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# Homelessness and Criminal Justice

A Justice Reform Initiative Briefing Paper  
October 2025

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# Introduction

People in poverty or who are homeless are particularly vulnerable to coming into contact with the criminal justice system and eventually becoming incarcerated. The risk-factors for criminal justice involvement associated with socio-economic disadvantage are particularly accentuated in relation to those people who are homeless or at risk of homelessness.<sup>1</sup>

Fifty years ago the Australian Government's 1975 Commission of Inquiry into Poverty ('the Sackville Report') recognised that people who are socially and economically disadvantaged were over-represented in the criminal justice system. They were more likely to be the subject of policing activity, more likely to be subject to criminal charges in court, less likely to access bail, and were the overwhelming majority of the prison population.

The issues identified in the Sackville Report 50 years ago remain equally pertinent:

**According to the Australian Institute of Health and Welfare (AIHW) 43% of people entering prison in 2022 were homeless in the 4 weeks prior to being incarcerated.<sup>2</sup>**

In the context of Australia's deepening housing crisis, the criminalisation of people experiencing homelessness and poverty is a growing concern given the ever-increasing numbers of people living in unstable housing, or who are homeless.<sup>3</sup>

According to the Australian Bureau of Statistics (ABS), on Census night in 2021, **122,500 people** were estimated to be homeless in Australia—56% were male, 44% were women. 23% were aged 12–24 and 20.4% identified as First Nations

people.<sup>4</sup> In 2023–24, over **280,000 people** were assisted by specialist homelessness services (SHS), equating to a rate of 105.1 clients per 10,000 population, or 1.1% of the Australian population. This is an increase from 236,400 clients in 2011–12.<sup>5</sup>

Rising homelessness has continued to outpace Australia's growing population.<sup>6</sup> This has resulted in an extraordinarily high unmet demand for specialist homelessness services. **Every day more than 300 requests for homelessness assistance are not able to be met.** In 2023–24, around one-third of clients (34,360 people) who needed short-term or emergency accommodation did not receive this service, nor were they referred to another agency for this service.<sup>7</sup>

The systemic factors that funnel people who experience poverty and homelessness into the criminal justice system need to be addressed. Many aspects of the criminal justice system work to criminalise those who are poor and homeless and the criminal justice system frequently becomes the inappropriate default mechanism to respond to poverty and homelessness. However social and economic inequality is an issue that requires sustained and adequate investment in social housing and support services and should not be characterised as a 'crime' problem.

<sup>1</sup> Australian Government Commission of Inquiry into Poverty, Second Main Report, *Law and Poverty in Australia* (AGPS, 1975) ('the Sackville Report'); Vicki Sentas. 2017. 'The Poverty of Criminal Law: Criminalisation and the Limits of Access to Justice'. Chapter 17 in Andrea Durbach, Brendan Edgeworth and Vicki Sentas. 2017. *Law and Poverty in Australia – 40 years after the Poverty Commission*. Federation Press. 255.

<sup>2</sup> Australian Institute of Health and Welfare (AIHW). 2023. *The health of people in Australia's prisons 2022*. Catalogue number PHE 334, AIHW, Australian Government. 80.

<sup>3</sup> Pawson, H., Parsell, C., Clarke, A., Moore, J., Hartley, C., Aminpour, F. and Eagles, K. (2024). *Australian Homelessness Monitor 2024*; Sydney: UNSW City Futures Research Centre <<https://cityfutures.be.unsw.edu.au/>>. ISBN: 978-0-7334-4097-7.

<sup>4</sup> Australian Bureau of Statistics (ABS). 2023. *Estimating Homelessness: Census*. Released 22 March 2023, available <<https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/latest-release#key-statistics>> (accessed 2 January 2025).

<sup>5</sup> AIHW. 2024. *Specialist homelessness services annual report 2023–24*. <<https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/clients-services-and-outcomes>>. 11 December 2024. Canberra: AIHW.

<sup>6</sup> Pawson et al, 2024, n 3, 81.

<sup>7</sup> AIHW. 2024, n 5.

This briefing paper considers how the criminal justice system **disproportionately** affects people who are homeless.

The use of police resources to target particular locations and areas where homeless people may gather, the adverse use of police discretion, and the policing of particular offences which have a disproportionate effect on people who are experiencing homelessness, all serve to ensnare people who are homeless or at risk of homelessness into the criminal justice system.

The operation of increasingly punitive bail laws where factors taken into consideration for granting bail such as community ties and secure housing, serve to keep people experiencing homelessness in custody on remand. Proactive policing of bail conditions such as residency, curfew and non-association can also disproportionately affect people who are homeless. Diversionary sentencing options for courts that require safe, secure accommodation are also not available for people who are homeless, making them more likely to receive a custodial sentence.

Finally, those exiting prison face significant barriers in securing safe and secure accommodation, with many expecting to be homeless upon their release. This creates a vicious cycle as post-release homelessness and unstable housing is a major predictor of re-incarceration.

The briefing paper also considers some of the positive models of policing, bail support programs, court-based initiatives, prison

pre-release and post-release programs that have delivered promising results in terms of diverting people who are homeless away from the criminal justice system and breaking the cycle of homelessness and criminalisation.

There are institutional and structural factors that also significantly contribute to the criminalisation of people who are homeless. The way crime is defined and policed, and the processes for charging, prosecution and punishment are all major factors that result in drawing people in poverty and homelessness into the criminal justice system, and ultimately into the prison population.<sup>8</sup> This briefing paper will also consider these structural factors.

<sup>8</sup> Vicki Sentas. 2017. 'The Poverty of Criminal Law: Criminalisation and the Limits of Access to Justice'. Chapter 17 in Andrea Durbach, Brendan Edgeworth and Vicki Sentas. 2017. *Law and Poverty in Australia – 40 years after the Poverty Commission*. Federation Press. 255., 254.

# Snapshot: Homelessness and the criminal justice system

There is no internationally agreed definition of homelessness. The ABS uses a cultural definition of homelessness that identifies shared community standards about the minimum housing that people have the right to expect.<sup>9</sup> Social Policy researchers Chris Chamberlain and David MacKenzie have developed a model of homelessness that explores an application of the cultural definition. They divided those people living outside of the minimum standard of housing into five groups:

- **Marginally housed:** people in housing situations close to the minimum standard;
- **Tertiary homelessness:** people living in single rooms in private boarding houses without their own bathroom, kitchen or security of tenure;
- **Secondary homelessness:** people moving between various forms of temporary shelter including friends, emergency accommodation, youth refuges, hostels and boarding houses;
- **Primary homelessness:** people without conventional accommodation (living in the streets, in deserted buildings, improvised dwellings, under bridges, in parks, etc); and
- **Culturally recognised exceptions:** where it is inappropriate to apply the minimum standard, e.g. seminaries, gaols, student halls of residence.<sup>10</sup>

It is important to note that many First Nations people have living arrangements in which they live between multiple homes, often grounded in kinship, cultural obligations and community connection. To classify these arrangements as secondary homelessness under this cultural definition risks misrepresenting culturally legitimate forms of mobility and connection, and may not accurately reflect the lived experience. Nevertheless, these living arrangements may place First Nations people at risk in terms of vulnerability of criminalisation and incarceration.

