

# Policing Public Space:

The experiences of people sleeping rough

A report by PIAC and Homelessness NSW



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## Executive Summary

This report examines the experiences of people sleeping rough and their interactions with police in Sydney. It is based on structured interviews with people sleeping rough and service providers and is designed to better understand how police powers impact on the lives of people experiencing primary homelessness.

The experiences of participants in this study highlight the need to improve police practices and procedures to ensure that the human rights of people experiencing homelessness are respected and protected. The report calls on the NSW Police and other signatories to renew their commitment to the Protocol for Homeless People in Public Places. Legislative changes are also needed to create stronger safeguards regarding strip searches and the right for people experiencing homelessness to enjoy public space.

The people we spoke to disclosed high rates of police involvement in their lives, and highlighted concerns about:

- **Over-policing.** Participants stated they felt targeted and harassed and linked their frequent interaction with police to their homelessness; and for the Aboriginal people we spoke to, their Aboriginality. The significant emotional and psychological effects – including re-traumatisation, stigmatisation, isolation, hopelessness and despair – were a strong theme in the interviews.
- **The improper use of stop and search powers.** Interactions with police often included the execution of a personal search, without apparent justification. Factors such as a person's appearance and/or presence in a known drug area are insufficient to justify a legal search, but may be being relied upon by police interacting with people experiencing homelessness. Special concerns were raised about the overuse of strip searches.
- **The improper use of move on orders.** People experiencing homelessness are regularly issued with move on orders. These orders can have a significant impact on a person's ability to stay safe and access specialist services. It appears that move on orders are often given without proper regard to reasonableness and proportionality.
- **Verbal abuse and excessive use of force.** The majority of people we spoke to reported having experienced verbal abuse and/or physical mistreatment by police. Participants did not make complaints about these incidents and regarded complaints mechanisms as being ineffective.
- **The need for better training for police in responding to people presenting with mental health issues.** Concern about the quality of care for vulnerable people was a consistent theme in the interviews, particularly when police were responding to challenging mental health presentations, such as substance-induced psychosis.
- **Use of police discretion.** Participants gave both positive and negative examples of police discretion being used. These examples highlight the importance and utility of guidelines like the Protocol for Homeless People in Public Places, to avoid practices that entrench disadvantage and create additional barriers to social integration.

# Summary of Recommendations

## 1 Recommendation 1

Insert time limits for move on directions given under s 197 of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)* (LEPRA)

Insert a new subsection under s 197 of LEPRA that stipulates that the period during which a person may be directed not to return to a public place is not to exceed 6 hours. This is commensurate with time limits under s 198.

## 2 Recommendation 2

Amend s 197 of LEPRA to mandate consideration of access to the area for lawful purposes including access to essential services

Insert new subsections under s 197 of LEPRA stipulating that:

- (a) in determining whether to make a move on direction, a police officer is to consider the ability of a person to enter the area for any other lawful purpose such as accessing essential services
- (b) if making a move on direction, when determining the appropriate length of time a person must not enter the area, a police officer is to consider the ability of a person to enter the area for any other lawful purpose such as accessing essential services.

## 3 Recommendation 3

Repeal the 'Martin Place Act'

Repeal the *Sydney Public Reserves (Public Safety) Act 2017 (NSW)* ('Martin Place Act').

## 4 Recommendation 4

Removal of police discretion in regards to body worn video (BWV) cameras

Amend Standard Operating Procedures to remove police discretion for the use of BWV cameras by developing clear, robust, publicly available guidelines around activation, tagging, retention and release regarding BWV camera use and footage by police.

## 5 Recommendation 5

Implement recommendation 1 and 2 from the final report of the Inquiry into the Protocol

Department of Communities and Justice to consider, in consultation with all signatories and stakeholders:

- (a) the development of a review mechanism, implementation plan and accountability mechanisms for signatory agencies to demonstrate that they are implementing the Protocol for Homeless People in Public Places in a consistent way (Recommendation 1)
- (b) the development of an independent complaint mechanism for people experiencing homelessness and other stakeholders with respect to the implementation of the Protocol for Homeless People in Public Places by signatory agencies (Recommendation 2).

## 6 Recommendation 6

### Fund NSW Health and related services to increase number of health responders to mental health incidents

Increase specific funding to NSW Health, Ambulance NSW and programs such as Police Ambulance Clinical Early Response (PACER) to increase number of health first responders to mental health crisis and emergencies.

## 7 Recommendation 7

### Stronger accountability and integration of the Protocol into signatories' processes and practices

All signatories to the Protocol, including NSW Police, must be held accountable through mandatory reporting obligations, whole-of-organisation training in trauma-informed care and integration of the Protocol into organisational frameworks and codes of practice.

## 8 Recommendation 8

### Relationship building between Police and Specialist Homelessness Services

Police Area Commands should commit to building relationships with local specialist homelessness services so police are able to provide appropriate referrals and information for people experiencing homelessness who may not be currently in contact with any homelessness services.

This should include development of referral pathways with assertive outreach teams such as HOST, HART, and Newtopian Outreachers in inner Sydney.

## 9 Recommendation 9

### Establish a community of practice about the Protocol

(a) Establish a community of practice about the Protocol for all signatories, convened regularly by an independent chair, so that good practice can be shared and issues discussed between all stakeholders.

(b) Appoint a 'Protocol Liaison Officer' within NSW Police who will attend the community of practice and be a central point of contact for all policy and practice discussions linked to the Protocol.

# 1. Introduction

## 1.1 About PIAC and Homelessness NSW

This report is the result of joint research undertaken by the Public Interest Advocacy Centre (PIAC) and Homelessness New South Wales.

An independent legal centre based in Sydney, PIAC operates the Homeless Persons' Legal Service (HPLS). HPLS provides free legal assistance to people who are homeless or at risk of homelessness, at legal advice clinics throughout inner Sydney, outer western Sydney and the Hunter. Each year, HPLS provides around 1200 advice services a year to more than 700 people, and undertakes casework for approximately 400 clients. Our casework focuses on the human rights of people experiencing homelessness, housing and tenancy matters, financial hardship and criminal legal problems.

HPLS operates alongside StreetCare, a lived experience advisory committee. StreetCare brings together a diverse group of people with lived experience of homelessness including women and men, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. StreetCare members are active advocates and advisors to government and other key stakeholders on law reform, decision-making and training relating to homelessness and housing.

Homelessness New South Wales (HNSW) is the peak not for profit organisation for homelessness services (SHS). It works with its members to prevent and reduce homelessness across NSW. Members include small, locally based community organisations, multiservice agencies with a regional reach and large State-wide service providers who work to address and prevent homelessness.

HNSW provides policy development and advocacy in working to end homelessness, public education about the changing faces of homeless people and those at risk, information about the diverse mix of initiatives operating in NSW and advice and support for member organisations and others about organisational change and improvement.

