcoming homelessness. The recent report of the United Nations Special Rapporteur on Adequate Housing summarises a number of concerns in relation to housing affordability, a decline in public housing stock, and inadequate places in Supported Accommodation Assistance Program (SAAP) accommodation services<sup>36</sup>.

According to the Special Rapporteur, SAAP services only have enough room for 15% of NSW’s homeless young people on any given night. The Youth Accommodation Association reports that half of all requests for a place at a supported youth accommodation service are turned away<sup>37</sup>.

The Shopfront is often called upon to help clients to find accommodation. For those under 18, there are a number of youth refuges across New South Wales, but these are often full (or are unable to accommodate a particular young person for reasons including past behavioural problems, mental health issues or drug use). Although many youth refuges do an exceptional job of accommodating “hard core”, at-risk young people, there remains a shortage of places for young people with very high needs.

When a young person turns 18, the outlook becomes very bleak indeed. There are very few crisis accommodation services which specialise in accommodating young adults (indeed, Oasis in Surry Hills is the only one we know of in the Sydney metropolitan area, and they only accommodate young people until they are 21).

For most of our clients in their early 20s, the only crisis accommodation services available are men’s hostels and women’s refuges, which are often inappropriate for younger adults. Most of our clients in this age group

<sup>35</sup>Cashmore and Paxman, *Wards leaving care: four to five years on*, Social Policy Research Centre, UNSW (research commissioned by DOCS), January 2007, [http://www.community.nsw.gov.au/documents/research\\_wards\\_leavingcare2.pdf](http://www.community.nsw.gov.au/documents/research_wards_leavingcare2.pdf)

<sup>36</sup>Kothari, M: *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living: Mission to Australia*, United Nations Human Rights Council, 11 May 2007.

<sup>37</sup>Youth Accommodation Association: *Youth Homelessness in NSW: Did you know?*, <http://www.yaa.com.au/policydocuments/YHM07Did%20you%20know.pdf>

resort to sofa-surfing (if they are fortunate enough to have friends with some form of housing), boarding houses (where they are often exploited and usually evicted after very short periods) seedy hotels or temporary motel accommodation paid for by the Department of Housing.

Most do not have the financial means, stability or independent living skills to obtain private rental accommodation. The Department of Housing waiting lists are impossibly long, even for those on the priority housing list.

There are some very good semi-supported accommodation options for young people with adequate independent living skills. However, getting into these services can be quite difficult and, for young people with higher needs, the level of support provided is not always sufficient.

There is a particular problem for people getting out of custody (particularly young adults getting out of prison). In our experience, it is extremely difficult to secure accommodation before release. Homelessness upon release from prison is, of course, one of the major risk factors for re-offending and repeat incarceration.

It also appears to us that there are inadequate supported accommodation options for young people who are couples (whether straight, gay or lesbian).

Young parents also have very limited accommodation options. While generally they would be placed on the priority housing list because they have children, waiting lists are still long and, in the meantime, young parents risk having their children removed by DOCS if they are unable to find stable accommodation. There are some very good housing programs for young women with children (eg the Red Cross Young Women's Health Program) but for young couples or single men with children the options are very limited.

## 2.5 Education

It has long been agreed that education is vital to one's long-term success and well-being<sup>38</sup>. While the percentage of young people Australians in full-time education has never been higher<sup>39</sup>, the lower rates of participation by homeless young people in the education system is a major policy concern.

Like many issues associated with youth homelessness, lack of stable accommodation and poor educational attainment are closely linked. Remaining at school is difficult, if not impossible, with frequent changes of address. Some schools will not enrol students without parental consent,

<sup>38</sup> Denise Chadwick & Anne Hampshire (Research & Social Policy Unit, Mission Australia), *Hearing from young homeless Australians* (Paper presented at the Australian Federation of Homeless Organisations Conference), Sydney, March 2006; *Young Australians: their health and wellbeing*, Australian Institute of Health and Welfare, 2007, <http://www.aihw.gov.au/publications/index.cfm/title/10451>.

<sup>39</sup> See, for example, *Youth Employment: The Facts*, Mission Australia, 2005, [www.missionaustralia.com.au/cm/resources/documents/Youth%20Employment%20Strategy%20report.pdf](http://www.missionaustralia.com.au/cm/resources/documents/Youth%20Employment%20Strategy%20report.pdf).

which can be impossible if a young person is estranged from their family and not in formal substitute care. Difficulties with Centrelink benefits – getting on benefits in the first place, and then eking out enough money to survive – is a further barrier to full-time study<sup>40</sup>. Low educational attainment, in turn, perpetuates the cycle of poverty and homelessness by closing off many employment opportunities.

Most of the Shopfront's clients have failed to complete year 10; many have left school without completing year 7 or 8. In many cases their education has been interrupted due to frequent changes of accommodation; often this is a function of the difficulties their parents face in finding stable and affordable housing. Sometimes it is due to their parents' relationship breakdowns and re-partnering.

A significant proportion (probably a majority) of our clients have a history of being suspended, expelled or excluded from school. This is often due to behavioural problems which stem from learning disabilities, untreated disorders such as ADHD or a seriously dysfunctional home environment.

We acknowledge that children with behavioural problems pose a serious difficulty for mainstream schools: they divert huge amounts of teaching resources away from the other students. However, it appears to us that some young people are suspended from school too frequently and without adequate steps being taken to ensure their educational needs are being met.

We are aware of some good non-mainstream schools which achieve great results with some very disadvantaged young people. However, they often face a formidable challenge in re-engaging students who have spent long periods out of the formal education system.

Holistic initiatives which both support retention in and/or return to school, and provide assistance in terms of finding accommodation and meeting financial needs, are crucial for ensuring that homeless young people remain within the education system<sup>41</sup>.

## 2.6 Employment

### *Youth unemployment*

Consistent with Australia's booming economy, it appears that youth unemployment has been on the decline in recent years.

A recent report by the Australian Institute of Health and Welfare<sup>42</sup> shows that unemployment has decreased by 4.8 per cent for 15-19 year olds and 4.6 per cent for 20-24 year olds over the last 10 years.

<sup>40</sup> Welfare benefits are often inadequate to support young people who wish to undertake education and/or training programs. Rob White et al: *Any Which Way You Can*, Australian Youth Foundation, 1997; see in particular Chapter 6, *The Welfare Economy*.

<sup>41</sup> Denise Chadwick & Anne Hampshire (Research & Social Policy Unit, Mission Australia), *Hearing from young homeless Australians* (Paper presented at the Australian Federation of Homeless Organisations Conference), Sydney, March 2006.

<sup>42</sup> *Young Australians: their health and wellbeing*, Australian Institute of Health and Welfare, 2007, <http://www.aihw.gov.au/publications/index.cfm/title/10451>

Although the number of young adults in full-time work was 7% lower in 2006 than in 1995, the proportion of young adults *not* in full-time study or full-time work was the lowest it had been for more than 20 years<sup>43</sup>.

However, youth unemployment is still relatively high. According to a Mission Australia fact sheet in 2005, almost 40% of unemployed Australians are under 25. The unemployment rate for 15-19 year olds is almost 4 times that of people over 25, and the rate for young adults is double that of people over 25<sup>44</sup>.

#### ***Difficulties in the labour market***

Homeless young people face significant difficulties in the context of both formal and informal employment. These include:<sup>45</sup>

- the low wage received by young people under age-based awards;
- the provision of often poor working conditions;
- the insecure tenure of position;
- the lack of full-time work;
- the fact that young people are more vulnerable to health and safety problems, and to harassment.

The lack of enough formal modes of employment may lead young people to seek out informal, non-waged employment, 'paid' by way of goods and services exchange. Informal employment leaves young people vulnerable to exploitation and with no means of legal recourse.

#### ***"WorkChoices"***

The Federal Government's new WorkChoices reforms don't apply to employees under the age of 18. Rather, state governments continue to protect under-18s through the continued application of existing child labour laws. In NSW, legislation requires that employers of such young people must employ them under terms and conditions which are at least equivalent to those specified by NSW awards and legislation.

However, WorkChoices now requires young people over 18 to negotiate their wages and working conditions. We submit that this presents a further serious obstacle towards the ability of homeless young people to find, and to secure, meaningful, long-term employment which is fair in terms of both pay and conditions. The requirement under WorkChoices that young adults negotiate their terms of employment disadvantages these individuals - many of whom are already inexperienced in the workplace, who are

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<sup>43</sup> Long, M: *How Young People are Faring 2006*, Dusseldorf Skills Foundation, November 2006, [www.dsf.org.au/papers/192.htm](http://www.dsf.org.au/papers/192.htm)

<sup>44</sup> *Youth Employment: The Facts*, Mission Australia 2005 (citing ABS 2005 statistics), [www.missionaustralia.com.au/cm/resources/documents/Youth%20Employment%20Strategy%20report.pdf](http://www.missionaustralia.com.au/cm/resources/documents/Youth%20Employment%20Strategy%20report.pdf).

<sup>45</sup> Rob White et al *Any Which Way You Can*, Australian Youth Foundation, 1997; see especially p13.

unlikely to have the confidence to negotiate their employment contract, and who will be placed in a position of unfair bargaining power<sup>46</sup>.

### **Employment obstacles**

For homeless young people, the main obstacle towards employment is a lack of literacy, numeracy and/or vocational skills. In addition, a significant number of our clients have experienced discrimination due to a drug dependency or mental illness, even when these problems are treated and are unlikely to affect the person's work performance.

For most of our clients, there is the additional obstacle of a criminal record. For reasons which will be explored later in this submission, a large proportion of homeless young people have been convicted of at least one criminal offence, either as a juvenile or as a young adult. We do not have any empirical evidence about the extent to which criminal record-based discrimination against homeless young people is occurring. However, anecdotal evidence from our clients, and from workers in youth services and employment agencies, suggests that such discrimination is a significant issue<sup>47</sup>.

In many areas, lack of a driver licence is a huge barrier to employment. In NSW the fine enforcement system, combined with draconian traffic laws, is creating a huge population of disadvantaged young people who are unable to get a licence. This will be discussed further in this submission.

## **2.7 Access to Centrelink benefits**

Homeless young people commonly encounter difficulties with the welfare system, owing to its immense complexity, and to the cracks that exist in the system.

### **Difficulty getting onto benefits**

Young people who have recently left home often have trouble proving they are homeless or independent for the purpose of getting onto benefits<sup>48</sup>. Good advocacy from youth workers can help smooth the way, but this does not always happen quickly and in the meantime a young person is often left with no income.