This briefing paper will principally focus on the vulnerability of people in primary, secondary and tertiary homelessness to being disproportionately criminalised and at risk of incarceration.

## According to the Australian Institute of Health and Welfare (AIHW):

- **43%** of people entering prison were homeless in the 4 weeks prior to being incarcerated;<sup>11</sup>
- **Nearly 1 in 2** (48%) of people leaving prison expect to exit into homelessness;<sup>12</sup>
- In 2021/2022, **9,000** people leaving prison in Australia sought specialist support for their housing after leaving prison;<sup>13</sup>
- **Almost half** of people leaving prison each year (approximately 33,000 people) plan to sleep in short-term or emergency accommodation, or expect to sleep rough on release from prison.<sup>14</sup>

<sup>9</sup> Counting the Homeless 2006, ABS cat. no. 2050.0. According to the ABS a person is considered homeless when that person does not have suitable accommodation alternatives and their current living arrangement: is in a dwelling that is inadequate; or has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of, and access to space for social relations.

<sup>10</sup> Chamberlain, C and MacKenzie, D (2008) Counting the Homeless 2006, Canberra: Australian Bureau of Statistics, Catalogue No. 2050.0.

<sup>11</sup> AIHW 2023, n 2.

<sup>12</sup> Ibid 81.

<sup>13</sup> <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/clients-exiting-custodial-arrangements>

<sup>14</sup> AIHW 2023, n 2, 81.

# Policing people experiencing homelessness

People who experience homelessness, particularly those who are sleeping rough (a category of primary homelessness) are vulnerable to police interaction and engagement by virtue of their visibility in public spaces.

Rough sleeping, sometimes referred to as 'street homelessness', is just one form of homelessness under the definition of homelessness referred to above, but is often the main focus and public perception of homelessness. Street homelessness involves a shifting population, with people lacking stable accommodation often periodically cycling in and out of rough sleeping. Accordingly, any estimates of the actual numbers of people rough sleeping at any one time are usually under-estimates.<sup>15</sup>

According to the 2021 ABS Census 7,636 people were recorded as experiencing rough sleeping on Census night 2021. During 2023–24, **over 55,500** people seeking help from SHS agencies reported having slept rough in the preceding month.<sup>16</sup>

## The effect of 'status' or 'public order' offences

People sleeping rough are exposed to heightened levels of policing because they are often highly visible and the necessity of conducting daily activities in public which, if carried out in a private home, would not be criminalised. This conduct is rendered criminal because it is performed in public and reflects the realities of living on the streets.<sup>17</sup> Such conduct includes public nuisance offences and the use of offensive language or behaviour. It also extends to offences which criminalise carrying basic eating utensils such as knives and forks. Additionally, people experiencing homelessness are more vulnerable to being charged with possession of illicit drugs as they will be more likely to be carrying those drugs on their person due to the absence of private storage options.<sup>18</sup>

**People who are sleeping rough are particularly susceptible to what has been termed 'status offences' – laws that criminalise who and where a person is, rather than what they have done.**

These status offences include begging, offensive language and public intoxication, and are discussed in more detail below.

### The offence of begging

People who engage in begging often experience profound hardship, including homelessness, mental illness, substance dependence, trauma, family violence and poverty.<sup>19</sup> In many cases those who undertake begging have been unable to access adequate social support or assistance from welfare services, healthcare or housing services.<sup>20</sup>

There is also a high prevalence of serious medical conditions amongst those who beg. One study found in a survey of people begging in the Melbourne CBD and inner-city area, **54%** of people suffered from mental illness, **15%** experienced physical disability and **11.5%** had an intellectual disability.<sup>21</sup> An overwhelming majority also had experienced some form of dependency;

<sup>15</sup> Pawson et al, n 3, 99.

<sup>16</sup> Ibid 99–100.

<sup>17</sup> Young A and Petty J (2019) On visible homelessness and the micro-aesthetics of public space. *Australian & New Zealand Journal of Criminology* 52(4): 444–461 at 447. <https://doi.org/10.1177/0004865818823945>

<sup>18</sup> McNamara L, Quilter J, Walsh T and Anthony T (2021) Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia. *International Journal for Crime, Justice and Social Democracy* 10(1): 111–129, at 114–117. <https://doi.org/10.5204/ijcsd.1742>

<sup>19</sup> Michael Horn and Michelle Cooke, *A Question of Begging: A study of the extent and nature of begging in the City of Melbourne* (Hanover Welfare Services, June 2001).

<sup>20</sup> Philip Lynch, Understanding and Responding to Begging [2005] *Melbourne University Law Review* 16.

<sup>21</sup> PILCH Homeless Persons' Legal Clinic. 2010. *We want change – calling for the abolition of the criminal offence of begging*. November 2010. 14.

drug dependency accounted for almost **40%** of respondents; alcohol dependency accounted for approximately **15%**, and problem gambling accounted for **15%**.<sup>22</sup>

The criminalisation of begging disproportionately harms individuals experiencing housing insecurity, crisis and homelessness who are the people most likely to engage in begging due to their financial circumstances. The criminalisation of begging fails to address the underlying drivers of the conduct, and instead exposes vulnerable people to unnecessary and often harmful contact with the criminal justice system. Despite its social causes, begging remains a criminal offence in Queensland, Victoria, Northern Territory and South Australia.<sup>23</sup>

In Queensland between 2009–2015 there were a total of **1562** convictions for the offence of begging. Over that period, there was an average of 227 convictions per year and no significant decrease in the rate of convictions over time. The most commonly imposed penalty over this period was a monetary order or fine, representing more than half of all sentences imposed for begging in Queensland in the 2009–15 period.<sup>24</sup> While fines constitute a less severe penalty than incarceration, the impact of fines on people who are already disadvantaged is significant and in some jurisdictions failure to pay fines can result in an escalation to incarceration.

**Criminalising begging fails to address the underlying causes and instead compounds the hardship faced by those already experiencing homelessness, drug and alcohol dependency, mental illness, disability and poverty.**

Begging should be decriminalised in all Australian jurisdictions. A more effective response requires tackling these underlying drivers through sustained investment in support services.

### More effective responses to tackle social drivers of begging include:

- Appropriately resourcing specialist homelessness services (SHS);
- Increasing the supply of emergency homeless accommodation, crisis accommodation, supported accommodation and social housing; and
- Providing additional resourcing for drug, alcohol treatment and mental health services for people who are homeless or at risk of homelessness.