## 1.2 Background

While we all have a right to use and enjoy public spaces, research suggests that people experiencing homelessness, particularly those who occupy public spaces are far more likely to come into contact with police and the criminal justice system than the general population.<sup>1</sup> In an attempt to protect the rights of people experiencing homelessness, in NSW, a Homelessness Protocol sets out principles and procedures to guide organisations that may come into contact with people experiencing homelessness in public places. To a large extent, the Homelessness Protocol is a best practice legacy from the Sydney Olympic Games in 2000. In the lead up to the Olympic Games in the late 1990s, legislation was adopted to confer additional powers to police to remove people from public areas. The *Crimes Legislation (Police and Public Safety) Act 1998*, the *Homebush Bay Operations Act and Regulation 1999*, and the *Sydney Harbour Foreshore Authority Act 1999* formed the basis of legislation that could be relied upon to suppress protest, or remove people seen as 'undesirable' from public places. Housing and homelessness organisations shared concerns that the Sydney Olympic Games would lead to heavy handed policing and widespread displacement of homeless people.<sup>2</sup> Indeed, during the Atlanta Games in 1996, over 9000 people had been wrongfully arrested in order to project the image of a 'tidy' city. PIAC and other civil society organisations strongly opposed moves to extend law enforcement powers to council rangers and private security.<sup>3</sup>

Community and housing services led by Shelter NSW and the NSW Council of Social Service continued to draw attention to the issue of homelessness and policing during the Games. As a result, the NSW Government formed a Social Impact Advisory Committee (SIAC) bringing together government representatives and civil society organisations.<sup>4</sup> In 1998, Premier Bob Carr declared "'Unfortunates'" would not be removed from the streets just to provide a good impression during the 2000 Olympic Games.<sup>5</sup>

1 See for example Forrest Stuart, 'On the streets, under arrest: Policing homelessness in the 21st Century' (2015) 9 *Sociology Compass* 11, 940; Robert Hartmann McNamara, Charles Crawford and Ronald Burns, 'Policing the homeless: Policy, practice and perceptions' (2013) 36 *Policing: An International Journal* 2, 357; Luke McNamara, Julia Quilter, Tamara Walsh and Thalia Anthony, 'Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia' (2021) 10 *International Journal for Crime, Justice and Social Democracy* 1, 111.

2 Centre on Housing Rights and Evictions, 'Fair Play for Housing Rights: Mega-events, Olympic Games and housing rights' (Report, 2007) 126-141. (COHRE)

3 Patricia McEnery, 'Olympic Games Liberty and Security Issues' (Sydney: Public Interest Advocacy Centre (PIAC), Feb. 2000).

4 *COHRE* (n 2) 136-141.

5 Australian Associated Press 'Unfortunates would not be removed from Sydney streets' (Media release, 2 June 1998).

A 'Homelessness Protocol' was developed by Allen Consulting for SIAC in consultation with government and community groups. It was then adopted by the City of Sydney, the NSW Government, NSW Police, and other Olympic specific agencies. The first version of the 'Sydney Homeless Protocol' stated that '[A]ll people have the right to be in public places and that they will not be harassed or moved on unless their safety or the security of others is being threatened.'<sup>6</sup>

Housing and homelessness services and civil right activists closely monitored NSW Police actions in the lead up to, and during the 2000 Olympic Games. Very little harassment of people experiencing homelessness by police was reported, and there was no evidence that attempts were being made to move homeless people out of the city.<sup>7</sup> The 'Homelessness Protocol' has since remained a significant policy document which sets out the rights of people experiencing homelessness using public places, and guides the behaviour of signatory agencies in their engagement and interaction with people experiencing homelessness in public places.

The latest iteration of the 'Protocol for Homeless People in Public Places' (the Protocol) was introduced by the NSW Government in 2012. It is reproduced at Appendix Two of this report. The Protocol acknowledges and promotes the rights of people experiencing homelessness alongside the rights of other community members – for example, by highlighting the rights of people experiencing homelessness to use and enjoy public space and to carry and store their belongings with them. 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. It emphasises the importance of the use of discretion, in particular when it comes to policing of people experiencing homelessness.

The Protocol also aims to assist people experiencing homelessness to access appropriate services if they so request, and to provide advice and information on points of assistance they may wish to access in the future. NSW Police have been signatories to the Protocol since its inception. Despite the 2012 iteration of the Protocol providing for review every two years, the Protocol has not undergone a review process since its introduction.

More recent policy developments have had a significant impact on people sleeping rough and people experiencing all forms of homelessness<sup>8</sup> living in inner Sydney, particularly when it comes to their interactions with NSW police.

These include:

- the development of '**assertive outreach models**' for homelessness service delivery, piloted in the inner-city since 2015;
- the announcement in mid-2019 of the inclusion in the NSW Premier's Priorities of a target to reduce '**street homelessness**' in NSW by 25% by 2020, and 50% by 2025.
- the introduction of the '**Martin Place Act**', granting additional police powers<sup>9</sup> in response to the Martin Place 'tent city'.<sup>10</sup>

Against this backdrop, PIAC and Homelessness NSW set out to investigate the experiences of people with lived experience of homelessness with policing practices in the inner city of Sydney during approximately mid-2017 to mid-2019. We sought to draw out the experience of homeless people's interactions with police, their perceptions of these interactions and of the role of police more broadly, as well as the physical, emotional and psychological effects of these interactions.

We focused on three local government areas (LGAs): Sydney City, Kings Cross and the Inner West. This work sits alongside research on the criminalisation of homelessness and poverty, to which we contributed in October 2018.<sup>11</sup>

6 COHRE (n 2) 137.

7 Dr Hazel Blunden, Centre on Housing Rights and Evictions, 'The Impact of Sydney Olympic Games on Housing Rights' (Background paper, 2007).

8 'Homelessness' in this report is used to refer to primary, secondary and tertiary forms of homelessness: see Chris Mackenzie and David Chamberlain, 'Understanding contemporary homelessness: issues of definition and meaning' (1992) 27(4) *The Australian Journal of Social I* 274, 274-297 .

9 *Sydney Public Reserves (Public Safety) Act 2017* (NSW).

10 Benedict Brook, 'Inside the homeless tent city taking over Sydney's iconic Martin Place', *News Corp Australia* (online, 30 July 2017) [www.news.com.au/lifestyle/real-life/inside-the-homeless-tent-city-taking-over-sydneys-iconic-martin-place/news-story/aab8b7a91a7c71cdd54eb8eee636408](http://www.news.com.au/lifestyle/real-life/inside-the-homeless-tent-city-taking-over-sydneys-iconic-martin-place/news-story/aab8b7a91a7c71cdd54eb8eee636408)

11 Luke McNamara, Julia Quilter, Tamara Walsh and Thalia Anthony, 'Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia' (2021) 10 *International Journal for Crime, Justice and Social Democracy* 1, 111 (McNamara); Tamara Walsh, Luke McNamara, Julia Quilter and Thalia Anthony, 'National study on the criminalisation of homelessness and poverty' (2019) 32(4) *Parity* 25, 25-27.



Photo by Vladimir Haltakov on Unsplash

### 1.3 The people we spoke to

In total, 27 interviews were conducted with people with lived experience of homelessness. Participants were nominated by specialist homelessness services across City of Sydney, Kings Cross and Inner West areas.

All participants had spent at least one night sleeping rough within the past two years, and had at least one interaction with police during that time.

- **Gender**

Men comprised 78% of participants (23 men), while 22% were female (6 women). This is consistent with the demographics of people sleeping rough in the inner city.<sup>12</sup>

- **Age**

The majority of participants fell within the 35-49 years age bracket (74%). Again, this is consistent with the demographic of the target cohort. We interviewed two people between the ages of 25-34 years, and five people between the ages of 50-64 years.