### **Searching or proving? – everyday struggles in finding work**

Research by the Welfare Rights Network has found that juggling the requirements of full-time job search with part-time study, as well as having to meet everyday personal commitments, means that many young people spend more time *proving* that they are looking for work, rather than

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<sup>46</sup> Youth Action and Policy Association NSW, media release November 2006, <http://www.yapa.org.au/yapa/media/under18workchoices.php>

<sup>47</sup> See Human Rights and Equal Opportunity Commission, Discussion Paper on Criminal Record Discrimination, December 2004, [www.humanrights.gov.au/human\\_rights/criminalrecord/discussion.html](http://www.humanrights.gov.au/human_rights/criminalrecord/discussion.html) and the Shopfront Youth Legal Centre's submission, February 2005 [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

<sup>48</sup> For a discussion of this problem, see Welfare Rights Network (2002) *Kicking Them While They're Down, Youth Allowance and Youth Poverty* <http://www.welfarerights.org.au/policy/breachesfinal.pdf>

looking for work itself. This, in turn, makes it difficult for individuals to secure employment in the long run.<sup>49</sup>

***Improperly and indiscriminately applied penalties***

For those on unemployment benefits, Centrelink imposes penalties for “breaches” which may, for instance, include not attending an interview, or failing to supply adequate information relating to job searches. Research by the Welfare Rights Network<sup>50</sup> found that the incidence of harsh social security penalties imposed on persons receiving unemployment benefits had dramatically increased. That report also noted that many such penalties were being applied improperly or indiscriminately (evidenced by the fact that approximately 35% of those penalties applied by Centrelink were subsequently revoked). Of particular concern was the fact that the penalty amounts did not correspond to the seriousness of the alleged breach, and were often much higher than fines imposed for criminal offences<sup>51</sup>. We suggest that homeless young people are disproportionately affected by the application of such penalties.

***Switching between education and job-seeking***

The common youth allowance, introduced in 1998, was supposed to fix the problems encountered by young people moving in and out of education, and having to switch between Austudy and unemployment benefits. However, young people switching between education and job-seeking continue to experience problems with Centrelink overpayments and debts<sup>52</sup>.

## **2.8 Transport**

***Public transport***

Accessible and affordable public transport is vital for all young people. This need is even greater for homeless young people, who are unlikely to have other transport options.

NSW’s public transport system, especially rail services, has been allowed to run down considerably in recent years. Even where adequate services exist, fares can be expensive<sup>53</sup>. Concession fare entitlements are complex and often depend on the number of hours a young person is studying or the rate of Centrelink benefits they are receiving<sup>54</sup>.

<sup>49</sup> Welfare Rights Network (2002) *Kicking Them While They’re Down, Youth Allowance and Youth Poverty* <http://www.welfarerights.org.au/policy/breachesfinal.pdf>

<sup>50</sup> Welfare Rights Network (2002) *Kicking Them While They’re Down, Youth Allowance and Youth Poverty* <http://www.welfarerights.org.au/policy/breachesfinal.pdf>

<sup>51</sup> For example, penalties between \$280 and \$340 were being applied for failing to reply to letters, whilst penalties of between \$630 and \$1300 were being applied for failing to attend interviews.

<sup>52</sup> *Runaway Youth Debt – no allowance for youth*, National Welfare Rights Network, October 2002, <http://www.welfarerights.org.au/policy/index.htm>

<sup>53</sup> Comments from NCOSS on transport and fares are at <http://www.ncoss.org.au/search/index.html>

<sup>54</sup> In NSW, young people who are not on the full rate of Centrelink benefits are not eligible for transport concessions. A reduction in payments due to an activity test breach could leave them ineligible for a concession: see Welfare Rights Network (2002) *Kicking Them While They’re*

The menacing presence of transit officers, who readily issue large fines for minor infringements, is an additional problem for young people travelling on Sydney's rail system.

### ***Driving***

For growing numbers of young people, driving is not an option either. Measures ostensibly introduced to improve road safety have made it increasingly difficult for young people to get and keep their licence. Even a minor speeding offence now results in an automatic suspension for drivers on P1 provisional licences. Outstanding fines (which often have nothing to do with traffic offences) can also result in licence suspension or ineligibility.

Young people's problems with transit officers, fines and driver licence ineligibility will be further discussed later in this submission.

## **2.9 Health**

### ***General***

Physical and mental health problems are prevalent among homeless young people. This is often a function of inadequate shelter, hygiene and nutrition, as well as physical and emotional abuse<sup>55</sup>.

Access to good quality health care is often difficult for reasons including:

- inability to get treatment without parental consent: some young people are not mature enough to consent to medical treatment and cannot be treated without the consent of a parent or guardian; others probably do have the capacity to consent, but some medical practitioners are still reluctant to treat them without parental consent;
- many homeless young people do not have a Medicare card, either because they are too young to obtain one independently of their family, or because they have lost their card;
- young people often find mainstream health services and medical practices intimidating;
- some young people have a perception (rightly or wrongly) that their confidentiality will not be respected and that sensitive health information may get back to their parents or carers.

The Shopfront's concerns about young people's access to health care (particularly in relation to consent and confidentiality) were discussed in our submission to the NSW Law Reform Commission's reference on minors' consent to medical treatment in 2004<sup>56</sup>.

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*Down, Youth Allowance and Youth Poverty*

<http://www.welfarerights.org.au/policy/breachesfinal.pdf>

<sup>55</sup> For further discussion, see *Young Australians: their health and wellbeing*, Australian Institute of Health and Welfare, 2007, <http://www.aihw.gov.au/publications/index.cfm/title/10451>; see especially pp. 111-112.

<sup>56</sup> Shopfront Youth Legal Centre, *Minors' consent to medical treatment*, submission to NSW Law Reform Commission, August 2004, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

We also share many of the views expressed by the New South Wales Association for Adolescent Health (NAAH) and we endorse their submission to this inquiry.

There are some excellent youth health services, and also services such as KRC (Kirketon Road Centre) that are not youth-specific but work very well with homeless young people. However, these are not sufficiently resourced to meet the existing need.

#### **Alcohol and other drug services**

For clients of the Shopfront, alcohol and other drug treatment is a major area of need. Despite funding boosts associated with the 1999 NSW Parliamentary Drug Summit, and some demonstrably successful programs such as the Medically Supervised Injecting Centre (MSIC) in Kings Cross, there still remains a lack of adequate AOD services.

Residential detoxification services are very difficult to get into, waiting lists are long and prospective applicants are often required to telephone frequently (sometimes daily) to maintain their place on their waiting list. For homeless young people this is unrealistic. There is also the problem that many detox services are area-based and are not available to people who cannot demonstrate that they live in a particular area. Long-term rehabilitation services are similarly difficult to access, particularly as many require a period of detox first.

Access to detox and rehab services is made all the more difficult for people who are in custody, partly due to the shortage of AOD workers (at least in the adult prison system) and to the fact that most detox and rehab services only assess people in the community.

Publicly-funded methadone and buprenorphine programs are limited and many of our clients have to obtain their dose from a private clinic or pharmacy, at considerable expense.

#### **Mental health**

A significant proportion of the Shopfront's clients have a mental illness. Many of these are "dual diagnosis" clients who also have a substance abuse problem and/or an intellectual disability.

As a result, we have come into contact with a number of mental health services. Whilst some of these services have responded well to these clients' needs, for many of our clients there has been an acute lack of appropriate services.

The Shopfront's concerns about the inadequacy of mental health services in NSW were discussed in a submission to the NSW Parliament Select Committee on Mental Health in 2002<sup>57</sup>.

Our submission included several case studies which illustrated the problems faced by homeless young people accessing mental health services, including:

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<sup>57</sup> Shopfront Youth Legal Centre: *Inquiry into mental health services in New South Wales*: Submission to NSW Parliament Select Committee on Mental Health, April 2002, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

- the limitations imposed by area-based services;
- there are some excellent early intervention services but these are not available statewide (or even across metropolitan Sydney) and they are only able to work with young people for a limited period of time;
- hospital psychiatric units are grossly under-resourced so that patients are discharged from hospital (often onto the streets) before they are ready;
- community mental health services are poorly resourced to deal with mental health problems that do not respond quickly to medication but instead need long-term counselling or therapy;
- mainstream community mental health services are often not very good at working with young people;
- community mental health services are often ill-equipped to deal with non-compliant or “difficult” clients.

The Parliamentary Committee produced a report which made a number of recommendations aimed at improving access to mental health services<sup>58</sup>. We are aware that there has been a boost in funding for mental health at national and state level, but unfortunately we are yet to see any dramatic results.

We must acknowledge that there are excellent early intervention programmes run by the community mental health services in our area (the Sydney inner city and eastern suburbs). These services have provided many of our clients with very high-quality care and support. However, we remain concerned that once these clients are older, or if they move out of the area, they will be left with inadequate support.

## 2.10 Disability services

A large number of the Shopfront’s clients have disabilities, particularly intellectual disabilities. The lack of adequate accommodation options for people with intellectual disabilities (particularly if they are involved with the criminal justice system or have challenging behaviours) is well documented.

The services provided by the Department of Aging Disability and Home Care (DADHC) have traditionally been difficult for our clients to access, particularly if their intellectual disability has not been identified before their 18th birthday.

In recent years we have noticed some improvement in the way DADHC works with this target group, and they have provided excellent services to some of our clients who have been fortunate enough to access them.

However, the majority of our clients with intellectual disabilities still rely on non-specialist youth services as their main source of support.

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<sup>58</sup> *Mental Health Services in New South Wales, Final Report*, NSW Legislative Council, Dec 2002, [www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/F742B6B2E561ABDECA256C73002B7F87](http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/F742B6B2E561ABDECA256C73002B7F87)

Fortunately some of these services have skilled and experienced workers with an understanding of intellectual disability, but this is not present across the board.

**Case study – Jack Part 1**

Jack is 21 and has a mild intellectual disability. He grew up in a dysfunctional family environment where he was physically abused by his mother and sexually abused by a male friend of hers. Jack exhibited behavioural problems at school and was diagnosed with ADD.

DOCS became involved with Jack and eventually, after foster care placements didn't work out, he became homeless. With the involvement of some good youth services, Jack managed to attain a degree of stability, including housing. The Shopfront Youth Legal Centre has recently assisted him to obtain a payment of victims compensation in relation to the physical and sexual abuse he suffered as a child.

However, Jack still has unresolved issues which need to be addressed through counselling and cognitive behavioural therapy. One of the most pressing issues is what is commonly referred to as “anger management” – in particular, learning to manage his responses to stressful situations such as police contact.

The Shopfront has recently tried to refer Jack to the Department of Ageing, Disability and Home Care (DADHC) so that he can access their Behaviour Intervention Service. DADHC has been reluctant to accept the referral. Because we have been unable to provide any cognitive assessments conducted when Jack was under 18, they are not satisfied that he meets the criteria for “developmental disability”. They also commented that Jack's IQ is probably higher than recent psychological assessments suggest, because of various stress factors in his life (we find it very unlikely that reputable, experienced clinical psychologists would not allow for such stress factors in administering and interpreting these tests!)

If DADHC does not accept the referral, we hope that we may be able to refer Jack to a non-government program for young people with disabilities. However, this program is area-based and will not be available if Jack moves to a different area. We are also unsure whether this service will be able to provide intensive cognitive behavioural therapy or other appropriate counselling.