### Offensive language

All states and territories have provisions that criminalise the use of offensive language in a public place. In South Australia, Tasmania and the ACT, offensive language matters are heard before a court, while in New South Wales, Western Australia, Queensland and Victoria police can issue a direct fine via a Criminal Infringement Notice (CIN) or issue a court attendance notice. If the matter proceeds to court the usual penalty is a court imposed fine. However, a sentence of imprisonment can be imposed in all jurisdictions except NSW and WA.<sup>25</sup>

While the offence of offensive language ostensibly exists to ensure that there is accountability for language which the community regards as unacceptable (because it impedes free access to and enjoyment of public space), the offence is often employed by police as a mechanism to exert authority over those who do not display what they consider to be an appropriate level of respect or deference.

<sup>22</sup> Ibid 14–15.

<sup>23</sup> *Summary Offences Act 2005 (QLD)*, s8(1); *Summary Offences Act 1966 (VIC)*, s49A; *Summary Offences Act (NT)*, s56; *Summary Offences Act 1953 (SA)*, s12.

<sup>24</sup> Paula Hughes. 2017. 'Punishing Poverty in Australia.' *Parity*. 32–33.

<sup>25</sup> Section 4A, *Summary Offences Act 1988 (NSW)*; section 6, *Summary Offences Act 2005 (QLD)*; sections 7, 22, *Summary Offences Act 1953 (SA)*; section 47, 53, *Summary Offences Act 1923 (NT)*; section 12 *Police Offences Act 1935 (TAS)*; section 17, *Summary Offences Act 1966 (VIC)*; section 74A, *Criminal Code 1913 (WA)*; section 392, *Crimes Act 1900 (ACT)*.

Several studies in NSW suggest that most offensive language charges are issued for language directed at police, which in many cases involved an expression of exasperation, frustration or response to unfair targeting by police.<sup>26</sup> While most CIN's and court charges for offensive language are not challenged in court, there is strong evidence to suggest that if tested in court, most language in the subject of the charge/CIN may not meet the legal definition of 'offensive'.<sup>27</sup>

Because the offence involves the use of offensive language in a public place, the offence has a disproportionate effect on people most likely to frequent public spaces – children and young people, First Nations people and people experiencing homelessness. The Australian Law Reform Commission (ALRC) received evidence that First Nations people in Queensland are up to **12 times more likely** to be charged with or receive infringement notices for public nuisance/offensive language than non-Indigenous people. Where these matters were dealt with in the court, First Nations people were more likely to receive a custodial sentence.<sup>28</sup>

In 2024, the Australian Institute of Criminology noted that police are more likely to arrest and detain First Nations people than non-Indigenous people who commit public order offences, such as offensive behaviour and offensive language.<sup>29</sup> While NSW criminal incident data indicates that the number of offensive language incidents has decreased by 17% in the 12 months to March 2025 and has been trending down for the last 10 years,<sup>30</sup> First Nations people are more likely to be arrested for offensive language or to receive a CIN for offensive language.<sup>31</sup>

The offence of offensive language in a public place should be abolished across all Australian jurisdictions. These provisions disproportionately impact First Nations people, children and young people and people experiencing homelessness. The offence is heavily reliant on police discretion and rarely reflects the intent of the legislation.

## Public Intoxication

All Australian states and territories have now decriminalised public drunkenness, with Queensland becoming the final jurisdiction to do so in September 2024, more than 30 years after the Royal Commission into Aboriginal Deaths in Custody first recommended this reform.

However, the decriminalisation of public drunkenness has not eliminated the incarceration of people who are intoxicated in public. According to analysis by the Victorian Expert Reference Group on Decriminalising Public Drunkenness, people who are intoxicated continue to be placed in police cells at high rates across jurisdictions. This occurs under protective custody legislative regimes which were developed to allow police to place intoxicated people into police cells ostensibly as a last resort to keep them and the community safe.<sup>32</sup> Again, people experiencing homelessness are more vulnerable to over policing due to the public nature of the conduct and their high visibility.

**There is an urgent need for increased resourcing of alternative health-based models that better address the need for places of safety and health intervention for people who are intoxicated and in need of immediate health support.**

<sup>26</sup> NSW Law Reform Commission, *Penalty Notices*, Report No 132 (2012); Elyse Methven, 'Dirty Talk: A Critical Discourse Analysis of Offensive Language Crimes' (PhD Thesis, Faculty of Law, University of Technology Sydney, 2017), Chapter 9; New South Wales Ombudsman. (2009). Review of the impact of criminal infringement notices on Aboriginal communities. Sydney: NSW Ombudsman, 57; Hannah Trollip, Luke McNamara, Helen Gibbon (2019) The factors associated with the policing of offensive language: a qualitative study of three Sydney Local Area Commands, *Current Issues in Criminal Justice*, 31:4, 493-512, at 506-507.

<sup>27</sup> Trollip et al, n 26.

<sup>28</sup> Australian Law Reform Commission (ALRC), *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133 (2017), paragraphs 12.172, Submission from Professor Tamara Walsh, Queensland University of Technology. <[https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)>.

<sup>29</sup> Don Weatherburn, Michael Doyle, Teagan Weatherall, Joanna Wang. 2024. Don Weatherburn, Michael Doyle, Teagan Weatherall, Joanna Wang. AIC, 2024. 8. <[https://www.aic.gov.au/sites/default/files/202405/tr32\\_towards\\_theory\\_indigenous\\_contact\\_with\\_criminal\\_justice\\_system\\_v2.pdf](https://www.aic.gov.au/sites/default/files/202405/tr32_towards_theory_indigenous_contact_with_criminal_justice_system_v2.pdf)>.

<sup>30</sup> NSW Bureau of Crime Statistics and Research. 2025. New South Wales Recorded Crime Statistics, Quarterly Update, March 2025. June 2025.

<sup>31</sup> Elyse Methven, 'Dirty Talk: A Critical Discourse Analysis of Offensive Language Crimes' (PhD Thesis, Faculty of Law, University of Technology Sydney, 2017) 5.

<sup>32</sup> *Seeing the Clear Light of Day: Expert Reference Group on Decriminalising Public Drunkenness*. 2020. Report to the Victorian Attorney-General. August 2020. 34.