- **Nationality**

The majority of participants indicated that they were Australian citizens (70%). Four indicated that they were permanent residents, and another four chose to not answer this question.

- **Cultural Background**

Aboriginal and Torres Strait Islander people were proportionally over-represented, with approximately half of participants identifying as Aboriginal and/or Torres Strait Islander people (13 out of 27 interviews).

- **Disability/Mental Health**

While a relatively small number of participants identified as having a physical or intellectual disability (19%), the vast majority identified as suffering from a mental health condition, including (but not limited to) substance use disorders (96%).

- **Source of Income**

Almost all participants indicated that social security was their primary form of income (96%). Of these, 55% were on the NewStart payment, with 41% receiving a Disability Support Pension. The remainder of our sample did not receive income from any source.

- **Criminal History**

Two thirds of participants indicated that they had a criminal record (67%). 22% indicated that they did not, whilst 11% chose not to answer.

<sup>12</sup> Homelessness New South Wales, *Inner City Registry Week 2015 Report* (Report, February 2016) [www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Registry\\_Week\\_2015\\_report.pdf](http://www.homelessnessnsw.org.au/sites/homelessnessnsw/files/2016-12/Registry_Week_2015_report.pdf)



## 1.4 Summary of police interactions

### Stops and Searches

|  |   |  |  |                                       |
|--|---|--|--|---------------------------------------|
| Approached often, but not searched often<br><b>4/27</b>                                | Not approached often, but searched the majority of the times they are approached<br><b>6/27</b> | Approached often and searched often<br><b>14/27</b>                        | Strip searched in public<br><b>10/27</b> | Not asked/Not answered<br><b>3/27</b> |
| Of these cases, impropriety was raised by the majority of participants<br><b>18/20</b> |   | Of these cases, impropriety was raised by all participants<br><b>10/10</b> |  |                                       |

### Move on Orders

|  |  |   |                              |                                       |
|--|--|---|------------------------------|---------------------------------------|
| Not received<br><b>7/27</b>                  | Given verbal warning, complied<br><b>17/27</b> | Given verbal warning, not complied<br><b>1/27</b> | Given penalty<br><b>1/27</b> | Not asked/Not answered<br><b>1/27</b> |
| Of these, impropriety raised<br><b>14/19</b> |  |   |                              |                                       |

### Problematic Interactions

|   |   |   |   |
|---|---|---|---|
| None<br><b>7/27</b>                       | Verbal abuse or frequent verbal abuse<br><b>13/27</b> | Frequent verbal abuse + incident of physical abuse<br><b>4/27</b> | Frequent verbal and physical abuse<br><b>3/27</b> |
| Improper conduct reported<br><b>20/27</b> |   |   |   |

## 1.5 A qualitative project

This research is primarily qualitative rather than quantitative, and involves a relatively small sample of 27 interviews. Nevertheless, our findings provide a useful starting point for understanding the diversity of experiences of people who were rough sleeping during the period of the research, and highlight some of the ways police interacted with them during this time.

We do not generalise these experiences to all people experiencing homelessness who have interacted with police, nor do we seek to make broad claims about police conduct as a whole. The experiences we have captured do, however, provide useful insights into the impact of police practices on people experiencing homelessness and are a basis for considering what best-practice approaches to policing public space might involve.

Further details of our methodology are contained at Appendix One.

We note that due to limitations in data collection by police in their Computerised Operational Policing System (COPS) database, and subsequently, limitations in data collation by the NSW Bureau of Crime Statistics and Research, there is a lack of quantitative data on the use of stops and searches and move on orders in relation to people experiencing homelessness specifically. This is an area that would benefit from further development to better inform future research.

More comprehensive data in relation to police interaction with people experiencing homelessness could also support better service delivery and cross sector collaboration between police and specialist homelessness services. PIAC is interested in exploring whether COPS is able to record when police interact with a person who identifies as homeless, and if this could be used to gather better quantitative data for research and service provision.

## 2. Stop and Search Powers

Under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA), police may stop, search and detain a person without warrant in a range of circumstances.<sup>13</sup> They must, however, establish a factual basis for the suspicion.<sup>14</sup> People experiencing homelessness are more likely than other people to be impacted by a police officer using stop and search powers.<sup>15</sup>

LEPRA was introduced to 'help strike a balance between the need for effective law enforcement and the protection of individual rights'.<sup>16</sup> Unfortunately, it falls short of protecting people experiencing homelessness from excessive use of police powers. Arbitrary and unreasonable use of police powers remains common for people experiencing homelessness. Participants to this research describe being stopped and searched based on unreasonable suspicion of drug offences and targeting based on their appearance. The use of strip searches in public also seems to be relatively common.

These negative and invasive interactions have a damaging effect on people experiencing homelessness, many of whom have a history of trauma and abuse. This can be a barrier to recovery and engagement with services.

### 2.1 Quotas

Serious concerns have been raised about the impact of quotas used by NSW police in relation to the use of stop and search powers. Quotas may have the effect of creating an operational imperative to undertake stops and searches, regardless of the legal basis for the exercise of such power. The use of annually increasing quotas to determine the number of stops and searches performed has been strongly criticised as encouraging the misuse of police powers and undermining legal safeguards.<sup>17</sup>

### 2.2 Participants experiences of stop and search powers

Instances of stop and search powers

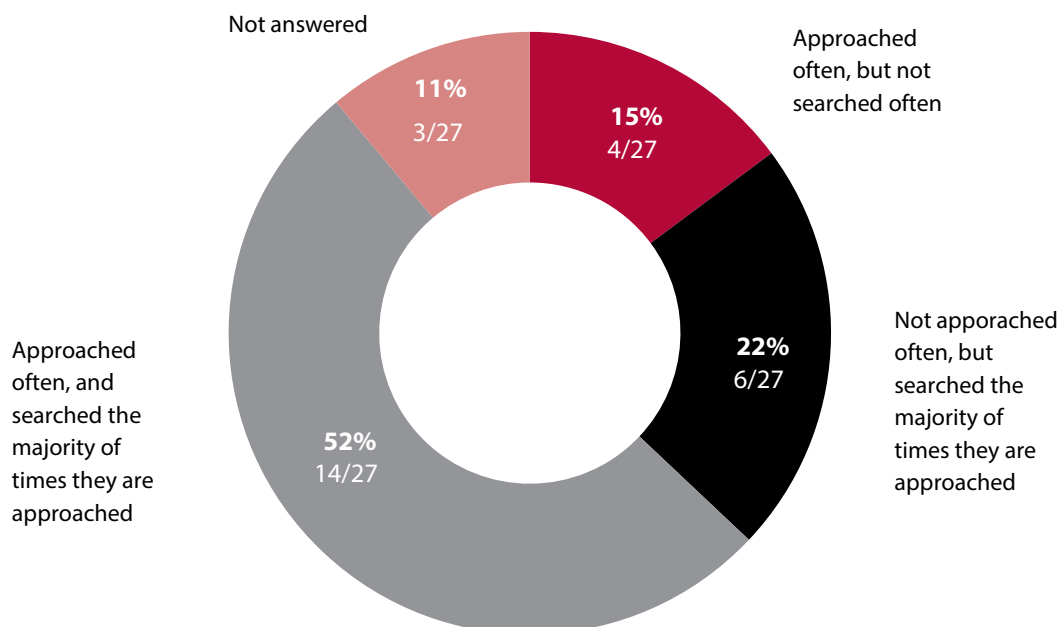


FIGURE 1: MOST PARTICIPANTS ARE OFTEN STOPPED AND SEARCHED.