## 2.11 Legal services

Last but not least, good quality, youth-friendly legal services are vital for most homeless young people. Some of the gaps in legal services were highlighted in the Burdekin report. The *Seen and Heard* report of 1997<sup>59</sup> contains a very detailed analysis of young people's legal needs.

For reasons which we will shortly discuss, homeless young people are highly likely to be involved in the criminal justice system. In NSW Local and Children's Courts, the Legal Aid Commission provides a duty

<sup>59</sup> *Seen and heard: priority for children in the legal process*, Human Rights and Equal Opportunity Commission & Australian Law Reform Commission, ALRC 84, 1997.

solicitor scheme, staffed by either in-house Legal Aid solicitors or rostered private lawyers.

Considering its modest budget, Legal Aid provides an excellent service. However, they cannot always provide continuity of representation, which is vitally important for homeless young people. People can also fall through the cracks in the Legal Aid system if they miss appointments or fail to appear at court.

Thanks to Legal Aid's Children's Legal Service, juveniles (at least in metropolitan Sydney) now receive a much better service than most adults do. There is also a free Legal Aid Hotline for under-18s.

The Aboriginal Legal Service also represents people in criminal courts throughout NSW. In general they are more flexible and responsive to the needs of disadvantaged clients than Legal Aid, they are badly under-resourced<sup>60</sup>.

Services like the Shopfront aim to be flexible, holistic and responsive to the needs of vulnerable young people. We have achieved some fantastic results for our clients (even if we say so ourselves!) but we can only meet a small fraction of the need.

Homeless young people also have a range of other legal needs, principally in the areas of including family and civil law, where Legal Aid is even more limited than it is in criminal matters<sup>61</sup>. The Shopfront has tried to meet some of these needs, but we have found ourselves overwhelmed by the demand for assistance with criminal matters.

Finally we would comment that young people's role in most legal matters is reactive and not proactive. In most cases, the law is used as a "shield" (to defend young people against criminal charges or other types of state intervention) and not as a "sword" (to positively assert a young person's rights). Being more proactive about young people's rights is a major challenge for youth advocates ... if only we had the time and the resources to meet it.

## 2.12 Youth services that don't work, and why

Unfortunately, it is easy for us to list examples of services which have failed to meet the needs of our homeless young clients. All too often, clients have expressed to us their frustration with "the system", with common complaints including:

### ***Having to retell their story***

Lack of continuity is a major problem for homeless young people in regard to a variety of services. Children in care have often complained to us about having a succession of DOCS case workers: this is partly due to the way in

<sup>60</sup> This situation appears to have worsened since ATSIC was disbanded and the Commonwealth government put ATSI legal services out to tender.

<sup>61</sup> See *Seen and heard: priority for children in the legal process*, Human Rights and Equal Opportunity Commission & Australian Law Reform Commission, ALRC 84, 1997; *No home, No Justice?: The legal needs of homeless people in NSW*, Forell, McCarron & Schetzer, Law & Justice Foundation of NSW, July 2005

which caseloads are allocated by reference to geographic boundary, and partly due to the high attrition of staff.

Another problem commonly complained of has been the increasing use of call-centre models by large companies and government departments: as a result, young people are unable to develop a relationship with any particular staff member, rather, having to re-tell their story many times to a series of different people.

***Being perceived as a problem rather than a person***

Many services (particularly those designed for adults) are centred around dealing with particular problems, rather than people. It is easy to fall between the cracks: for instance, young people with a “dual diagnosis” are often bounced between mental health and drug rehabilitation services.

Whilst the Shopfront recognises the need for specialist services, we have found that some services are so “specialised” that some young people dealing with a complex set of issues fail to meet any service criteria and are unable to receive help.

Fortunately, there are services which do view young people as whole beings, and which recognise the need to work co-operatively with other services: it is these services which our homeless clients have found to be most effective, and which we need more of!

***Feeling like they are not being listened to or not taken seriously***

Many of our clients report not being taken seriously by service providers: this is particularly true of services which are used to dealing with adults. Some service providers, while having the best of intentions, seem to be unduly paternalistic: they profess to know what is best, and take action accordingly - without the young person’s consultation. In such situations, the perspective of the young person is dismissed as immature, uninformed, or unrealistic.

We have received complaints about service providers failing to respect the young person’s confidentiality, rather, passing on sensitive information to parents, teachers, DOCS, and/or the police. To this end, we do acknowledge that some information may need to be passed on, for example, where there are genuine concerns regarding child abuse or high risk behaviour. We note further, however, that services will be unable to engage the young person or provide them with any meaningful support unless they treat that person as an autonomous individual whose confidentiality must be respected.

***Fear of being dumped once they turn 18***

We see it as problematic that some youth services have rigid cut-off ages (usually 16, 18, 21, or 25). While there may be good reasons for this, it is frustrating and destabilising for young people to be suddenly denied a service because they are “too old”.

We believe that young people should be supported through a gradual transition towards independence. In our experience, some of the most effective services are those which provide after-care support, and which

are able to maintain some degree of contact with their clients, even after they are considered “too old” to receive intensive support.

### 2.13 Youth services that do work, and why

Some youth services appear to operate on a shoestring, and yet are still able to deliver great results for their clients. We submit that some of the reasons for this are as follows:

- They are often led by experienced, committed individuals who earn the respect and inspiration of both their clients and their staff.
- Their funding, whilst often meagre, gives them flexibility to strive for quality, rather than quantity: funding that is not solely dependent on statistically-measurable performance<sup>62</sup> is more likely to result in meaningful, long-term, assistance.
- Their philosophy is youth-centred. These services respect the autonomy, confidentiality, and perspective of young people. They listen to their clients and feel confident to advocate on their behalf.

The Shopfront’s views about effective youth services were set out in a submission to an inquiry conducted in 2002 by the NSW Commission for Children and Young People on *Children who have no-one to turn to*.<sup>63</sup> Although this submission is now several years old, our views about what works and what does not remain the same.

We have been fortunate enough to see the emergence of some new youth services which have a holistic approach and which provide case management and brokerage. Examples of such services include The Crossing (run by Mission Australia) and the Kings Cross Youth at Risk Project (funded by NSW Premier’s Department). We should also mention the Come-In Youth Resource Centre, which has been running for over 20 years and is, in our view, a model of excellence. However, even high-quality services can still have trouble attracting and retaining staff, which means that clients do not always receive an ideal level of continuity.

While it is undoubtedly true that a problem like youth homelessness cannot be solved simply by throwing money at it, the provision of adequate government funding would be a start. At the very least, better funding could enable agencies to recruit, train, and retain first-rate staff.

#### **Case study - Simon**

Simon is 19 and has a moderate intellectual disability. His parents had very high expectations of him and refused to accept that he had a disability. This eventually led to a breakdown in their relationship and Simon went to a refuge when he was about 16.

Since then, Simon has come to the attention of the police a few times, mainly for being involved in fights, once for being a passenger in a stolen car and once for being in possession of a weapon. On most of these

<sup>62</sup> Such as the number of beds filled at night, or the number of people placed in jobs.

<sup>63</sup> Shopfront Youth Legal Centre: Submission to Commission for Children and Young People: *Children who have no-one to turn to*, October 2000, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

occasions it appears that he was “led astray” by older and more sophisticated friends.

Fortunately Simon has received excellent support from both government and non-government services. He has stable, semi-independent accommodation through the Salvation Army. He has received case management from The Crossing, an intensive case management and support service run by Mission Australia. Significantly, he was successfully referred to DADHC, where he has a case worker and has also received assistance from the Behaviour Intervention Service.

Simon’s case workers were able to work together with the Shopfront Youth Legal Centre to put together a solid case plan, which resulted in his criminal charges being dismissed under s.32 of the *Mental Health (Criminal Procedure) Act*.

Simon remains vulnerable to negative peer influences, unwanted police contact and involvement in the criminal justice system. However, we are optimistic that the continued provision of holistic, high-quality support services will enable him to deal with any problems before they get out of hand.

## 2.14 Overcoming youth homelessness: what is needed?

Whilst the existing level and appropriateness of social housing available to young people is an important policy issue in urgent need of attention, solving the issue of homelessness requires a lot more than just bricks and mortar: it requires finding a solution which incorporates both understanding and relationship-building.

Research conducted in 2005 by Mission Australia identified some of the key policy priorities for homeless young people, including:<sup>64</sup>

- provision of comprehensive support by community agencies;
- holistic supports which lead to positive education and employment outcomes;
- adequate and accessible income support;
- strategies which strengthen the advice and support roles of family/relatives/friends;
- support and information strategies which address alcohol and drug-related issues;
- improved access to, and affordability of, mental health services which are appropriate to young people;
- increased and improved availability of information;
- availability and appropriateness of social housing.

To this list, we would add:

<sup>64</sup> Mission Australia: *The voices of homeless young Australians: snapshot 2005*, [http://www.missionaustralia.com.au/cm/resources/documents/Snapshot\\_Homeless\\_Youth\\_2005.pdf](http://www.missionaustralia.com.au/cm/resources/documents/Snapshot_Homeless_Youth_2005.pdf)

- relationships;
- advocacy.

### ***Relationships***

Empathetic, understanding and caring relationships are of utmost importance to homeless people.<sup>65</sup>

Ideally, relationships with family, peers, and the school community should be among the most significant and supportive during the life of a young person. When these relationships break down, it is vital for young people to feel a sense of “connectedness” with others in the community. Connectedness has been identified as one of the key factors in building resilience in young people.

### ***Advocacy***

Advocacy involves allowing young people to express their views, and ensuring those views are heard. More than anything, it involves taking the concerns and viewpoints of young people, seriously.

The Shopfront believes wholeheartedly in the importance of good quality, independent legal representation for homeless young people. However, we also recognise that legal advocacy is only one of the many forms of advocacy to which homeless young people should have access. Depending in the situation, advocates for homeless young people may include parents, teachers, youth workers, counsellors and peers. What is vital is not the advocate’s formal qualifications, but the strength of their relationship with the homeless young person. To this end we submit that if provided with enough support, the best and most effective advocates for eradicating youth homelessness in Australia may be homeless young people themselves.

Moreover, the Shopfront values the ability of systemic advocacy to influence a change in laws and policies to ensure that society not only positively addresses the issue of youth homelessness in terms of a lack of available housing and other services, but also recognises and appreciates the complexity of needs, issues, and power-related problems faced by homeless young people. Well-resourced peak organisations and networks can prove invaluable in this respect.