## Criminal infringement notices and penalty notices

The most common penalty imposed for public order or status offences (offensive language, being drunk or disorderly, or smoking on public transport) are CINs and Penalty Notices.<sup>33</sup> CINs/ Penalty Notices can be issued by police at the scene of the alleged offence and do not require court attendance. With the expansion of police discretion to issue CINs/ Penalty Notices, these have become the most common penalty issued by criminal justice systems in Australia.<sup>34</sup>

Many everyday activities which would be legal if done in a private home attract CINs/penalty notices when done in public places.<sup>35</sup> It is therefore not surprising that published research into the legal needs of homeless people and legal service providers cite CINs/ Penalty Notices as one of the most common legal problems for people experiencing homelessness.<sup>36</sup>

The penalty received under an infringement notice is fixed and cannot be tailored to the circumstances of the recipient. As a result CINs/ Penalty Notices cause significant hardship and

difficulty for people on low incomes, particularly people experiencing homelessness. While they can be challenged in court, this rarely happens.<sup>37</sup> People who are homeless are less likely to address their CINs/ Penalty Notices as they often have no permanent postal address. This means that they are often not aware of or able to keep track of their outstanding CINs/ Penalty Notices, resulting in the accumulation of debt and an escalation of enforcement costs or sanctions, including driver licence disqualification.<sup>38</sup>

**A change is needed in police practice to ensure they make greater use of warnings and cautions rather than issuing Criminal Infringement Notices or Penalty Notices.**

Warnings and cautions represent a less punitive and more proportionate response, particularly in cases of minor offending, or where the person is vulnerable or disadvantaged.<sup>39</sup> This approach aligns with the practice in the United Kingdom where written cautions operate as a diversionary mechanism, allowing low-level offending to be addressed without a prosecution.<sup>40</sup>

<sup>33</sup> ALRC, n 28, paragraphs 12.46–12.47.

<sup>34</sup> NSW Law Reform Commission (NSWLRC), *Penalty Notices*, Report No 132 (2012), paragraph 14.6.

<sup>35</sup> *Ibid*, paragraphs 1.26–1.28.

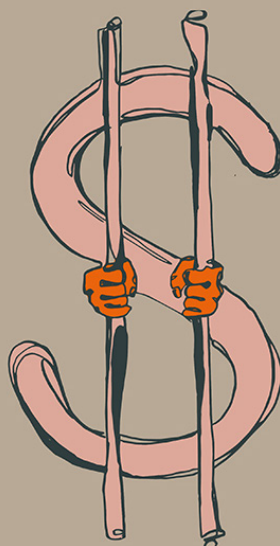
<sup>36</sup> S Forell, E McCarron and L Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW*, Law and Justice Foundation of New South Wales (2005) 95; Queensland Public Interest Law Clearing House Incorporated, Homeless Persons' Legal Clinic, *The fines enforcement regime in Queensland for people experiencing homelessness: Options for change* (2011) 7–8; Homeless Persons' Legal Service and Public Interest Advocacy Centre, *Not Such a Fine Thing! Options for Reform of the Management of Fines Matters in NSW* (2006).

<sup>37</sup> ALRC, n 28, paragraphs 12.48–12.49.

<sup>38</sup> Forell, McCarron and Schetzer, n 36, 106.

<sup>39</sup> NSWLRC, n 34, paragraph 5.7.

<sup>40</sup> Crown Prosecution Service. 2022. *Cautioning and Diversion*. Webpage. 22 August 2022, available at <<https://www.cps.gov.uk/legal-guidance/cautioning-and-diversion>>.



## Police move-on powers and banning notices

Police also hold a number of discretionary powers that enable them to proactively approach people who are homeless in a manner that can lead to forceful confrontation, escalation and additional, more serious charges. These discretionary powers include the powers to direct a person to 'move-on' or the power to ban a person from premises or locations (i.e. banning notices).<sup>41</sup>

People who experience homelessness in the form of rough sleeping are often highly visible in public spaces, making them vulnerable to targeted policing. This visibility can also prompt community pressure for police to use their "move on powers" to remove people from people from certain areas. These practices not only displace people without any support, but leave individuals feeling targeted, harassed and discriminated against.<sup>42</sup> This was reflected in 27 interviews undertaken by the Justice and Equity Centre (formerly the Public Interest Advocacy Centre) in 2021, interviewing people with lived experience of rough sleeping in the City of Sydney, Kings Cross and Inner West (Sydney) areas.

### The people interviewed highlighted several concerns based on their experiences of contact with police including:

- Feeling targeted and harassed by police as a result of being visibly homeless;
- Being stopped by police and subjected to a personal search without apparent justification or reasonable cause;
- Being issued with move-on orders without proper regard to reasonableness or proportionality;
- Experiences of verbal abuse and physical mistreatment by police.<sup>43</sup>

Given the discretionary power of police to proactively target people experiencing homelessness in public places, police should adopt different practices to avoid the over-criminalisation of people who are homeless including:

- Avoiding unnecessary enforcement-based interactions with people experiencing homelessness;
- Ensuring that where interactions do occur, they are appropriate and respectful;
- Considering alternative options to fines and charges when interacting with people experiencing homelessness (e.g. warnings, cautions, etc);
- Making referrals to appropriate services as an alternative to fines and charges.<sup>44</sup>

An example of such a policing practice is provided for in the NSW Homelessness Protocol. This Protocol guides the interaction of police with people experiencing homelessness, so they are treated respectfully and don't face discrimination. The main principle underpinning the Protocol is that unless they ask for help or intervention is deemed necessary, people experiencing homelessness should be left alone when using public places. The Protocol also aims to assist people experiencing homelessness to access appropriate services and to provide advice and information on points of assistance they may wish to access. NSW Police have been signatories to the Protocol since 2012.<sup>45</sup>

<sup>41</sup> McNamara, Quilter, Walsh and Anthony, n 18, 114.

<sup>42</sup> Parliament of Victoria, Legislative Council, Legal and Social Issues Committee (Victoria Parliament LSIC). 2021. *Inquiry into Homelessness in Victoria*, Final Report, 189.

<sup>43</sup> Public Interest Advocacy Centre and Homelessness NSW. 2021. *Policing Public Space – The experiences of people sleeping rough*. A report PIAC and Homelessness NSW. 3, 8-9.

<sup>44</sup> Victoria Parliament LSIC 2021, n 42 above, 191.

<sup>45</sup> NSW Department of Communities and Justice. Protocol for homeless people in public places. <<https://www.facs.nsw.gov.au/providers/working-with-us/programs/homelessness/specialist-services/partnerships/safe-in-public/protocol#1>> (accessed 8 January 2025).