<sup>13</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 21 ('LEPRA').

<sup>14</sup> See Smart AJ in *R v Rondo* [2001] NSWCCA 540 ('Rondo'), [53]; *Hyder v Commonwealth of Australia* [2012] NSWCA 336; *Attalla v State of NSW* [2018] NSWDC 190 ('Attalla').

<sup>15</sup> See for example Tamara Walsh, *No Vagrancy: An Examination of the Impact of the Criminal Justice System on People Living in Poverty in Queensland* (Report 2007); Suzie Forell, Emily McCarron & Louis Schetzer, *No home, no justice? The legal needs of homeless people in NSW* (Report 2005); Law and Justice Foundation of NSW, Sydney; Forrest Stuart, 'On the streets, under arrest: Policing homelessness in the 21st Century' (2015) 9 *Sociology Compass* 11, 940; Robert Hartmann McNamara, Charles Crawford and Ronald Burns, 'Policing the homeless: Policy, practice and perceptions' (2013) 36 *Policing: An International Journal* 2, 357.

<sup>16</sup> The Hon Bob Debus, NSWPD, Legislative Assembly, 17 September 2002, 4846.

<sup>17</sup> Vicki Sentas, 'Policing by numbers: why targets lead to abuse of power' *The Sydney Morning Herald* (online, 14 February 2020) [www.smh.com.au/politics/nsw/policing-by-numbers-why-targets-lead-to-abuse-of-power-20200213-p540kn.html](http://www.smh.com.au/politics/nsw/policing-by-numbers-why-targets-lead-to-abuse-of-power-20200213-p540kn.html) ('Sentas').

Despite statutory and common law safeguards, a majority of interview participants raised examples about the use of search powers. Particular concerns were raised about whether police had properly formed a reasonable suspicion prior to exercising their stop and search powers or whether these decisions were based on assumptions, prejudices and stereotypes.

### 2.2.1 Suspicion of drug offences

Several participants felt that police were making decisions to stop and search them based on their general appearance, the fact they were in an area known for high drug activity or appeared to be under the influence of drugs. These factors alone may not be sufficient grounds for a lawful search.

#### Greg

*Greg felt he was targeted by police based on his appearance. 'I have been targeted for the way I look plenty of times. I am pretty aware of that. I have been hassled by them, targeted for no good reason.'*

*A number of times police approached him and advised, 'we are detaining you for the purpose of a search'. Greg was not sure if he was actually being arrested or unlawfully detained in these interactions, as the police did not explain the basis for their suspicion, and did not engage in any conversation with Greg prior to informing him of their intention to conduct a search. Greg felt that police often used the 'excuse' that, based on the area that he is in and his appearance, they had a reasonable suspicion that Greg was either possessing or intending to purchase drugs.*

*'It's usually around drugs, that's the excuse they use. They said, 'We have reasonable suspicion to think you've got drugs on you'. Then they grabbed me, threw me up against the wall, pin me down and handcuff me.'*

#### Yael and Frank

*Yael is an Aboriginal man who lives in the inner city. He has had frequent interactions with police around his home and local community. Yael reported that police often tell him that being in his home suburb gives rise to their reasonable suspicion that he is committing an offence. Police have said they believe he either possesses drugs or has plans to purchase them in the near future. 'I live in [suburb] and they say you are here to score drugs cause of the drug houses. It's [suburb]: every second house is a drug house.'*

*Even though he tells police that he lives in this street, as evidenced by the address on his licence, police insist they have a legal right to conduct a personal search. Even though Yael does not believe police, he consents to being searched because he fears the consequences if he does not comply.*

*Frank is an Aboriginal man with similar experiences dealing with police in the inner city. He lives and attends community services in the inner city. Frank told us that he gets searched by police every single time he is approached. He also said that police give little reason for the searches, other than stating, 'we believe you may be in the area to purchase drugs.' This is despite Frank living, and receiving services, in this area, which he has explained to police on several occasions.*

*'They pulled me over way too many times, sometimes it was like 6 times in one day and it's just come on man, it's like the only reason I could see is because I'm Indigenous you know.'*

Case law establishes that a 'reasonable suspicion' must arise from something more than merely being present in an area known for drug activity.<sup>18</sup> However, many of the people we spoke to reported police stating that the justification for their search was the person's presence in a known drug area, or their suspicion that the person either possessed drugs or were looking to purchase drugs.

### 2.2.2 Reasonable suspicion based on an individual's appearance

The majority of interview participants (18) described feeling targeted because of the way they look, and because they are experiencing homelessness.

#### Ryan and John

*Ryan spent a significant period of time sleeping rough in and around the inner city. His experience was that he was approached and searched by police nearly every day during this time. He reflected: 'You'd think after a week of them asking you the same question every day, then they'd know that you're homeless and you're just sitting there, not doing anything wrong, but it's not like that.'*

*'You try to explain to them, "Listen, I'm just sitting here, I've got nowhere to live". 'Automatically, because you've got a criminal history, you've got tattoos, you're Aboriginal, they assume you're selling drugs or you're planning to rob people. You can't be just sitting there just doing your own thing.'*

*John had been living in an inner-city specialist homelessness service for 6 months after a period of street sleeping. He stated that he has been stopped and searched by police multiple times in the preceding few months, in and around the service where he was staying. 'I have been here since last August. There are horses every day, there is foot patrol, there are vans, there's the cars, they're everywhere, all the time.' He said that police do not give a reason as to why they are searching him and do not provide the basis for their reasonable suspicion, other than asserting they have the right to search him.*

Another common theme among participants was the perception that police had already made the decision to conduct a personal search before engaging with them. Many of the participants took it for granted that they will be searched every time they are approached by a police officer.

#### Isaac and Arlo

*When asked whether he was searched every time he was approached by police, Isaac responded emphatically, 'every single time'. He feels as though he can tell that police plan to stop and search him when he sees them walking down the street towards him, and this decision is already made based on his location in the inner city and his appearance. 'I see them come down the street, and I'm like, "Oh no, I'm going to get pulled up here". I knew I was going to get pulled up.'*

*Isaac said that on one occasion, police approached him in a busy public area and asked, 'what are you doing?'. He told them he was just using Facebook on his phone. Despite this legitimate response, Isaac reported that police immediately proceeded to conduct a personal search.*

*'They'll just go through everything, pockets, bags, and I'll say, "I've only ever been in trouble once before, I've got no drugs on me", but they still want to go through everything, search me, turn my socks up inside out, take my shoelaces out of my runners...'*

*He felt this elaborate personal search was unnecessary and designed to embarrass and humiliate him. He also felt that police were determined to find drugs on him, although he did not have any and did not believe police had a factual basis for their suspicion.*

*Arlo has a similar experience of police.*

*'I was standing at [train station], lit a cigarette. The copper said "What are you doing smoking here?" and I said "What do you mean? I'm just having a cigarette". I said "Look at all these other people having a cigarette, why you gotta pick me out? It's cause I've got tattoos isn't it?" He says "Listen grandpa", while he's bending my arm, "don't go telling us how to do our job". We all get picked on. As soon as they see the tattoos. They know the difference between a normal tattoo and a jail tattoo.'*

Participants also reported that police often target areas in which homeless people are present, including places where they receive services and support.