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<sup>65</sup> Participants in Mission Australia’s annual national youth survey are asked to rank what they value. For the last three years (2004-2006) the top four rankings have been family relationships, friendships, being independent, and feeling needed/valued; see <http://www.missionaustralia.com.au/cm/p.aspx?n=LSPEM-XYCPH-SKNFP-POHEU-LXEPH>

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### 3 Homeless young people in the criminal justice system

*The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.*<sup>66</sup>

#### 3.1 The criminalisation of young people who are homeless or in care

Numerous reports have recorded a link between children in care, homelessness, and the criminal justice system<sup>67</sup>. According to research in 1998 by the Community Services Commission (which has since been absorbed into the office of the NSW Ombudsman), state wards were 16 times over-represented in juvenile detention centres, and 6.5 times over-represented on supervision orders<sup>68</sup>.

Reasons advanced for this over-representation included:

- young people in care are more likely to spend time on the streets and be visible to police;
- poverty among children in care can contribute to the commission of property offences;
- young people in care often have behavioural problems arising from a history of abuse or neglect;
- “difficult” behaviour, that would usually be a disciplinary matter within a family home, will often result in police involvement if exhibited in a refuge or group home;

It was also noted that children in DOCS care face special problems at all stages of the juvenile justice system. For example, they are more likely to come into contact with the police, less likely to have an adult support person available to attend the police station, more likely to be refused bail (often on “welfare” grounds), and more likely to receive a custodial sentence.

Recent research by the Department of Juvenile Justice has shown that 28% of young people in detention, and 24% of young people on community-based orders, had a history of being in care<sup>69</sup>.

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<sup>66</sup> Anatole France, French writer (1844-1924), quoted in *Sound Bites: quotes for our times*, New Internationalist Publications, 1997

<sup>67</sup> See, for example, Community Services Commission, *Just Solutions – wards and juvenile justice*, 1999; Community Services Commission, *The drift of children in care into the juvenile justice system*, 1996; and of course the Burdekin report itself. In its 1996 report the Community Services Commission noted that homelessness is a significant contributor towards involvement of young people in the juvenile justice system.

<sup>68</sup> Community Services Commission, *Just Solutions – wards and juvenile justice*, 1999, pp.17-18.

<sup>69</sup> *NSW Young People in Custody Health Survey*, Department of Juvenile Justice, 2003; *NSW Young People on Community Orders Health Survey*, Department of Juvenile Justice, 2006, [www.djj.nsw.gov.au/publications.htm#research](http://www.djj.nsw.gov.au/publications.htm#research)

While being in care does not equate to being homeless, our experience indicates that there are very strong links. The factors underlying the “drift of children from care to criminal justice” also serve to explain the large proportion of homeless young people in the juvenile justice system.

Recent Juvenile Justice health surveys show that 33% of young people in detention centres did not live in their family home immediately prior to being incarcerated. For young people on community-based orders, 36% did not live in their family home<sup>70</sup>.

From the Shopfront’s work with young adults aged 18 to 25, it is clear that these problems carry over into adulthood. Research has shown that ex-wards<sup>71</sup> and homeless people<sup>72</sup> are over-represented in the adult criminal justice system.

### 3.2 Survival crime

Homeless young people will often commit property offences for economic survival. It is not uncommon for our clients to steal food because they are hungry, or to incur fare evasion fines from travelling overnight on trains because they have nowhere to sleep. Sex work is also a means of survival and, while not of itself illegal, can often lead to charges for soliciting and other public order offences.

Criminal activity to supplement an inadequate income is discussed at some length in the Australian Youth Foundation publication *Any Which Way You Can*<sup>73</sup>.

### 3.3 Drug-related offending

As we have already discussed, homeless young people are highly likely to develop substance abuse problems. Alcohol and other drugs are often used in an attempt to block out painful feelings and memories, or to self-medicate an emerging mental illness. Problematic AOD use in turn entrenches homelessness, poverty and criminal activity.

<sup>70</sup> NSW *Young People in Custody Health Survey*, Department of Juvenile Justice, 2003; NSW *Young People on Community Orders Health Survey*, Department of Juvenile Justice, 2006, [www.djj.nsw.gov.au/publications.htm#research](http://www.djj.nsw.gov.au/publications.htm#research)

<sup>71</sup> See final report of the NSW Parliament Select Committee on the Increase in the Prisoner Population, Nov 2001, <http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/A2DC299193D1072ECA256CF4002183EC> at para 4.27, citing a submission by the Positive Justice Centre (which, in turn, cited a survey by the Department of Corrective Services which found that 30% of female prisoners claimed to have been removed from their families as children).

<sup>72</sup> See Baldry and Maplestone, *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration of ex-prisoners?*, paper presented at Australian Institute of Criminology seminar on *Housing, Crime and Stronger Communities*, May 2002, <http://www.aic.gov.au/conferences/housing/baldry.html>. In a survey of 356 prisoners from NSW and Victoria it was found that approximately 20% were either homeless, living in squats or in other marginal housing prior to imprisonment. In addition, 34% had been dependent on public and assisted housing prior to imprisonment and 16% expected to be homeless or did not know where they were going to live post-release.

<sup>73</sup> Rob White et al *Any Which Way You Can*, Australian Youth Foundation, 1997; see Chapter 7, *The Criminal Economy*

For those with a dependency on expensive, illicit drugs such as heroin, “survival crime” escalates to new levels. Non-violent property crime often gives way to robbery offences as a young person becomes more desperate for money to support their drug dependency.

In recent times there has been much media exposure of what is said to be an “ice epidemic”. It is true that we have seen a significant increase in crystal methamphetamine use among our homeless young clients. In many cases this has led to psychotic illnesses and sometimes to bizarre and violent behaviour.<sup>74</sup>

Alcohol abuse, including binge drinking (which is by no means unique to homeless young people) is closely linked to assaults and also to street offences such as offensive conduct. Many police interventions with intoxicated young people result in further charges including the “trifecta” (offensive language, resist police and assault police). The problems arising from police interactions with young people will be discussed in more detail below.

We acknowledge that criminal justice policy in NSW has shifted away from a strict law enforcement model and has introduced measures aimed at harm minimisation (eg the Medically Supervised Injecting Centre trial<sup>75</sup>) and rehabilitation of drug-dependent offenders (eg adult Drug Court pilot, Youth Drug & Alcohol Court, MERIT program<sup>76</sup>).

However, drug users continue to be criminalised and, in some areas, are policed in a way that undermines the goals of rehabilitation and harm minimisation. For example, in the Cabramatta area of south-western Sydney, police adopted a systemic policy of issuing move-on directions to suspected drug users, effectively banning them from the suburb and interfering with their access to AOD services in the area<sup>77</sup>.

### 3.4 Mental health and intellectual disability

People with mental illnesses or intellectual disabilities are more likely to be involved in the criminal justice system, and to be disadvantaged within that system, due to factors such as:

<sup>74</sup> Recent academic literature suggests that there is not necessarily a direct link between crystal methamphetamine use and violent behaviour. The strongest evidence for such a link is in the context of methamphetamine-induced psychosis. See McKetin, McLaren, Riddell and Robins, *The relationship between methamphetamine use and violent behaviour*, NDARC/NSW BOCSAR Crime and Justice Bulletin No 97, August 2006, [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/CJB97.pdf/\\$file/CJB97.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB97.pdf/$file/CJB97.pdf)

<sup>75</sup> For further information, see <http://www.sydneymsic.com/>

<sup>76</sup> For further information, see the NSW Office of Drug Policy website, <http://www.druginfo.nsw.gov.au/diversion>

<sup>77</sup> For further discussion of drugs and policing, please see the Shopfront Youth Legal Centre’s preliminary and final submissions to the NSW Ombudsman’s review of the *Police Powers (Drug Premises) Act*, June 2002 and July 2003, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html); see also Maher, Dixon, Swift and Nguyen, *Anh Hai: Young Asian Background People’s Perceptions and Experiences of Policing*, UNSW Faculty of Law Research Monograph Series, 1997

- poverty and homelessness – a mental illness or intellectual disability makes it especially difficult to find stable accommodation and secure employment;
- many people with a mental illness or intellectual disability may behave in a manner that does not conform to social norms and/or that attracts police attention. People in the acute phase of a psychotic illness will often assault people or damage property due to persecutory delusions;
- once in contact with police, a person with an intellectual disability or a mental health problem is likely to be more vulnerable; for example, they may be easily suggestible and may make damaging admissions.

The recent NSW Department of Juvenile Justice health surveys reveal that 75% of young people in custody, and 56% of young people on community-based orders, reported severe symptoms on the Adolescent Psychopathology Scale consistent with a clinical mental disorder. Percentages of young people with test results indicating a possible intellectual disability were estimated to be 10% for young people in custody and 12% for young people on community based orders.

In the 1990s it was estimated that 12-13% of inmates in the adult prison system had an intellectual disability<sup>78</sup>. As for the adult criminal justice system generally, it was suggested that more than a third of defendants coming before Local Courts had significant intellectual deficits<sup>79</sup>. While we are not aware of any more recent quantitative research, our experience suggests that people with intellectual disabilities are still disproportionately involved in the criminal justice system.

Similarly, people with mental illnesses are over-represented in adult prisons. A report based on the 2001 Inmate Health Survey estimated that 46% of reception (remand) prisoners and 38% of sentenced inmates had suffered a mental disorder (psychosis, affective disorder, anxiety disorder) in the last 12 months; these percentages were higher among women than men<sup>80</sup>. In recent years, with the explosion in the NSW prison population, there is a serious concern that our prisons are becoming “warehouses” for people with mental health problems who are unable to access hospital treatment or suitable accommodation in the community.

In the NSW Local and Children’s Courts, there are special diversionary procedures available for people with an intellectual disability or a mental illness<sup>81</sup>. The Shopfront is very familiar with these procedures, which are used often for our clients. However, the availability of diversionary

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<sup>78</sup> *People with an intellectual disability and the criminal justice system*, NSW Law Reform Commission Report 80, December 1996, para 2.5, citing a study by Hayes and McIlwain

<sup>79</sup> *People with an intellectual disability and the criminal justice system*, NSW Law Reform Commission Report 80, December 1996, para 2.6, citing NSWLRC Research Reports 4 (1993) and 5 (1996)

<sup>80</sup> Butler and Allnutt, *Mental illness among New South Wales prisoners*, Corrections Health Service, August 2003, [http://www.justicehealth.nsw.gov.au/pubs/Mental\\_Illness\\_Among\\_NSW\\_Prisoners\\_2003.pdf](http://www.justicehealth.nsw.gov.au/pubs/Mental_Illness_Among_NSW_Prisoners_2003.pdf)

<sup>81</sup> Sections 32 and 33 of the *Mental Health (Criminal Procedure) Act* (NSW)

procedures is limited by the shortage of appropriate mental health and disability services. Further, when a person's alleged offending becomes more serious, diversionary procedures are less readily available and our clients are often incarcerated due to concerns about community protection.

### 3.5 Policing and street offences

The difficult relationship between young people and police has been well documented over the years. There is a wealth of research and criminological literature on the subject<sup>82</sup>.

For young people who are homeless, this relationship is even more problematic. Young people in general are frequent users of public space; homeless young people all the more so, for obvious reasons. This makes them highly likely to come into contact with police, and especially vulnerable to inappropriate targeting, harassment and abuse of police powers.