# Difficulties for people experiencing homelessness to obtain bail

**Lack of suitable and stable accommodation poses a barrier for many individuals to meet bail requirements, especially those in rural, regional or remote areas or those experiencing homelessness.<sup>46</sup>**

A person charged with a criminal offence might be eligible for release on bail but for their circumstances. For instance, a person might present a low risk of reoffending but have no stable accommodation to which they can be released. In these circumstances the availability of a bail support service could assist the accused person with accommodation, allowing an individual to be granted bail when they might otherwise be remanded in custody.<sup>47</sup>

As noted above, according to the AIHW, **43%** of people entering prison were homeless in the 4 weeks prior to being incarcerated.<sup>48</sup> Around **78%** of adults entering prison are unsentenced. This would suggest that a significant number of people entering the remand population are homeless. Research undertaken on behalf of the

NSW Corrective Services found that defendants who were homeless were more likely to be refused bail due to poor community ties or risk of failing to appear in court.<sup>49</sup> Several non-government organisations have expressed concerns that people who are homeless are less likely to be granted bail because they do not have stable accommodation.<sup>50</sup> In NSW, the third most likely breach of bail conditions is failing to reside at a particular place of residence.<sup>51</sup>

Bail hostels provide a potential solution as they increase access to bail by ensuring adequate housing which, when coupled with effective bail support, can increase bail compliance.<sup>52</sup> Bail hostels are residential establishments that accommodate people as a condition of bail, generally with some degree of endorsement or regulation by the government. While there are some long-standing examples of bail hostels in some jurisdictions in Australia, they have not been systematically implemented throughout Australian states and territories.<sup>53</sup>

Although bail hostels may present as a promising solution several concerns have been expressed about them. These include the issue of 'net-widening' (when a defendant is bailed into a more restrictive bail hostel, instead of bailed into the community), co-locating children with adults who have offended and geographical restrictions.<sup>54</sup>



<sup>46</sup> ALRC, n 28, paragraph 2.65.

<sup>47</sup> Matthew Willis, 'Bail support: A review of the literature' (Australian Institute of Criminology, Research Report, 2017) 27.

<sup>48</sup> See AIHW 2023, n 2 above.

<sup>49</sup> Susan Ayres, Kyleigh Heggie and Abilio de Almeida Neto. 2010. *Bail Refusal and Homelessness Affecting Remandees in New South Wales*. Research Publication No.50. July 2010. 35-36,

<sup>50</sup> Victoria Parliament LSIC 2021, n 42 above, 180.

<sup>51</sup> Asher Presneill. 2018. 'A Viable Solution? Bail Hostels in the ACT' (Research Report, ACT Inspector of Correctional Services, 2018), 6.

<sup>52</sup> Lorana Bartels. 2019. 'The growth in remand and its impact on Indigenous over-representation in the criminal justice system' (Indigenous Justice Clearinghouse, Research Brief No. 24, May 2019) 5, citing Willis 2017, n 46; Presneill 2018, n 50).

<sup>53</sup> Willis 2017, n 47, 27; Presneill 2018, n 51, 16-21.

<sup>54</sup> Willis 2017, n 47, 21; Rowena Johns, 'Bail Law and Practice: Recent Developments' (Briefing Paper No 15, Parliamentary Library Victoria, 2002) 57.

Despite these concerns, the Law Council of Australia and many others have recommended the introduction of more bail hostel programs in Australia.<sup>55</sup>

**The Australian Institute of Criminology (AIC) and others have noted that the features that influence the success of bail hostels include:**

- Their affordability;
- Being targeted towards people who do not have access to alternative accommodation to avoid net-widening;
- Being geographically available in regional and remote areas; and
- Availability for diverse populations including First Nations people, people with mental illness or cognitive impairment, people at risk of domestic violence and people who are homeless. Care needs to be taken to ensure the safety of all people residing in bail hostels and allocation of beds needs to happen thoughtfully.<sup>56</sup>

Overall, the limited research and analysis on the effects of bail hostels suggests that it is more cost effective to house a defendant in a bail hostel than a prison, after taking into consideration the economic and social benefits of individuals maintaining employment and relationships, contributing to rent, and reducing recidivism.<sup>57</sup>

Bail support programs that provide supported accommodation also provide services that support people released on bail to comply with their bail conditions. Bail support refers to the provision of services, intervention or support designed to assist a person to successfully comply with their bail obligations.<sup>58</sup>

The principal aims of bail support are to reduce reoffending while on bail, increase the likelihood of a person facing criminal charges appearing in court and to provide an alternative to detention and remand. Bail support programs may also be combined with diversionary programs that seek to address particular problems such as substance abuse. These combined programs seek to provide an integrated approach to assisting people obtain and remain on bail.<sup>59</sup>

**Bail support programs that intervene and support people – rather than being focused on compliance – are much more successful.<sup>60</sup>**

Also, given the importance of localised responses, the absence of services in regional and remote areas can negatively impact outcomes for people experiencing homelessness who are charged with criminal offences.<sup>61</sup>

<sup>55</sup> Bartels 2019, n 52, 5.

<sup>56</sup> Willis 2017, n 47, 27.

<sup>57</sup> Presneill 2018, n 51, 20.

<sup>58</sup> Gabrielle Denning-Cotter. 2008. 'Bail Support in Australia' (Indigenous Clearinghouse, Research Brief No 2, April 2008) 1.

<sup>59</sup> Willis 2017, n 47, 5-6.

<sup>60</sup> Denning-Cotter 2008, n 58, 1-2.

<sup>61</sup> Emma Colvin. 2019. 'Postcode (in)justice: location and bail support services' 5(4) Journal of Criminological Research, Policy and Practice 307, 307.

# Court-based diversion for people who are homeless

There are models of court-based diversion programs that focus on supporting people who are homeless. In the USA and New Zealand, these have taken the form of specialist homeless courts, while in some Australian jurisdictions, central magistrates courts have established special circumstances lists within mainstream courts to address the specific needs of people who are homeless who have been charged with minor offences.

## Homeless courts

Homeless Courts allow dedicated magistrates, prosecutors, support services and defence lawyers to work together holistically to address the underlying causes of offending. These courts can assist people who are homeless to make earlier exits from the criminal justice system into secure housing with supports to reduce the risk of reoffending. They seek to address the participants' basic human needs, as well as their legal needs, and encourage participants to take responsibility for their actions.<sup>62</sup>

Some of the Homelessness Court models in the USA involve participants voluntarily signing up through a homeless service provider and engaging in a series of program activities before appearing in court.<sup>63</sup> These program activities serve as a "sentence" for participants, even though they are completed prior to the court appearance. After the completion of services, participants present proof of participation at a Homeless Court session. Most cases are then dismissed. In some jurisdictions court sessions are held somewhere other than the courthouse—onsite at a service provider or at another location

easily accessible to people who are homeless.<sup>64</sup> Other models operate as a form of pre-sentence specialist court where the court will facilitate access to housing and support services with the aim of addressing the underlying causes of criminal offending.

**In New Zealand, a 2012 review of the Homelessness Court in Auckland that has been operating since 2010, found that that the number of arrests dropped by two-thirds during participation in the program, and this was sustained in the six months following participation.**

The number of people arrested fell by 26% during participation and by 42% in the six months following the program. In addition, of those who had been arrested, the number of times they were arrested fell from an average of 7.7 times prior to participation, to 2.6 times during and after the program.<sup>65</sup> In 2015, the District Court reported that evaluations showed that the New Beginnings Court had reduced reoffending rates by 66% and saved on nights spent in prison by 78% and hospital admissions by 57%.<sup>66</sup>

<sup>62</sup> Claudia Lopez. 2017. *Trends in State Courts - Homeless Courts*. Report, National Centre for State Courts, May 2017.