#### Fred and Barry

*Fred witnessed police searching every person present at different homeless encampments. Fred told us, 'there was like 25 police officers up at the park today, searching every single homeless [person]'*

*Barry recounted that during the time he was staying at a specialist homelessness service, police were entering the service and searching the rooms of residents, sometimes up to three times per week. Barry reflected that the searches were conducted on every single resident's room, regardless of whether the resident was present or not and without any apparent justification.*

Putting aside the lawfulness or otherwise of these practices, according to participants these sorts of practices have serious implications on their sense of safety and their ability to access services, which may be fundamental to their recovery. In our view, police should be required to consider these potential impacts on a person experiencing homelessness before exercising stop and search powers, and powers of arrest and giving move on orders.

Several people we spoke to believed that over-policing of people sleeping rough and the excessive use of stop and search powers was motivated by a 'zero tolerance' attitude to illegal drugs. If this is the case, we believe that this approach undermines the proper use of police discretion.<sup>19</sup>

#### Darren

*'[Police] use the users to get to the dealers. That's how they try to get the big fish, by getting the little fish, hoping they will do people in if they scare them enough.'*

#### Josh

*'[Stops and searches] are a scare tactic. Zero tolerance doesn't do anything, but they still go to extraordinary lengths [to find drugs in someone's possession]. What do they think? The end user is going to say, 'Oh yeah, I get it from this guy, he lives here, here's his number'. What do they think is going to happen by them attacking and focusing on the end user? It doesn't do anything.'*

#### Frank

*Frank said he saw cases in which police appeared to target the safe injecting centre and the methadone clinic that he attends. He reported seeing police searching every individual at those premises on several occasions.*

The experiences of the people we spoke to indicate a need for greater police and community training about legal standards and the use of discretion, in particular a greater understanding and awareness of the requirements of reasonable suspicion.

Isolated observations of a person being in a known drug area or of their appearance do not necessarily form a sufficient basis to support a 'reasonable suspicion' to conduct a stop or search.<sup>20</sup> Police should exercise their discretion to avoid unnecessary interference with vulnerable people, especially when the outcome would only lead to a fine or a charge for a minor offence. Where required to act, police should do so in a way that minimises the use of force and coercive powers such as searches of people and their belongings.

### 2.2.3 Strip searches conducted in public

Of the 27 participants we interviewed, 10 gave examples of being strip searched in public, some on multiple occasions. This raises concerns about:

- the grounds upon which the **reasonable suspicion** to justify the exercise of stop and search powers is based; and
- whether officers are **adhering to the safeguards** set out in s 31 of LEPR.<sup>21</sup>

Section 31 clearly states that a person should only be strip searched if police suspect, on reasonable grounds, that a strip search is *necessary*, and that the *seriousness* and *urgency* of the circumstances mean that the search is *necessary*. As Redfern Legal Centre has highlighted, 'the power to strip search is deliberately framed with strong language: necessary, serious, and urgent.'<sup>22</sup>

All but one participant who reported being subjected to a strip search in a public space on more than one occasion identified as Aboriginal or Torres Strait Islander. This reflects the known disproportionate use of the power to conduct strip searches on Aboriginal and Torres Strait Islander people.<sup>23</sup>

19 David Dixon, 'Beyond zero tolerance' (Paper presented at the 3rd National Outlook Symposium on Crime in Australia, Canberra, 23 March 1999).

20 *Rondo* (n 14); *Atalla* (n 14)).

21 Section 31 of the *Law Enforcement Powers and Responsibilities Act 2002* (LEPRA) limits the circumstances in which police may lawfully conduct a strip search, as follows:

Where the search is carried out at a police station or other place of detention, the police officer must suspect on reasonable grounds that the strip search is necessary to achieve the objective of conducting any kind of search.

Where the search is carried out in any other place:

the police officer must suspect on reasonable grounds that the strip search is necessary to achieve the objectives of conducting any kind of search, and the seriousness and urgency of the circumstances mean that a strip search is necessary.

22 Redfern Legal Centre, 'Strip Searches and the Law in NSW' (Web Page, Accessed 13 April 2021) 6, [rlc.org.au/publication/strip-searches-and-law-nsw](http://rlc.org.au/publication/strip-searches-and-law-nsw)

23 *Sentas* (n 17)

### Neil, Oliver and Roger on strip searches

Neil reported that every time he gets approached by police, he is strip searched. Although he admits to having a history of substance abuse and prior convictions for possession, he is currently on a substitution program and is not using illegal drugs. Neil told us that even though he informs police of this, they continue to assert that they suspect he is carrying drugs, and perform a strip search. Neil said that he complies because he does not feel he has any other option. 'Every time, I'm strip searched. I've been strip searched in public and it's degrading, because people see that.'

Oliver is an Aboriginal man who told us that police usually start out acting respectfully and appropriately, until they find out his name and come to know of his previous criminal convictions. Despite taking place over two decades ago, Oliver feels that his past still haunts him today, and that police use his previous charges to surpass the need for reasonable suspicion. He said, 'once they find out my name, they say "Have you got any drugs on you? Have you got any weapons on you?" And they go through your stuff, go through your car, pat you down, strip you...'

Roger is an Aboriginal man who has a long history of police interaction. He reported that he feels targeted because of his Aboriginality and his previous criminal convictions. He also said the increased police attention that he receives feels like targeting. He told us that he feels this over-policing has contributed to him being stuck in a cycle of incarceration for many years. Rogers recounted: 'I've been taken down to my boxers, to my undies, on train stations... get taken down laneways, and stripped, take your undies down to your knees...'

An Aboriginal woman, "Monica" reported that she had been strip searched eight times over the past three months at a railway station, without appropriate privacy measures in place. None of these searches resulted in any prohibited items being found in her possession or any charges being laid.

Recounting her experience, Monica said:

*If I'm laying down in the park and that, if I'm just laying there just enjoying it and having a cigarette, they [The police] will come up and go 'What are you doing here? How long have you been here? Why are you here? Where do you live?' and then they just start strip searching.*

The experiences of the people we spoke to are consistent with recent reporting about the overuse and misuse of strip searches and their humiliating and degrading impact.<sup>24</sup>

#### 2.2.4 Effects of invasive and negative interactions on people experiencing homelessness

It is important to highlight the negative impact that interactions with police, particularly those resulting in a personal or other search, have on people sleeping rough. Many people sleeping rough have significant histories of trauma and abuse, including interpersonal violence. Many people experiencing homelessness have had a lifetime of feeling unworthy and undeserving. For those who have set themselves on a path of recovery and are working towards clear goals, negative interactions with police can cause re-traumatisation thereby undermining the recovery process.<sup>25</sup>

### Tony

Tony explained that his interactions with police have a significant impact on his recovery and his perception of himself and the world. He described the process of re-traumatisation when police speak to him in a negative and derogatory way. He told us that these interactions make him feel as though he can't move on and can't succeed in his recovery.