#### **Search and move-on powers**

The Shopfront's clients, almost without exception, report a high level of police intervention in their lives. In most instances this involves being searched, often for no apparent reason other than that they are young, homeless or previously known to the police.

For police to stop and search a person, the law requires that the police officer must have reasonable grounds to suspect that the person has in their possession stolen property, drugs, weapons, etc. As the Supreme Court has said on many occasions, there must be some factual basis for the suspicion and it must not be arbitrary. For example, the fact that some young men were driving a car late at night, and the police received some "intelligence" that they *might* be involved in some unspecified offending, was not sufficient to justify the police stopping them. Moreover, the fact that the young men vigorously objected to being searched did not give the police any reasonable grounds to suspect that they may be in possession of something illegal<sup>83</sup>.

Arbitrary and illegal police searches can sometimes lead to the discovery of prohibited drugs, knives, items regarded by police as "offensive implements" (eg screwdrivers), and property such as mobile phones that police suspect of being stolen (often for no reason other than the young person does not look like they can afford to purchase such an item). As a result they are charged with possess prohibited drug, custody of a knife in a public place, custody of an offensive implement, possess car-breaking implement, or goods in custody.

The Shopfront has assisted numerous young people to defend such charges. In some cases the court dismisses the charge on the basis that the evidence was illegally obtained; however, in many cases the magistrate

<sup>82</sup> For a good summary, see Cunneen & White, *Juvenile Justice: Youth and Crime in Australia*, Oxford University Press, 2002, Chapter 9, *Policing the Young*. See also Blagg & Wilkie, *Young People and Police Powers*, Australian Youth Foundation 1995.

<sup>83</sup> *Streat v Bauer; Streat v Blanco*, NSW Supreme Court, 16 March 1998,

will rule that the search was lawful or will exercise their discretion to admit the evidence anyway.

**Case study – Danny**

Danny was 17, unemployed, and Aboriginal. He had been homeless for some time and was staying at a local youth refuge. Danny has been subjected to police searches on numerous occasions, including:

Search 1: At 11:00pm officers of DOCS attended the Kings Cross police station expressing concern about Danny, who was then aged 15. He had been spotted in a park, “frequented and used by drug users and suppliers.” Danny was told he would be taken to the Kings Cross police station so that inquiries could be made about the whereabouts of his parents. There was nothing in the police statement of facts to indicate Danny was suspected of carrying drugs, offensive implements, or anything else. Nevertheless, Danny was physically searched and placed in the back of a caged vehicle for conveyance to the police station.

Search 2: At 9:50pm Danny was observed walking across the street in Kings Cross. Police kept a close eye on Danny because he was, “fiddling with his beanie”, and looking at police. He was then observed making a phone call, apparently “without being engaged in a conversation”, whilst at the same time fiddling with his beanie and hurrying past the police. Danny was stopped and searched, being described in the police statement of facts as “aggressive”.

Search 3: At 10:40pm, Danny was walking in Darlinghurst where he was stopped and searched because he, “matched a description given over the police radio of a suspect for drug activity.” The police discovered a picnic set down Danny’s left sock: this was a fold-up set which comprised a fork, spoon and knife. Danny was homeless at the time and had been using the set for eating takeaway food. Danny had hidden the set as he had been charged with being in possession of a knife four weeks earlier. Danny was again charged with having custody of a knife in a public place. The picnic set was described in the charge sheet as having a “silver coloured 2.5 inches bladed knife.”

Search 4: At 2:15am, Danny was walking along a street in Marrickville with a friend. There was no suggestion in the police brief that he was committing a crime, or that he was in any way disruptive or offensive. The police decided to stop and search Danny “due to the recent spate of break and enters in the Marrickville CBD that have been conducted by juveniles” (it is questionable just how police would know that “juveniles” committed the said offences). Danny was therefore going to be stopped and searched for no reason other than his age and the location in which he was walking. There is no record of what was said to the boys, however, Danny ran when approached by police.

The police called in the dog squad to assist in the search for Danny. Danny was found later that evening by police: he explained that he had run away because he thought there were warrants out for his arrest. The police told him he was to be searched but Danny was not informed of what (if anything) he was suspected of carrying.

A struggle ensued when police tried to search Danny: he was charged with offensive language, assault police, resisting arrest, and having custody of an offensive implement in a public place. The “offensive implement” was in fact a laser pointer (i.e., a device used by lecturers to highlight information to their students).

Inappropriate use of move-on directions is another major problem for young people who frequent public space<sup>84</sup>.

The NSW Ombudsman’s *Policing Public Safety* report, published in 1999, examined the use of knife search powers and “move-on” directions. Among the findings were that 42% of searches were carried out on people under 18, and the percentage of “successful” searches among this age group was low compared to older age groups. 48% of all directions were issued to people under 18, with the peak age being 16. In the Ombudsman’s opinion, about 50% of the directions were issued for reasons outside the scope of the relevant legislation; for example, because people were begging, in a high crime area, or simply “had no reason to be there”<sup>85</sup>.

#### **The “trifecta”**

Once a young person has some criminal history (not unusual if they are homeless) they will be further targeted, in some cases being labelled a “high risk offender” which seems to give the police a pretext for stopping, searching and questioning them at every opportunity.

A young person who has had previous negative interactions with the police will often, quite understandably, respond to police contact in a hostile way. It usually starts with swearing and, all too often, quickly escalates into violence.

At the Shopfront, we see this pattern repeated again and again. In fact, it is not uncommon for homeless young people (particularly those from indigenous backgrounds) to build up an extensive criminal record comprised almost entirely of the “trifecta”: offensive language, resisting police and assaulting police<sup>86</sup>.

In some cases, charges are dismissed because the court rules that the police were acting unlawfully or improperly. However, the vast majority of these charges result in a finding of guilt or a guilty plea. Many of these charges could have been avoided entirely by more appropriate use of police powers and discretion.

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<sup>84</sup> See the Shopfront’s submissions on *Police search and move-on powers*, July 1999, and on the *Police Powers (Drug Premises) Act*, June 2002 and July 2003, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

<sup>85</sup> NSW Ombudsman, *Policing Public Safety*, November 1999, <http://www.ombo.nsw.gov.au/show.asp?id=389> (see in particular pp. 128, 227-230, 250-263).

<sup>86</sup> See NSW Bureau of Crime Statistics and Research, *Race and offensive language charges*, 1999 [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/bb02.pdf/\\$file/bb02.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/bb02.pdf/$file/bb02.pdf) and *Aborigines and public order legislation in New South Wales*, 1997 [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/vwFiles/cjb34.pdf/\\$file/cjb34.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/cjb34.pdf/$file/cjb34.pdf)

As one NSW Supreme Court judge has stated:

*This Court in its appellate and trial divisions has been emphasising for many years that it is inappropriate for powers of arrest to be used for minor offences where the defendant's name and address are known, there is no risk of him departing and there is no reason to believe that a summons will not be effective. Arrest is an additional punishment involving deprivation of freedom and frequently ignominy and fear. The consequences of the employment of the power of arrest unnecessarily and inappropriately and instead of issuing a summons are often anger on the part of the person arrested and an escalation of the situation leading to the person resisting arrest and assaulting the police. The pattern in this case is all too familiar. It is time that the statements of this Court were heeded<sup>87</sup>.*

**Case study – Jack Part 2**

Like many homeless young people, Jack has been involved in low-level criminal activity. His intellectual disability, ADD and the fact that he has been a victim of serious abuse make him ill-equipped to handle police interaction. As a result, much of Jack's contact with the police has resulted in additional charges including resisting, assaulting and intimidating police.

One day two police officers approached Jack to talk to him because he was riding his pushbike without a helmet. They decided to search him (because he was outside a methadone clinic and looked nervous, so they suspected he might have drugs on him) and found nothing of interest. Although Jack was compliant with the search, he was verbally abusive and swore at the police. The police told him "you will be getting a fine in the mail for riding your bike without a helmet, and we're giving you a warning now about your language".

Jack walked away from the police, still swearing loudly. One of the police officers followed him, grabbed him and told him he was under arrest for offensive language. Predictable consequences ensued, and Jack was also charged with resisting police and intimidating police.

At court, Jack admitted to the offensive language, but pleaded not guilty to resist and intimidate police. His lawyer argued that the arrest was unlawful and therefore the police were not acting in the execution of their duty. The arresting officer gave evidence that she thought it was necessary to arrest Jack to stop the offence (offensive language!) continuing. Jack's lawyer argued that, far from stopping it, arresting Jack was guaranteed to ensure that he continued using offensive language.

Unfortunately the magistrate did not agree with Jack's solicitor, and ruled that the arrest was lawful because police have a duty to "keep the peace". We are currently considering appealing against this decision.

<sup>87</sup> Comments of Justice Smart in *DPP v Carr* [2002] NSWSC 194, [http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/nsw/supreme\\_ct/2002/194.html?query=lance%20carr](http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/nsw/supreme_ct/2002/194.html?query=lance%20carr), see para 35

Even if the arrest was lawful, it certainly escalated the situation. While Jack was not entirely blameless, no doubt things would have turned out very differently had the police officers been better trained, more mature and less confrontational.

A few weeks later, Jack was involved in a similar confrontation with different police officers. This time it was clear that the police acted inappropriately and unlawfully. They approached Jack and told him that he met the description of a suspect in an assault matter, and they needed to see his ID.

Jack tried to explain to them that he did not have any ID on him and, when they continued to demand ID, started swearing. The police, apparently lacking reasonable grounds to suspect that he was the “wanted” person, did not arrest him for the alleged assault. However, they told him he could not leave until he produced his ID and continued to detain him (something they did not have the power to do).

Eventually Jack’s language became more and more heated, and the police then arrested him for offensive language, provoking a physical response from Jack. He was charged with the “trifecta” and has pleaded not guilty; the matters are currently proceeding through court.

On yet another occasion, Jack was involved in an argument with a store security guard who apparently suspected him of trying to steal something. The police were called and, although he was not charged with shoplifting, he was charged with goods in custody because the police found a large sum of money on him. He explained that this money had come from a recent victims compensation award, but police did not seem to believe him. Fortunately, they have now withdrawn this charge and given back his money, having received proof of where it came from.

#### ***Legal recourse for unlawful or improper police conduct***

In cases where a search (or other police intervention such as an arrest or direction) has led to criminal charges, the legality of the police action can be challenged during the court proceedings. Unfortunately, this does not seem to address the systemic problem of young people being continually stopped and searched, often with nothing found. Court rulings on illegal searches or arrests are still relatively infrequent and do not seem to have prompted the police to change their approach.

The Shopfront Youth Legal Centre had a minor success a few years ago in relation to a systemic police practice of banning suspected drug users from a particular suburb for 7 days at a time. A court ruled that such a direction was unlawful<sup>88</sup>, which prompted a temporary change to police practices in the area, but not enough to make a significant difference to the people who had been affected.