<sup>63</sup> Center for Court Innovation. 2015. *Responding to Homelessness - 11 ideas for the Justice System*. New York City. 4.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid 17.

<sup>66</sup> District Courts of New Zealand. Annual Report 2015. 15. <<https://www.districtcourts.govt.nz/assets/Uploads/DCAnnualReport-2015.pdf>>

## Specialist court lists for homelessness in Australia

In two Australian jurisdictions (Victoria and Queensland), central magistrates courts have established special circumstances lists within mainstream courts. These specialist lists seek to provide an alternative to mainstream court processes and sentencing outcomes for defendants charged with minor offences who are homeless and suffering from mental illness or intellectual disability. They provide an avenue for their circumstances to be considered in a therapeutic setting when determining sentencing and assist some of the most disadvantaged people coming before the court to exit the justice system with long-term, therapeutic outcomes.<sup>67</sup>

In Victoria, the 'special circumstances' list was established in 2002 in response to the large numbers of people with a range of disadvantage who received fines and were cycling through the mainstream court system, unable to pay their fines and unlikely to be able to address the circumstances in which their fines were incurred.<sup>68</sup>

The ongoing role that this list plays in Victoria has been noted by advocates working at the intersection of homelessness and criminal justice.<sup>69</sup>

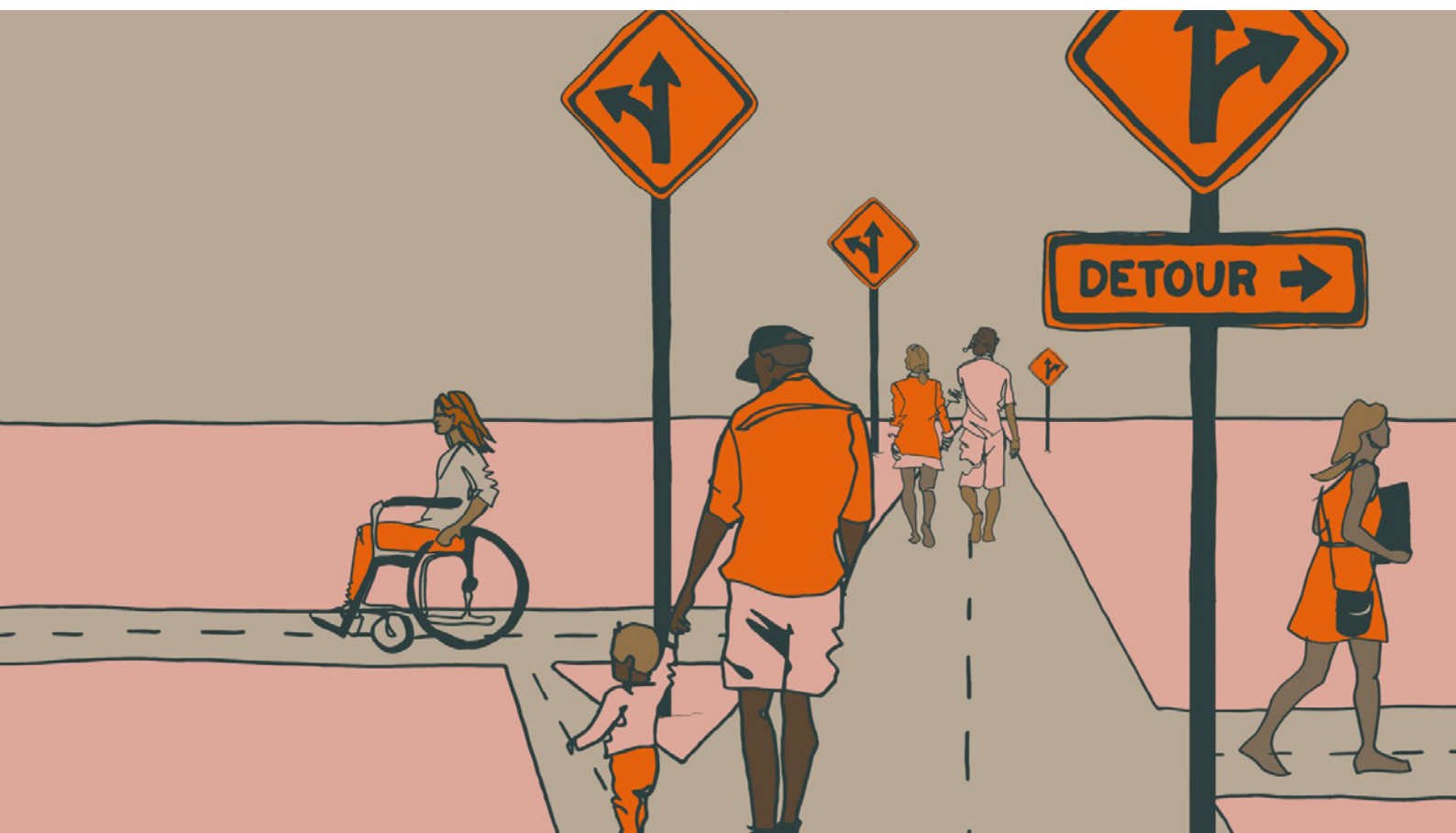
In 2006, a 'special circumstances list' was established at the Brisbane Magistrates' Court. The list was aimed at finding an alternative way of dealing with defendants charged with public order-type offences who had impaired capacity at the time of the offence, as a result of mental illness or intellectual disability, and homelessness. Court observation of the Brisbane 'special circumstances list' was conducted for a period of nine weeks between August and October 2006. The penalties imposed on participants for the designated offences were more likely to be aimed at addressing the underlying causes of offending (i.e. court supervision, referral for psychiatric or drug/alcohol treatment, referral to cognitive/life skills course) than for defendants facing similar charges in the generalist courts.<sup>70</sup>

<sup>67</sup> Victoria Parliament LSIC 2021, n 42, 192-193.

<sup>68</sup> Tamara Walsh, 'The Queensland special circumstances court' (2007) 16(4) *Journal of Judicial Administration* 225.

<sup>69</sup> <https://justiceconnect.org.au/fairmatters/opportunity-government-end-cycle-criminalisation-and-homelessness/>

<sup>70</sup> Walsh, n 68, 228-229.