Tony said that the effect this has on him is that he starts to believe what the police say about him; he doubts whether he is worthy or is capable of recovery. He explained that this brings up feelings of hopelessness and unworthiness and he feels some police go out of their way to ensure people experiencing homelessness are left feeling this way about themselves. Tony explained:

*'If things are going good and you have an interaction with police which isn't a good interaction, I suppose it brings back a bit of old things that may have happened in the past and it sort of cuts you down a few pegs. You can't feel like you can move and go back to thinking you can't make it and you end up being that person that they might continually tell you that you are, which is no good. When you get told that you are no good or you're hopeless, that's where you end up going back to.'*

<sup>24</sup> Ibid.

<sup>25</sup> New South Wales Government: Family and Community Services, *Protocol for Homeless People in Public Places: Guidelines for Implementation* (Practice guidelines, May 2013).



Photo by Keith Saunders.

### Gareth

*Although Gareth has been abstaining from drugs and alcohol for 18 months, he still feels anxious walking around in the inner city due to his past negative interactions with police. 'It causes me anxiety. From my past dealings with them, like I still get that thing, that anxious butterfly feeling when I see them even though I know, logically, that I haven't done anything wrong. It brings up that past stuff I suppose. I think that stuff is going to follow me for a while.'*

PIAC supports amendments to LEPR and NSW Police Standard Operating Procedures (SOPs) to provide greater clarity to police and community about what constitutes a strip search and ensure strip searches are conducted as a last resort, and in the least invasive way possible. This is consistent with the recommendations of the Inquiry into NSW Police Force strip searches practices by the Law Enforcement Conduct Commission (LECC). LECC concluded, amongst other things, that LEPR, NSW Police Force SOPs, and other guidelines should be amended to make clearer what constitutes a strip search, that officers must conduct the least invasive kind of search practicable in the circumstances, and that reasons for conducting a strip search should be recorded on Body Worn Video camera when practicable to do so.<sup>26</sup>

PIAC supports the implementation of the recommendations from the 'Rethinking Strip Searches by NSW Police' report.<sup>27</sup> In particular, we support recommendation 1, that:

*The definition of strip search should be amended to include practices such as a police officer pulling back, rearranging or lifting up a person's clothing and inspecting any area of the body unclothed or in underwear.<sup>28</sup>*

And recommendation 2, that:

*Strip searches should be limited to circumstances where:*

- (a) There are reasonable grounds to suspect a person possesses a dangerous weapon, and*
- (b) Following a personal search there are reasonable grounds to believe the person is concealing a weapon, and*
- (c) There are reasonable grounds to believe that a strip search is necessary to prevent an immediate risk to personal safety or to prevent an immediate loss or destruction of evidence, and*
- (d) The reasons for conducting the search are recorded on Body Worn Video before the search commences.<sup>29</sup>*

<sup>26</sup> Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip searches practices* (final report, December 2020). See in particular recommendation 1-4, 6, 8, 14-16, 18-25.

<sup>27</sup> Michael Grewcock and Vicki Sentas (Report, August 2019).

<sup>28</sup> *Ibid* 8.

<sup>29</sup> *Ibid*.

## 3. Move On Directions

### 3.1 Police 'move on' powers

Police officers are permitted to issue a person with a move on direction under section 197 of LEPR if a police officer has reasonable grounds to believe that a person's behaviour or presence in a public place is:

- obstructing people or traffic;
- amounting to harassment or intimidation;
- causing fear or likely to cause fear to a reasonable person; or
- for the purpose of unlawfully supplying or obtaining illegal drugs or intending to unlawfully supply or obtain drugs.<sup>30</sup>

The direction given must be reasonable for the purpose of reducing or stopping the obstruction, harassment, intimidation or fear, or stopping the supply or receipt of illegal drugs.<sup>31</sup>

Police are also permitted to issue an intoxicated person a move on direction under section 198 of LEPR if a police officer believes on reasonable grounds the person's behaviour, as the result of intoxication, is likely to either cause injury to other people, damage to property, or risk public safety, or is disorderly.<sup>32</sup> The direction must be reasonable in the circumstances for the purposes of preventing injury, damage or a risk to public safety, or preventing the continuance of disorderly behaviour.<sup>33</sup> This section also states the period of time during which a person may be lawfully directed not to return to a public place is not to exceed six hours.<sup>34</sup>

The *Sydney Public Reserves (Public Safety) Act 2017* (NSW) ('Martin Place Act') was introduced as a response to the 'tent city' in Martin Place during 2017. It confers much broader powers to police in relation to giving people directions in the Martin Place Reserve area. Under s 7 (1), a police officer may give a direction to a person who is in the area defined as the Martin Place Reserve if the police officer believes on reasonable grounds that the person's occupation of the reserve:

- materially interferes with the reasonable enjoyment of the rights of the public in relation to the reserve; or
- is unlawful.

#### 3.1.1 Quotas

Police have a quota system for the number of move on directions administered annually.<sup>35</sup> As noted above, the use of quotas in the administration of police powers has the potential to undermine legal safeguards by introducing operational imperatives which have no legal basis or relevance, leading to the improper and potentially unlawful use of police powers.<sup>36</sup>

30 LEPR (n 13) s 197(1).

31 Ibid s 197(2).

32 Ibid s 198 (1).

33 Ibid s 198 (2).

34 Ibid s 198 (3).

35 Jessica Kidd, 'NSW Police set quota for 241,000 personal searches and strip searches in 12 months, documents reveal' *The Sydney Morning Herald* (Online, 13 February 2020) [www.abc.net.au/news/2020-02-13/nsw-police-strip-search-quota-revealed-in-foi-documents/11960682](http://www.abc.net.au/news/2020-02-13/nsw-police-strip-search-quota-revealed-in-foi-documents/11960682)

36 *Sentas* (n 17).



### 3.2 Experiences of move on directions

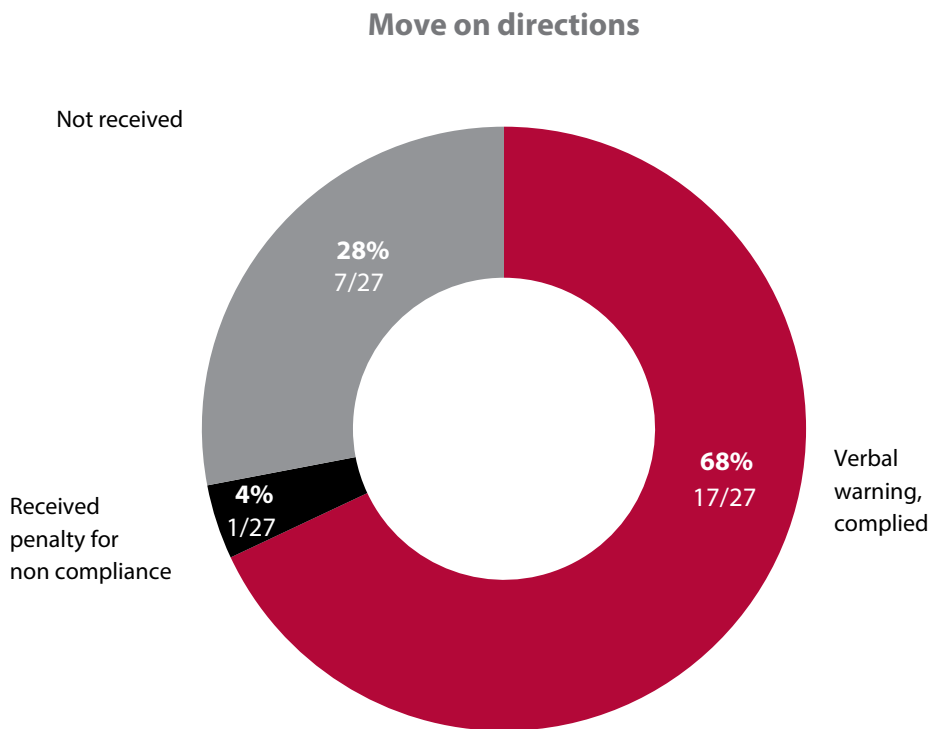


FIGURE 2: MOST PARTICIPANTS HAVE RECEIVED MOVE ON DIRECTIONS AND COMPLIED.