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<sup>88</sup> *Police v Sayoutinh*, Brydon LCM, Liverpool Local Court, 24 May 2002). In the context of a bail decision, Justice Greg James of the NSW Supreme Court also commented about the inappropriateness of a direction which required a person not to go within 2km of Cabramatta: see *R v Truong*, SCNSW, Greg James J, 13 November 2002.

Youth lawyers are increasingly pursuing civil litigation on behalf of clients who are unlawfully arrested or assaulted by police. However, it is not easy to pursue civil remedies for police intervention that falls short of physical assault or deprivation of liberty (such as being directed to move on or to empty your pockets).

***The role of the Ombudsman***

Although the NSW Ombudsman ostensibly deals with complaints against the conduct of police, and it has a youth liaison officer whose aim is to make the complaints process more accessible to young people, the Shopfront has found the Ombudsman's complaint procedures to be ineffective. Part of the problem lies in the fact that the Ombudsman is inadequately resourced to investigate complaints. In most cases the investigation is done internally by the police, who may or may not perform an adequate investigation. Secondly, even if a complaint is substantiated, the Ombudsman may only recommend that police take a certain course of action; there is no power to compel the police to do anything.

That is not to say that the NSW Ombudsman is completely ineffective. In recent years the Ombudsman has conducted a number of legislative reviews, mostly in relation to laws which have conferred increased powers on the police. These reviews have been thorough and well-researched, and have usually resulted in very sound recommendations.

Unfortunately, the NSW Government has been slow to implement the Ombudsman's recommendations, in many cases preferring to ignore them altogether. For all its talk about "evidence-based practice", our state government appears quite happy to ignore very sound evidence when it suits them! In recent years, appeasing the "law and order lobby" seems to have taken priority over protecting civil liberties and safeguarding the rights of disadvantaged people.

### **3.6 Bail**

Homeless young people, both juveniles and young adults, fare particularly badly when it comes to being granted bail. This is partly due to a series of amendments to the NSW *Bail Act* which have encroached upon the presumption in favour of bail. Homeless young people, particularly those aged under 16, are likely to be refused bail on welfare grounds because they do not have appropriate accommodation available.

***Difficulties getting bail for homeless young people and children in care***

As noted by the Community Services Commission, children in care are likely to be disadvantaged at all stages of the criminal justice system, including in relation to bail. They may be refused bail due to lack of community ties (which, in the eyes of the police, may make them a flight risk) or because of an assumption that they are safer in a detention centre than on the streets. In many cases children could be released on bail if they

had appropriate accommodation, but are held in detention simply because of a lack of accommodation.<sup>89</sup>

This is consistent with the experience of the Shopfront Youth Legal Centre and with other lawyers acting for young people in the Children's Court (including the Legal Aid Commission's Children's Legal Service and the Aboriginal Legal Service). Bail refusal due to lack of appropriate accommodation is seen by youth advocates as a major problem and there have been attempts to address it at a systemic level. Unfortunately, this is dependent upon the availability of adequate accommodation services and the co-operation of DOCS (neither of which are likely to be forthcoming in the near future).

If a child who is homeless or in need of care is charged with an offence, they will often be refused bail by the police, who regard it as part of their "duty of care" not to release a young person onto the street. Except where the charges are very serious, magistrates will usually grant bail on the condition that the young person reside as directed by DOCS or by the Department of Juvenile Justice (DJJ), or occasionally as directed by one department in consultation with the other.

In the Shopfront's experience, DJJ is usually very diligent in attempting to secure accommodation for its homeless young clients; if there is a bed available in a refuge, they will quickly find it. Unfortunately, DJJ does not have a legal mandate to provide bail supervision or find accommodation for under-16s (except maybe for the few children who are currently on a bond or probation order supervised by DJJ).

For under-16s, it is DOCS that is responsible for attending to their accommodation and welfare needs. Unfortunately, DOCS is generally not as proactive as DJJ in finding accommodation for homeless young people. No doubt this is partly due to inadequate resources or poor allocation of case work responsibilities. However, it seems that in some instances the main problem is with the culture that exists within DOCS. We have come across DOCS caseworkers who seem to believe that a young person is better off in a juvenile detention centre than anywhere else, or that because they stand "in loco parentis" they have as much right to refuse to accommodate the child as a parent does. Although this is fortunately not the prevailing view, we have heard it expressed often enough to regard it as a problem.

Although we are involved in efforts to get some research funding to investigate the number of juveniles who are refused bail due to lack of accommodation, no such figures are currently available. However, we do know that the rate of juvenile detainees on remand (as opposed to those serving a custodial sentence) is very high, and that most juveniles on remand do not go on to receive a custodial sentence.

During the period 1 July 2005 to 30 June 2006, there existed an average daily number of 309 young people in NSW juvenile detention centres.<sup>90</sup>

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<sup>89</sup> Community Services Commission, *The drift of children in care into the juvenile justice system* (1996), and *Just Solutions – Wards and Juvenile Justice* (1999).

Included in this number was a daily average of 146 young people remanded in custody awaiting finalisation of court proceedings.

We note again the Juveniles in Custody Health Survey which reported that 33% of young people in custody did not live in their family home before they went into custody<sup>91</sup>.

These figures, and our day-to-day experience in the Children's Court, suggests that a high proportion of children in detention at any one time are there because they do not have appropriate accommodation in the community.

We suggest that such treatment of young people constitutes a contravention of Rule 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which states that detention before trial should be avoided if possible and that efforts should be made to find alternatives.

We know of many Children's Court magistrates who (both on and off the bench) have expressed great consternation about children being remanded in custody because they lack appropriate accommodation. However, most of these magistrates are understandably reluctant to release young people on bail without being satisfied that they have somewhere to live. Several frustrated Children's Court magistrates have resorted to ordering officers from DOCS (and in at least one case the Director-General!) to attend court and undertake to provide accommodation or explain why this cannot be done.

**Case study - Luke**

Luke is 14 and usually lives with his mum, but things don't always go smoothly at home because Luke sometimes fights with mum's partner. After one such fight, during which Luke threatened to assault his stepfather, Luke left home. He was picked up by police a few days later, charged with assault and refused bail because his stepfather didn't want him back at home for the time being.

At the Children's Court, the magistrate granted Luke bail on the condition that he reside as directed by DOCS in consultation with DJJ. His mother wanted him to come back home but did not think it would be a good idea until things had calmed down a bit between Luke and his stepfather.

Luke's DOCS caseworker and JJO tried to find him alternative accommodation. The refuges were all full or unwilling to take someone so young.

Luke's JJO then contacted Luke's dad, who agreed to take him. Luke did not really want to go to his dad's place, because his dad was a strict disciplinarian and had been violent towards him in the past, but he thought it was better than being in a detention centre.

<sup>90</sup> NSW Department of Juvenile Justice, *Annual Report 2005 – 2006*, (2006), [www.djj.nsw.gov.au](http://www.djj.nsw.gov.au). We believe the daily average has recently crept up towards 330-340.

<sup>91</sup> *NSW Young People in Custody Health Survey*, Department of Juvenile Justice, 2003; [www.djj.nsw.gov.au/publications.htm#research](http://www.djj.nsw.gov.au/publications.htm#research)

Not surprisingly, Luke soon ran away from his dad's place after his father's "discipline" (physical abuse?) became too much for him to handle. He was again arrested and spent some time in custody before his mum and stepfather agreed to take him back.

At all times it was clear that Luke would not receive a custodial sentence for the assault charge. He ultimately pleaded guilty and the matter was dismissed with a caution.

***Other difficulties obtaining bail for homeless young people***

Homeless people are often seen by police and magistrates as a flight risk because they lack 'community ties' such as housing, employment and traditional family relationships. In fact, homeless young people often have strong ties in their community – including with local welfare and support services – and, if provided with adequate support, are highly likely to answer their bail by attending court. Even if they are unlikely to attend court, the triviality of some of the offences with which our clients are charged does not, in our view, justify them being refused bail.

The Shopfront's clients traditionally have a fairly high rate of non-attendance at court, often due to frequent changes of accommodation, loss of court papers, lack of transport, mental illness, and (sometimes) a feeling of fear or hopelessness about the court outcome. In our experience, many of these difficulties can be overcome by the provision of appropriate support services. Some of our most chronically homeless young clients always appear at court because they have competent and supportive youth workers who will ensure they make it to court and are supported when they get there.

***Toughening of NSW bail laws***

In recent years, the *NSW Bail Act* has been amended several times, removing many of the presumptions in favour of bail and making it more difficult to obtain bail. Instead of detention before trial being a last resort (as it should be in a criminal justice system founded on the presumption of innocence), it seems that bail is increasingly being viewed as a privilege.

The amendment to the *Bail Act* which has had the greatest impact upon our clients is the "repeat offender" provisions introduced in 2002. This removed the presumption in favour of bail for anyone deemed to be a "repeat offender". This definition is extraordinarily broad and includes almost all of the Shopfront's clients<sup>92</sup>.

***Inappropriate use of bail conditions***

The *NSW Bail Act* provides that bail should be unconditional unless it is necessary to impose conditions in order to promote effective law enforcement, protect the community, or to reduce the likelihood of further offending by promoting the treatment or rehabilitation of the accused

<sup>92</sup> The Shopfront expressed its concerns about the "repeat offender" amendment, and the NSW bail laws generally, in two submissions to the Criminal Law Review Division of the NSW Attorney-General's Department in 2004 and 2005: Shopfront Youth Legal Centre: *Submission on the review of the Bail Amendment (Repeat Offenders) Act*, 1 October 2004; *Submission on Review of Bail Law in NSW*, 31 January 2005; both available at [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html)

person. Conditions, if imposed, must not be any more onerous than required by the nature of the offence, or for the protection and welfare of any specially affected person (eg victim) or by the circumstances of the accused person.<sup>93</sup>

Despite these provisions, police and courts commonly impose bail conditions that we believe are unwarranted in the circumstances. In many cases, particularly where a young person is charged with an offence that will not result in a custodial sentence, we believe that bail should be unconditional or should be dispensed with altogether. In NSW there is a legislative presumption that, where possible, police should issue court attendance notices rather than arresting, charging and bailing a defendant.<sup>94</sup>

Conditions commonly imposed upon our clients include reporting to police stations (either daily or on certain days of the week), residential conditions, curfews, non-association conditions and place restrictions. We acknowledge that some of these conditions are imposed with good reason and may be effective in ensuring that a young person attends court and does not re-offend while on bail. However, conditions are often imposed in an arbitrary manner, without adequate consideration of why they are needed or how they will assist.

For example, police often impose curfew conditions on children (for example, not to be away from home without parental supervision between 7pm and 7am) even when the alleged offending has taken place at 3 or 4 in the afternoon.