# Leaving prison into homelessness

**Just as a significant proportion of people entering prison have recent experiences of homelessness, many people exiting prison also face high rates of housing insecurity and homelessness. This lack of stable accommodation places them at heightened risk of reoffending and returning to prison.**

As prison populations have increased, the need for housing and assistance post-release has likewise increased, resulting in people being released from prison representing the fastest growing category of clients of specialist homelessness services (SHS) over the past decade.<sup>71</sup> In 2023–24, around 8,900 clients of SHS were people exiting from custodial arrangements (or 3.2% of all SHS clients). Of these 28% identified as First Nations people and 55% experienced alcohol and/or drug issues and/or a current mental health issue.<sup>72</sup>

According to the AIHW, 52% of people exiting prison expected to be housed in their own home (owned or rented); 45% expected to be in short-term or emergency accommodation, and 3% expected to be sleeping rough.<sup>73</sup>

Access to stable and secure accommodation is a critical foundation for successful reintegration into the community.<sup>74</sup> Without this, people exiting prison face immediate barriers to meet their basic needs, and are much less likely to engage in engaging in rehabilitation, education, employment opportunities or attend support services. Secure accommodation is a fundamental requirement and in its absence people will be more likely to be pushed into precarious circumstances that increase the risk of reoffending and returning to custody.<sup>75</sup>

Over the last ten years the availability of housing for formerly incarcerated people has reduced significantly.<sup>76</sup> Waiting lists for public housing continue to grow and those experiencing disadvantage can wait for years before appropriate housing is allocated.<sup>77</sup> Social housing is in short supply and private rentals are out of the financial reach of many who are dependent on government support.<sup>78</sup>

In addition, people who are released from prison often face explicit and implicit discrimination when seeking appropriate housing.<sup>79</sup> They face significant challenges in securing accommodation in an already stretched housing sector, with few services available to provide the intensive support required to assist them to secure stable accommodation.<sup>80</sup> Housing is a base need and without appropriate shelter formerly incarcerated people are being asked to attempt reintegration while facing homelessness. They are therefore being set up for failure and reoffending becomes likely.

For people seeking early release from prison on parole, difficulties in securing appropriately located and affordable accommodation may result in parole being denied. If a person is successful in securing such accommodation but subsequently is unable to remain in that accommodation, that person may be in breach of their parole conditions and be returned to prison.<sup>81</sup>

<sup>71</sup> Chris Martin, Rebecca Reeve, Ruth McCausland, Eileen Baldry, Pat Burton, Rob White, Stuart Thomas. 2021. *Exiting prison with complex support needs: the role of housing assistance*. AHURI Final Report No. 361. August 2021. 24.

<sup>72</sup> AIHW. 2024, n 5, Clients exiting custodial arrangements.

<sup>73</sup> AIHW 2023, n 2, 81–82.

<sup>74</sup> UNSW Sydney. 2020. *Obstacles to Effective Support of People Released from Prison: Wisdom from the Field*. 25.

<sup>75</sup> Ibid 26; Council of Australian Governments (COAG). 2016. *Prison to Work Report*. COAG, Canberra, ACT, 2016. 7.

<sup>76</sup> UNSW Sydney 2020, n 74, 25.

<sup>77</sup> Ibid

<sup>78</sup> Matthew Willis. 2018. *Supported housing for prisoners returning to the community: a review of the literature*. Australian Institute of Criminology. 3 May 2018. 25.

<sup>79</sup> Mindy Sotiri and Alex Faraguna, *Shown the exit revisited: CRC's every day experience in assisting people leaving custody*; Louis Schetzer and StreetCare. 2013. *Beyond the Prison Gates: The experiences of people recently released from prison into homelessness and housing crisis*. Public Interest Advocacy Centre. July 2013. 39–41.

<sup>80</sup> Sotiri and Faraguna, n 79.

<sup>81</sup> Schetzer and StreetCare, 2013, n 79, 42–43.

Women have specific post-release housing requirements due to their caring responsibilities. The majority of women in prison are carers of dependent children.<sup>82</sup> During 2019, at least 33% of women released from NSW prisons were released into homelessness or unstable accommodation. The Keeping Women Out of Prison Coalition (KWOOP) identify this as a key factor behind the high rates of recidivism among women. At most, there are nine dedicated beds available in NSW for women immediately after leaving prison.<sup>83</sup>

The sharp rise in the remand population over the last decade has led to a growing number of people being released from custody from remand or after serving short sentences, without any pre-release case planning or coordinated support. Many exit prison without access to post-release housing or housing support, or assistance with Centrelink. As has been previously noted by the ALRC, the absence of post-release planning for these people is particularly concerning, as they are referred to short-term temporary accommodation upon release.<sup>84</sup> This lack of adequate planning and support leaves people vulnerable to homelessness, poverty and the risks of reoffending and incarceration.

## The importance of housing to reduce re-offending

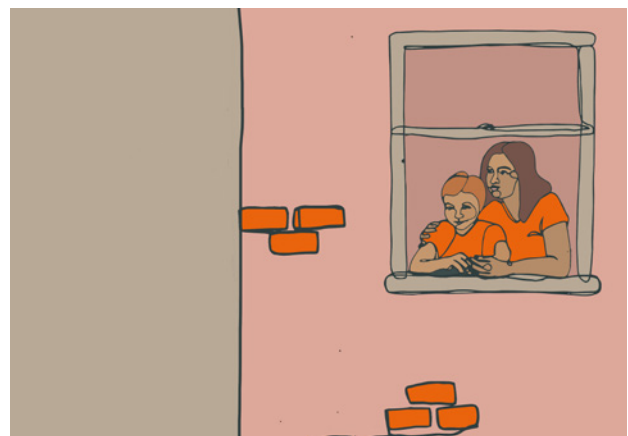
There is strong evidence to indicate that access to stable and secure accommodation is a vital ingredient in assisting a person exiting from prison to reintegrate back into society. Having a home has been described as a 'steady hook for change' that a person exiting prison can hold onto, that will help them make the necessary changes as they transition back into society and desist from re-offending. It also provides a stable base from which to receive necessary support services.<sup>85</sup>

In 2021 a detailed study of 623 people who received public housing after exiting prison and 612 people who only received rental assistance, found that there are clear benefits from providing public housing to people leaving prison. For those who received public housing there were significant improvements over time across several criminal justice outcomes:

- Police incidents: down **8.9%** per year.
- Court appearances: down **7.6%** per year.
- Proven offences: down **7.6%** per year.
- Time in custody: down **11.2%** per year.
- Time on supervised orders: following an initial increase, down **7.8%** per year.
- Justice costs: an initial decrease of **\$4,996**, followed by a further **\$2,040** per year.<sup>86</sup>

With the reduction in justice costs, the study found that there is an estimated net benefit of **\$5,200 to \$35,000 per person** over five years, compared with the cost of providing assistance to a person with lived experience of incarceration in private rental and/or via homelessness services.<sup>87</sup>

The evidence presented in this research strongly supports the need for much greater provision of social housing to people exiting prison, particularly for those with complex support needs.



<sup>82</sup> UNSW Sydney 2020, n 74, 28.

<sup>83</sup> Lucy Phelan, Mindy Sotiri and Margaret Scott. 2019. Keeping Women Out of Prison Coalition (KWOOP). *Profile of women in prison in NSW, Part A: A snapshot*. 4.