Of those who received a verbal warning to move on and complied, 73% (14 participants) were concerned about the lawfulness of the order.

#### **Omar, Fadi and Evan on move on directions**

*Omar recounted that one day, he was sitting on a wall waiting for his friend to arrive, when all of a sudden, police approached him. When they asked him why he was sitting there, he responded, 'I'm just sitting there, waiting for my friend'. He described police continuing to question him about what he was doing and why he was sitting where he was, before issuing him with a move on order. When he asked what the reason was for the order, police responded, 'You just have to move on'.*

*Fadi told us he receives move on orders frequently, often with little reason or justification. He recounted: 'The last one was a classic. They approached me because I was dancing, told me to move on, that I was causing a scene'.*

*Evan is dependent on local services to provide him with food as he has no income of his own, and is not eligible for social security payments. He told us that he tells the police officer, 'I would rather go to jail than be sleeping rough. At least I would get fed. I'm not moving on from here, if you want to move me on, you'll have to arrest me'. He reported that usually police are a little taken aback by his response and do not pursue the move on order.*

In general, the participants to this study were unsure as to when a move on order direction could lawfully be given. Their experiences also demonstrate that police are often confused about when they can lawfully exercise a move on power and how such a direction should be given. In some instances, it appeared that police were using the threat of a move on direction as an additional enforcement tool in circumstances where a direction was not otherwise justifiable. This threat is distinct from a police officer issuing a formal warning to a person before issuing a move on direction, as required by legislation.<sup>37</sup>

This is consistent with the findings of previous research that details both the prevalence of improper exercise of move on powers and the lack of clarity about when a move on direction may be lawfully made.<sup>38</sup>

37 LEPRA (n 13) s 198 (6).

38 Tamara Walsh and Monica Taylor, 'You're Not Welcome Here: Police Move On Powers And Discrimination Law' (2007) 30 *UNSW Law Journal* 151.

### 3.2.1 Move on directions in parks and reserves

Although the powers granted by the Martin Place Act were not ultimately used to dismantle the Martin Place ‘tent city’, participants recounted that police often claim to have powers similar to those granted under that Act (for example, to protect ‘public enjoyment’ of the area) in areas other than Martin Place. This is concerning, given that the Martin Place Act applies only to the precinct of Martin Place.

#### Eric and Daniel on move on directions in parks and reserves

*Eric shared his experience of being moved on from several different parks in the inner city. He also recounted one experience of being placed under arrest for being present in an inner-city park and being told by police that not only are people sleeping rough not allowed to sleep in these parks, they are not allowed to sit there either. ‘The copper that arrested me that day, he told me that we’re not even allowed to sit there. We end up having an argument, because it’s like, where else are you supposed to go... there’s only a few spots down here that you can find that are under cover... and then most of the spots are taken...’*

*Daniel told us that while the inner-city parks used to be a safe space for people sleeping rough to escape police attention, this has recently changed. ‘They’re really coming down hard on us, they’re not leaving us alone like they used to, they’re taking our bags off us now, tipping our bags upside down... they’re really pushing down the park real bad, pushing us away from the park, and they know that it’s our safe haven, down in the park, our hideaway, it’s our place of safety in this world, it’s our time-out place... a lot of homeless people use those parks, for time-out, away from everyone, to think about their things, to try not to be down...’*

Anecdotal evidence suggests that the title of the legislation, specifically, the words ‘parks and reserves’, is causing confusion amongst both people experiencing homelessness and police officers as to the application of the Martin Place Act outside of the Martin Place Reserve. We believe that in some instances, move on powers in relation to ‘interference with public enjoyment’ have been applied broadly to all inner-city parks and reserves as a result. The Martin Place Act was introduced precipitately and is causing confusion. It is unnecessary since NSW police officers already have adequate powers to protect the enjoyment of public places by all, and should be repealed.

### 3.2.2 Impact of move on directions on people sleeping rough

For people sleeping rough, move on directions can have a direct impact on their safety and security.

#### Ryan on move on directions

*Ryan told us that move on orders disrupt the survival measures that a person has to take when they are sleeping rough. He explained that one of the most important tasks in his day is finding a good spot to sleep.*

*‘You want to find a good spot to sleep, somewhere with a bit of shelter, somewhere the ground is soft, so you get there halfway through the day and you sort of like, mark your territory, “This is where I’m sleeping tonight. When you get asked to move on, the next guy is cheering – he just got the best spot.”*

*At this stage, it is often too late in the day to find somewhere else appropriate to sleep, and Ryan ends up sleeping in spaces that are unsafe, or that have no protection from the rain, wind, or other people.*

Move on directions can also prevent people from accessing services. While even court-imposed sanctions on liberty (such as bail conditions) would generally not prevent a person from accessing essential services, for people experiencing homelessness, a move on direction can result in the imposition of disproportionate restrictions and in some cases exclusion from essential services.

#### Mary on access to essential services

*Mary has a public housing tenancy, but has a long history of homelessness, drug dependency and interactions with police. She told us that she often gets move on orders when she is approached by police at a large metropolitan train station.*

*This can have significant impacts on Mary’s life and her ability to carry out day to day activities and engage with services, as this railway station is the most accessible public transport option available to Mary: ‘I have to wait until after 8 o’clock in the morning before I can go down to [the train station]. Any of my appointments. I always say to them “I have to wait until after 8 o’clock to get the train, if I go down now I’m going to get arrested.”*

*Mary reported that she often misses appointments and is unable to access services because she has received move on orders, sometimes the previous day, that restrict her movement through the station.*

One provider, operating a homelessness hub in an inner-city suburb, explained that their service has been directly affected by the use of move on directions. The service provider observed that local Aboriginal people did not attend the hub in the expected numbers. Local people experiencing homelessness reported they were interested and appreciated the event being held, but that move on directions were preventing them from attending. Indeed, the night before the event, local police attended the site and surrounds, issuing people with move on directions and indicating it prevented them from being present in the area for 12 hours.

Legislation is clear that a move on direction given to a person who is intoxicated, under s 198, preventing a person from returning to an area must not exceed six hours.<sup>39</sup> However there is no such corresponding time limit for move on directions given under s 197. Instead, the legislation states that move on orders are to be administered in a way that is 'reasonable' and 'proportionate'. It is clear from participant reports that these considerations are not always met. According to participants in this report, police are giving move on directions under s 197 for a 24-hour period as standard practice. This has a detrimental effect on people experiencing homelessness who might need access to specialist services in a certain area.