Police will routinely impose conditions banning a defendant from a particular area (most commonly Kings Cross, Cabramatta or the Sydney CBD) unless the person can prove that they reside in the area. This of course discriminates against homeless people who have ties to a particular area and who may need to enter the area to access necessary services or to pursue work opportunities<sup>95</sup>. Bail conditions which prevent access to essential services (eg health centres, methadone clinics, legal services) can usually be varied on application to the court. Making a bail variation application is not a simple process, though: most young people would not know how to do this unless they have ready access to a legal service or a very “switched on” youth worker who can assist them through the process.

#### ***Breach of bail and unnecessary time in custody***

If police suspect on reasonable grounds that a person has breached a bail condition, they may immediately arrest the person and bring them before

<sup>93</sup> *Bail Act* (NSW), section 37.

<sup>94</sup> See *Law Enforcement (Powers and Responsibilities) Act* 2002 (NSW) section 99(3), which provides a statutory presumption against arrest, and *Children (Criminal Proceedings) Act* 1987 (NSW) section 8, which creates a presumption that a young person should be dealt with by attendance notice rather than charge. See also *DPP v Carr* [2002] NSWSC 194, [http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/nsw/supreme\\_ct/2002/194.html?query=lance%20carr](http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/nsw/supreme_ct/2002/194.html?query=lance%20carr)

<sup>95</sup> See the Shopfront’s case studies and submission to the NSW Ombudsman on *Non-Association and Place Restriction Orders*, July 2003 and March 2004, [www.theshopfront.org/25/htm](http://www.theshopfront.org/25/htm)

the court. The court may decide to revoke the defendant's bail or to release them, either on the same bail conditions or with some variation. Most arrests (including those for breach of bail) tend to occur in the afternoon or evening, which means that a person arrested for breach of bail will spend a night in custody before appearing at court.

While magistrates are often prepared to release people arrested for breach of bail, this is not always the case and many of our clients have found themselves bail refused for a relatively trivial breach, or for breaching a condition that should never have been imposed in the first place.

We have also experienced several cases in which bail conditions have been varied by the courts (eg a curfew or a place restriction condition has been deleted) but the police prosecutors have failed to update their computer system. Police on the beat, being unaware of the variation and disinclined to believe what a young person tells them, have arrested many young people for alleged breaches of bail conditions that no longer exist. While the mistake will almost always be rectified the following morning at court, the young person has spent an unnecessary night in custody<sup>96</sup>.

### 3.7 Sentencing – community-based alternatives to custody

Imprisonment and detention are extremely harsh forms of punishment, particularly for young and disadvantaged people. Conditions inside adult prisons in NSW are harsh, and, with overcrowding, appear to be getting worse. Young adult inmates, especially, are also vulnerable to physical and sexual abuse, and to contracting long-term serious health problems such as hepatitis C.

It is clearly in the public interest to keep disadvantaged young people out of custody and to address the root causes of their offending. Problematically, though, homeless young people often miss out on community-based sentences, especially in the adult system. Due to actual or perceived instability, mental health concerns or “unresolved drug issues” they are often assessed as unsuitable for options like community service and periodic detention<sup>97</sup>.

It is relatively unusual for the Children's Court to sentence a young offender to detention. Such an option is truly a last resort, imposed where the offence is extremely serious or where other options such as youth justice conferencing, bonds, probation and community service have been exhausted. Rehabilitation of young offenders almost always prevails over other factors such as deterrence and punishment.

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<sup>96</sup> The Shopfront has succeeded in obtaining modest amounts of compensation for some of our clients in these circumstances. CIDNAP (Children in Detention Advocacy Project), which involves Legal Aid, the Public Interest Advocacy Centre and other legal services including the Shopfront, is pursuing a number of civil claims arising from similar situations.

<sup>97</sup> For further discussion of these issues, see the Shopfront Youth Legal Centre's submission to the NSW Legislative Council Standing Committee on Law & Justice's *Inquiry into community-based sentencing options for rural and remote areas and disadvantaged populations*, March 2005, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html); see also the report of the Inquiry at <http://www.parliament.nsw.gov.au/prod/PARLMENT/Committee.nsf/0/B09BA359E47F0703CA25714100013DF1>

For young adults appearing in the Local Courts, most magistrates will also attempt to promote rehabilitation by imposing community-based sentences wherever possible. However, the increasingly high rate of bail refusal has a flow-on effect; such people usually receive custodial sentences because of a perceived lack of appropriate alternatives.

Young people (both juveniles and adults) who commit very serious offences are dealt with by the District Court (or, in very serious cases such as murder and manslaughter, the Supreme Court). Serious offences such as armed robbery, even when committed by juveniles, are being met with increasingly punitive sentences which often do little to recognise the root causes of a person's offending or to achieve genuine rehabilitation. This is perhaps reflective of the fact that serious offences attract more media publicity and judges are more likely to feel a need to impose harsh sentences to meet community expectations (or, as a cynic would view it, to appease the law and order lobby).

### 3.8 Fines and their enforcement

In recent years, a huge and growing proportion of the Shopfront's workload has involved assisting clients with outstanding fines. This problem affects the vast majority of our clients and is also affecting young people who are not homeless.

#### *The use of infringement notices*

Figures from the NSW Bureau of Crime Statistics and Research show that almost 463,000 infringement notices were issued in 2002<sup>98</sup> – one fine for every 14 people in NSW. About 35% of these were issued to 14 - 24 year olds<sup>99</sup>.

The 14-24 age group was grossly over-represented when it came to public transport offences, bicycle offences, disobeying police directions, and possession of knives. Fines can range from \$49 for riding a bike without a helmet, to \$400 for graffiti or offensive language on railway land, to a whopping \$550 for carrying a knife or blade.

We have we have been unable to obtain any more recent statistics (apart from a total statewide figure of 1.3 million penalty notices in 2004<sup>100</sup>). Our experience suggests that the problem is getting worse and that young people seem to be receiving increasing numbers of fines.

For our clients, "train fines" are the main problem.

- Transit fines are often issued in circumstances undeserving of such action. For instance, fines are often issued by transit officers for use

<sup>98</sup> We are not sure whether these figures form part of the Bureau's published crime statistics; they do not appear to be publicly available via the Bureau's website.

<sup>99</sup> According to the Australian Bureau of Statistics, 15-24 year olds comprised 14.2% of Australia's population in 2001

<sup>100</sup> Office of State Revenue, *Annual Report 2003 – 2004*, pp. 67 and 69, [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au).

of the word “fuck”, which, although subjectively considered by the officer to be “offensive language”, is not offensive at law<sup>101</sup>.

- For a long time, CityRail transit officers were instructed not to exercise any discretion to warn offenders for minor infringements, instead issuing fines on the spot. This policy has softened recently after criticisms from the NSW Ombudsman<sup>102</sup>.
- Penalty notice amounts are set unreasonably high<sup>103</sup>, and in most cases these are the same for adults and juveniles<sup>104</sup>.

**Case study - Tina**

Tina, aged 17, was living in a refuge in south-western Sydney. She had to catch a bus and a train to travel to and from TAFE.

One evening, on her way home, she had just got off the train and was asked to produce her ticket and concession entitlement. She had a weekly concession ticket but had inadvertently left her concession card and all her ID at home. She attempted to explain this, and gave the transit officers her name and address when asked. They continued to detain her, asking for more details, and she began to get agitated because she was worried about missing the last bus home. Tina said “I’ve got to catch my f\*\*\*ing bus”.

She was then given penalty notices for:

- fail to produce concession ticket entitlement
- fail to comply with requirements of authorised officer
- offensive language on railway land

Tina elected to take the fines to court. Once the matters were in court, we made representations to RailCorp, who eventually decided to withdraw all 3 fines. It is most unlikely this outcome would have been achieved without legal advice and advocacy.

**The appropriateness of fines as a penalty**

The effectiveness of fines as a penalty lies in their deterrent value - both specific deterrence, in discouraging the similar behaviour in the future, and general deterrence, in discouraging other people from committing similar offences.

Whether imposed by courts or by way of penalty notice, fines are a generally inappropriate means of dealing with offences committed by young people, particularly if they are homeless or disadvantaged.

<sup>101</sup> For a discussion of offensive language and contemporary community standards, see *Police v Butler* [2003] NSWLC 2, decision of Heilpern LCM, NSW Local Court, 14 June 2002, [www.lawlink.nsw.gov.au/lcjudgments/nswlc.nsf/5727e65c31f4925c4a256cf50003b369/b10f03fb16745a2a4a256d97002e05f6?OpenDocument](http://www.lawlink.nsw.gov.au/lcjudgments/nswlc.nsf/5727e65c31f4925c4a256cf50003b369/b10f03fb16745a2a4a256d97002e05f6?OpenDocument).

<sup>102</sup> See NSW Ombudsman annual report, 2004/2005, p69, [www.nswombudsman.nsw.gov.au/show.asp?id=394](http://www.nswombudsman.nsw.gov.au/show.asp?id=394).

<sup>103</sup> For example, \$400 for smoking on a platform; \$200 for travelling without a valid ticket or without proof of concession entitlement.

<sup>104</sup> With the exception of travelling on the train without a ticket, which incurs a \$50 fine for juveniles.

Fines have little or no deterrent value for people with no means to pay. Importantly, the aim of rehabilitation (which is the primary consideration when sentencing young offenders) can be undermined via imposition of a fine.

***The NSW fine enforcement system***

Enforcement of unpaid fines is governed by the *Fines Act 1996* (NSW). The Act commenced in January 1998 and was accompanied by the creation of the State Debt Recovery Office (SDRO), which has extensive powers to enforce fines. This regime, which focuses on revenue collection, replaced an old system which relied heavily on imprisonment as a sanction for non-payment of fines.

Fines that are not paid by the due date (or within such extra time as may be allowed) are referred to the State Debt Recovery Office for enforcement action, which includes:

- driver licence suspension/cancellation
- cancellation of vehicle registration
- RTA “customer business restrictions”, which means the Roads and Traffic Authority can refuse to issue licences, transfer vehicle registrations, etc
- civil enforcement, including garnishee and property seizure orders
- community service
- imprisonment (as a last resort).

The Act also provides for fines to be paid by instalments, deferred, annulled or remitted.

The impact of the fine enforcement system on disadvantaged people has been discussed in numerous submissions and papers by the Shopfront Youth Legal Centre and other legal and advocacy groups such as the Homeless Persons’ Legal Service.<sup>105</sup>

The *Fines Act* was reviewed in 2002; it is pleasing to note that this review resulted in some legislative amendments which made the system more flexible and reduced the hardship faced by disadvantaged people. To its credit, the SDRO continues to look for ways to improve its procedures to ensure greater fairness. This includes allowing driver licence sanctions to be lifted after 6 regular payments on a time to pay arrangement. Unfortunately, this is often too little, too late for many fine defaulters and, there remains a fundamental problem with the way fines are imposed and enforced.