<sup>84</sup> ALRC Report 2017, n 28 above, paragraphs 9.67-9.68.

<sup>85</sup> Martin et al, 2021, n 71, 86.

<sup>86</sup> Ibid 75.

<sup>87</sup> Ibid 76.

## Supportive housing for people leaving prison

While the 2021 study (mentioned on the previous page) identified the importance of greater provision of social housing to people exiting prison, it also recognised that there was a need for greater availability of supports from other agencies and the importance of inter-agency work across criminal justice, disability, housing and homelessness sectors. This is particularly important in the period when a person is approaching their expected release date when considering housing options and other needs post-release.<sup>88</sup>

In 2018, a comprehensive literature review on supportive housing for people leaving prison conducted on behalf of the AIC concluded that transitional and housing support services have the potential to reduce recidivism, providing benefits to people who are exiting prison, increasing community safety and reducing criminal justice system costs. While acknowledging that these supported housing initiatives can be costly to implement, the review suggested that they are more cost-effective than imprisonment and can contribute to reduced reoffending.<sup>89</sup>

The review also concluded that there is no single best-practice model for delivering housing-related services to people exiting prison. However, it did identify some principles of good practice, including:

- Ensuring that **services are centred on the person** and their capacity to make decisions about their own circumstances;
- Supporting the person to realise that capacity requires a **holistic approach to service delivery** involving collaborative, multi-agency and multi-disciplinary ways of working;

- **Collaborative partnerships** between **criminal justice, housing** and broader **social support agencies**, providing opportunities for each of these agencies to contribute from a position of **strength**, aligned to their areas of primary responsibility and expertise;
- Collaborative partnerships that provide ways of facilitating the types of **client contacts** and **interagency communications** that are necessary for achieving throughcare goals.<sup>90</sup>

Access to supportive housing programs is particularly important for people exiting prison. Supportive housing has been described as any package of assistance that aims to assist tenants with a broad range of health and other aspects of their lives including access to and sustaining of affordable tenancies.<sup>91</sup> There is increased attention on what has been described as "Housing First" projects where people who are homeless are placed directly into long-term, self-contained housing with no requirement that they progress through transitional programs. However, this does not mean "housing only" as substantial and multidisciplinary social support is provided to re-housed people on an "assertive" basis. Importantly though, their tenancies are not conditional upon them actively engaging with such support.<sup>92</sup>

### There are two distinct forms of supportive housing in place in Australia:

- The Common Ground supportive housing model—based on congregated housing, with both onsite support and links to other necessary social services; and
- Scattered-site supportive housing models—involving geographically dispersed accommodation, with clients receiving outreach support provided by a partnering organisation.<sup>93</sup>

<sup>88</sup> Ibid 87.

<sup>89</sup> Willis 2018, n 78, 38.

<sup>90</sup> Ibid 38–39.

<sup>91</sup> Parsell C, Moutou O, Lucio E & Parkinson S. 2015. *Supportive housing to address homelessness*. AHURI final report no. 240. Melbourne: Australian Housing and Urban Research Institute. 1.

<sup>92</sup> Busch-Geertsema 2013. *Housing First Europe: Final report*. Bremen, Germany: Housing First Europe. 14.

<sup>93</sup> Willis 2018, n 78, 14; Parsell C & Moutou O 2014. *An evaluation of the nature and effectiveness of models of supportive housing*. Melbourne: Australian Housing and Urban Research Institute.

While there appears to be little difference between the two models as to effectiveness in helping tenants achieve housing stability, there is significant evidence to indicate the social and economic effectiveness of supportive housing models over crisis and transitional responses, particularly for those people who also experience mental health and drug and/or alcohol dependency.<sup>94</sup>

For specific information about supportive housing programs in Australia for people exiting prison, please see the Justice Reform Initiative's **Post-Release Position Paper**.

People exiting prison require access to appropriate models of supportive housing that will facilitate transition back into society, assist to address particular identified needs such as mental illness or drug and alcohol problems, and provide the necessary supports and assistance to make re-offending less likely. An important priority is to provide additional resourcing to increase access to supportive housing to assist people exiting prison.

<sup>94</sup> Parsell et al, n 91, 11.



# Conclusion

**People who are homeless or are at risk of homelessness are exposed to a range of intersecting factors that significantly increase their likelihood of being drawn into the criminal justice system and becoming incarcerated. These factors are a combination of personal, situational and institutional or structural.**

Many people who experience homelessness also experience disability, mental illness and/or substance dependency, compounding the likelihood of criminal justice involvement. The public nature of their living arrangements, their increased use of public space and their lack of access to appropriate support services make them highly visible and consequently more vulnerable to police attention. Behaviour or conduct that would go unnoticed in the privacy of a secure home often attracts police intervention simply because it occurs in public.

Institutional and structural factors also significantly contribute to the criminalisation of people who are homeless, including the definition of homelessness, policing, charging and prosecuting of particular offences, and the operation of punitive bail laws. In addition, diversionary sentencing options such as home detention or community service orders/intensive corrections orders that require secure accommodation are not available for people who are homeless, making them more likely to receive a custodial sentence.

Finally, those exiting prison face significant barriers in securing safe and secure accommodation, heightening the risks of reoffending and reincarceration.

The fact that 43% of people entering prison were homeless just prior to their incarceration, and nearly a half of people exiting prison expect to

be homeless again, illustrates the vicious cycle of homelessness-incarceration-homelessness. As the rate of homelessness continues to increase, the various personal, situational and structural factors that result in people who experience homelessness being drawn into the criminal justice system need to be addressed in order to break this cycle.

This briefing paper has canvassed several measures to address these factors including: implementing appropriate policing practices in relation to people who are homeless, repealing various public order offences, removing punitive bail conditions that result in people who are homeless being denied bail, and the establishment of court-based specialist homeless initiatives.

Ultimately the most important measure to break the cycle of homelessness and incarceration is a significant increase in the availability and accessibility of affordable housing, social housing and supportive accommodation. The absence of safe and stable accommodation is one of the most significant risk-factors for criminalisation and subsequent re-offending post-release from prison. Expanding access to secure, supported housing is an essential social and justice intervention to reduce this risk.





The Justice Reform Initiative is an advocacy organisation working to reduce the use of harmful incarceration and build communities in which disadvantage is no longer met with a criminal justice system response.

We work in partnership with other organisations and individuals seeking to bring about justice system change.

The Initiative respectfully acknowledges and supports the current and longstanding efforts of Aboriginal and Torres Strait Islander people to reduce the numbers of First Nations people incarcerated in Australia and, importantly, the leadership role which First-Nations-led organisations continue to play on this issue.

The Justice Reform Initiative is backed by eminent patrons, including former Governors-General Dame Quentin Bryce AD CVO and Sir William Deane AC KBE as patrons-in-chief. A full list of patrons is available on our website.

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