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<sup>105</sup> See Shopfront Youth Legal Centre, Submission to Fines Act Review, 6 June 2002, [www.theshopfront.org/25.html](http://www.theshopfront.org/25.html) and Fines & Young People: The Punishment/Poverty Cycle, paper presented to NCOSS Conference, October 2005, [www.theshopfront.org/26.html](http://www.theshopfront.org/26.html), Homeless Persons’ Legal Service, *Not Such a Fine Thing?*, April 2006, [http://www.piac.asn.au/publications/pubs/fines\\_20060404.html](http://www.piac.asn.au/publications/pubs/fines_20060404.html)

***Problems with time-to-pay arrangements and lack of access to community service orders***

While the SDRO is generally reasonable in allowing people to enter time to pay arrangements, this is often of little assistance to young people who already face serious financial difficulty. Further, a transient or chaotic lifestyle makes it difficult to make regular payments<sup>106</sup>.

Many of our clients have offered to work off their fines via community service (which was easy to do under the old system) but this is not usually considered by the SDRO until all efforts to collect the outstanding amount have been exhausted.

It is not uncommon for clients of the Shopfront to have between \$1,000 and \$10,000 worth of unpaid fines (sometimes court-imposed fines and traffic infringements, but mostly transit fines). For penalty notice fines, we have adopted a practice of making annulment applications to the SDRO. This has the effect of bringing the fines to court, as if a court election had been made when the penalty notice was first issued. Magistrates (particularly in the Children's Court) are usually willing to reduce the fines substantially or to dismiss the charges without conviction or penalty.

***Impact of drivers' licence sanctions***

Young people are particularly affected by the SDRO's power to impose sanctions on driver licences. This happens at an early stage in the enforcement process and is difficult to reverse without paying the fines in full, making several regular repayments, or having the fines annulled.

The situation has improved in recent years, mainly because the SDRO will now lift licence sanctions after six regular payments on a time-to-pay arrangement, instead of waiting until the fines are paid in full. However, many people still believe they will have to pay off their fines in full before becoming eligible for a licence. Even those who know they can have sanctions lifted after 6 regular payments often lack the means or stability to make these payments.

It is common for our clients to feel they will never be able to pay off their fines, and to abandon all hope of getting a licence. In these circumstances they are often tempted to drive unlicensed, incurring further fines and lengthy disqualification periods.

The problem is compounded by the fact that the law imposes draconian penalties (including imprisonment) and lengthy mandatory disqualification periods for driving without a valid licence. For example, a first offence of driving while cancelled, suspended or disqualified incurs a 12-month disqualification, cumulative on any existing disqualification or suspension period. For a second or subsequent offence, the mandatory period increases to 2 years. Driving when never licensed does not incur a

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<sup>106</sup> The SDRO does not accept payment by direct debit, ostensibly due to administrative costs. We are told that Centrepay (ie deductions from Centrelink benefits) will soon be available for SDRO fines, but this has taken years to achieve and we are still not sure when it will commence.

mandatory disqualification for a first offence, but for a second offence there is a mandatory three-year disqualification<sup>107</sup>.

Magistrates have a limited discretion to dismiss the matter (or impose a bond) without recording a conviction; this means that no disqualification is imposed. Indeed, we have found most magistrates to be reasonably sympathetic towards those who have been charged with driving during a fine-default suspension. Some magistrates will adjourn the matter, allowing the defendant some time to sort out their fines and to get their licence. Then, if the defendant can demonstrate that they have done this, the magistrate will exercise their discretion not to impose a conviction or disqualification.

However, magistrates cannot keep exercising this discretion with repeat offenders. While it might be said that people who chose to drive unlicensed deserve to bear the consequences, we believe that the consequences are disproportionate to the severity of the offending. Once a person is disqualified by the court, there is usually no turning back and it is easy to accumulate years of disqualification. There may also be a “habitual traffic offender declaration” which (unless the magistrate decides to vary or quash it) means an extra 5 years off the road<sup>108</sup>.

Imprisonment is also a real risk for disqualified drivers. NSW criminal court statistics show that court appearances for driver licence-related offences increased from 7,641 in 2004 to 18,943 in 2005. The number of people sentenced to imprisonment for such offences rose from 443 to 1027 in the same period<sup>109</sup>. While there could be other factors responsible for this increase, our experience suggests that the fine enforcement regime is a major contributor.

It is worth noting that, for people of licensable age (this means 16 or over, because a learner licence can be obtained at age 16), court proceedings for traffic offences are dealt with in the Local Court. In Local Courts, the Legal Aid Commission does not usually represent defendants on traffic matters, unless they face a real prospect of imprisonment. By the time the real prospect of imprisonment arises (usually a second or third drive whilst disqualified charge) it is often too late, even with excellent legal representation, to undo the damage that has already been done.

Of course it is important that drivers are licensed, to ensure that they meet basic competency and safety standards. However, we believe that making it difficult for people to obtain and retain licences is counterproductive, particularly where young and disadvantaged people are concerned. Beyond a certain point, licence suspensions or disqualifications have no deterrent value<sup>110</sup>.

<sup>107</sup> *Road Transport (Driver Licensing) Act 1999* (NSW), sections 25 and 25A.

<sup>108</sup> *Road Transport (General) Act 2005* (NSW), sections 198-203.

<sup>109</sup> NSW Bureau of Crime Statistics and Research, summary of criminal court statistics, [www.lawlink.nsw.gov.au/lawlink/bocsar/ll\\_bocsar.nsf/pages/bocsar\\_lc\\_05](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_lc_05)

<sup>110</sup> The NSW Court of Criminal Appeal, in a guideline judgment about high-range drink-driving, referred to research suggesting that the optimal disqualification period is 18 months and above that period the offender will simply ignore the fact of disqualification: *Application by the*

**Case study - Vicky**

Vicky has recently turned 21. She grew up in a dysfunctional family environment and, during her teens, was in the care of the Department of Community Services. Vicky was homeless for some years but has now been able to obtain Department of Housing accommodation with the help of an after-care service.

As a young adolescent Vicky was diagnosed with various mental and developmental disorders, which have continued into adulthood and affect her ability to function in society.

During her teens, when she was homeless, Vicky incurred a large number of fines, mainly for travelling on trains without a valid ticket. These fines were referred to the SDRO and were then referred to the RTA, who imposed a "customer business restriction". She was told that she would not be able to apply for a licence until her fines were paid in full.

Like many young people in her situation (with or without mental health problems) Vicky felt that she would never be able to pay off her fines and would never be able to get a licence. She took the risk of driving without a licence and, not surprisingly, she was soon picked up by police and charged with driving unlicensed.

On her first conviction for driving when never licensed, Vicky received a small fine and no disqualification, but upon her second conviction, she received the mandatory 3-year disqualification.

Despite Vicky's mental health problems, the magistrate dealing with her case felt that diversion under section 32 of the *Mental Health (Criminal Procedure) Act* was inappropriate for traffic offences. It must be said that the magistrate was prepared to extend Vicky some leniency, and adjourned her case for some time to give Vicky the opportunity to sort out her fines and apply for a licence.

The Shopfront Youth Legal Centre assisted Vicky to make annulment applications for some of her fines and to make a time to pay arrangement for the others. After 6 regular payments on a time to pay arrangement, the SDRO directs the RTA to lift any licence sanctions. Unfortunately, because of her poverty, mental health problems and chaotic lifestyle, Vicky missed a couple of payments. She also committed another unlicensed driving offence during the adjournment period, which of course disintitiled her to any leniency that the magistrate might have been contemplating.

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*Attorney General under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning the Offence of High Range Prescribed Concentration of Alcohol Under Section 9(4) of the Road Transport (Safety and Traffic Management) Act 1999 (No. 3 of 2002) [2004] NSWCCA 303, <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/nsw/NSWCCA/2004/303.html?query=PCA%20guideline>, citing Homel, *Penalties and the Drink Driver: A study of One Thousand Offenders*, ANZI Crim (1981) 14 (225-241).*

Since receiving her 3-year disqualification, Vicky has been charged at least three times with driving while disqualified. The first time, she faced a very understanding magistrate who was prepared to dismiss the charges under section 32 of the *Mental Health (Criminal Procedure) Act*, on condition that she accept psychiatric treatment and psychological counselling.

Unfortunately, the court's patience (and the limits of their discretion under the mental health legislation) was soon to run out. A few months ago, Vicky was recently charged (and refused bail) for another incident of driving while disqualified. She was also charged with dangerous driving because she took off to try to avoid the police.

Vicky spent almost 2 months in custody before being sentenced. She was sentenced to a 9-month prison term with immediate release on parole. The immediate release was only because we were lucky enough to strike a very compassionate magistrate – the same one who had previously dealt with her under the mental health legislation. He recognised that keeping Vicky in jail would cause her to lose her housing and jeopardise any potential for rehabilitation.

Vicky is on parole for the next 7 months, which means that any sort of slip-up (driving-related or not) will land her back in jail. On top of all this, Vicky has been disqualified from driving till 2016! Unless she wants to face a future in prison, she will have to learn to accept that driving is off-limits for the rest of her twenties.

### 3.9 Homeless young people as victims of crime

Our discussion of homeless young people in the criminal justice system would not be complete without some mention of their role as victims.

Many of our clients have been victims of serious abuse as children; this is usually the primary reason for their homelessness. They often feel let down by their family, DOCS, the police and the criminal justice system.

Because of the dangerous environments they often inhabit, homeless young people are vulnerable to physical violence, sexual assault and other forms of abuse<sup>111</sup>. Among the Shopfront's clients, street sex workers are especially at risk. Their attempts to report crimes to the police are often met with a less than adequate response. Police may perceive them as unreliable or unworthy of attention because they are homeless, or because they have a mental illness or criminal record.

Helping our clients pursue their victims compensation entitlements is one of the more frustrating but satisfying aspects of our work. For most of our clients, an award of compensation is more than just money; it is a vindication, a sign that someone has finally listened to them.

<sup>111</sup> See *Living rough: preventing crime and victimisation among homeless young people*, National Crime Prevention, Commonwealth Attorney-General's Department, 1999, <http://www.crimeprevention.gov.au/agd/www/Ncphome.nsf/Page/D8A7DF0A24000951CA256B140008F3F7?OpenDocument>

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## 4 Conclusion

Youth homelessness is a deeply-entrenched, multi-dimensional and seemingly overwhelming problem. But with enough resources, vision, commitment and co-operation, we believe it can be tackled. So ...

*Let us put our minds together and see what life we can make for our children.*<sup>112</sup>

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### Shopfront Youth Legal Centre, June 2007

This submission was prepared by Jane Sanders (Principal Solicitor) and Lily Tsen (Volunteer) with the assistance of Liz Johnstone, Katie Laut (Legal Assistants), Megan Fraser, Jenny Crawford and Jason Anom (Volunteers).

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<sup>112</sup> Sitting Bull, Sioux Native American chief (c1834-1890), quoted in *Sound Bites: quotes for our times*, New Internationalist Publications, 1997