The experiences of the people we spoke to point to a need for more training and/or a greater commitment by police to ensure that all move on directions are consistent with legal safeguards of reasonableness and proportionality in the circumstances. This would also mitigate the impact on access to services.

## 1 Recommendation 1

Insert time limits for move on directions given under s 197 of the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA)*

Insert a new subsection under s 197 of LEPRA that stipulates that the period during which a person may be directed not to return to a public place is not to exceed 6 hours. This is commensurate with time limits under s 198.

## 2 Recommendation 2

Amend s 197 of LEPRA to mandate consideration of access to the area for lawful purposes including access to essential services

Insert new subsections under s 197 of LEPRA stipulating that:

- (a) in determining whether to make a move on direction, a police officer is to consider the ability of a person to enter the area for any other lawful purpose such as accessing essential services
- (b) if making a move on direction, when determining the appropriate length of time a person must not enter the area, a police officer is to consider the ability of a person to enter the area for any other lawful purpose such as accessing essential services.

## 3 Recommendation 3

Repeal the 'Martin Place Act'

Repeal the *Sydney Public Reserves (Public Safety) Act 2017 (NSW)* ('Martin Place Act').

## 4. Use of Force

### 4.1 Current Legal Framework

Police are able to use only 'such force as is reasonably necessary' in the execution of their duties, including in the course of stops, searches and arrests.

Police are also instructed to avoid excessive application of force by using the 'minimum amount of force' that is both

- 1) appropriate for safe and effective performance of duties and
- 2) proportionate to the risks police face.<sup>40</sup>

### 4.2 Participants experiences of use of force

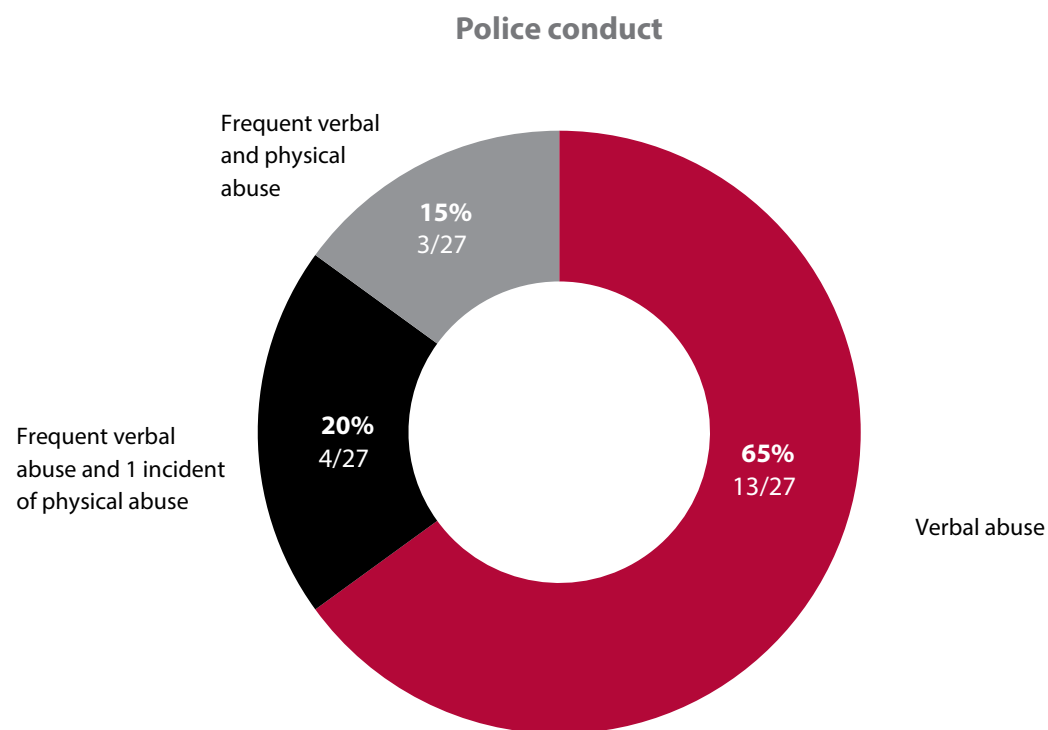


FIGURE 3: MOST PARTICIPANTS REPORT IMPROPER POLICE CONDUCT

The majority of participants to this study had experienced instances of unreasonable police conduct, including verbal and/or physical abuse.

40 Ibid s 230.; NSW Police Force 'Handbook' (Handbook, October 2019) [www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0014/631004/nsw\\_police\\_force\\_handbook.pdf](http://www.police.nsw.gov.au/_data/assets/pdf_file/0014/631004/nsw_police_force_handbook.pdf)

### Joel, Yardin and Cara on verbal and physical abuse

When asked about police being verbally abusive or demeaning in the way they spoke to him, Joel responded, 'There is always verbal abuse, that's pretty standard. They'll say anything to get you going, to try and get you to react badly. "What are you doing? Where is it? You're lying".'

Yardin is an Aboriginal man who has a colostomy bag as the result of previous medical complications. He recounted one incident where the owner of a store had called for police assistance as the owner suspected Yardin of shoplifting. Yardin maintains that he did not shoplift, and no charges followed his arrest.

Yardin says, 'When police showed up they just threw me up against the wall and my colostomy bag ripped off. They chucked me in the wagon and then they had to put me in the cell and I've got no bag on, so it's going everywhere.'

Yardin was not provided with medical assistance and was not able to replace his colostomy bag until he was released some time later. Yardin feels as though the arresting officer now targets him, performing stops and searches whenever he sees Yardin and stating, 'I know who you are'. Yardin also reported that he feels police intentionally try to escalate situations in order to provoke him to react badly; for example, stamping on his bare feet during an arrest and pinning him to the ground forcefully.

Cara is non-binary/gender diverse and has multiple mental health concerns, including drug dependence and mental illness. Cara was staying at a residential homelessness service in the inner city, when she was asked to temporarily leave the service following an altercation with another resident. When she refused to leave, police were called to remove Cara from the service. Staff from the service reported being horrified at Cara's treatment by police. They told us that police shoved Cara against a metal gate and used excessive force in placing handcuffs on her and removing her from the premises.

### 4.3 Use of body worn video in preventing unreasonable uses of force

The use of Body Worn Video (BWV) cameras by police officers is authorised in NSW under section 50A of the *Surveillance Devices Act 2007*. Under (1) (a) (b) and (c), police officers can use BWV if they are acting in the execution of their duty, if the use of the camera is overt, and the officer is in uniform or has provided evidence they are a police officer. BWV cameras as operational equipment have been rolled out in NSW since 2014 following a pilot project deemed successful by NSW Police Force. Police agencies argue that BWV has the potential to improve community and officers' safety, gather objective evidence, lower the incidence and escalation of violence, and encourage cooperative interaction.<sup>41</sup>

#### Brad

Brad feels as though in the past few months, police have been interacting more positively with people sleeping rough, due to the changes in body worn cameras. 'Because now, they have cameras. Before, they didn't have cameras, they were really bad. Now, they have cameras, they can't do something wrong.'

BWV has the potential to de-escalate certain situations and encourage greater accountability and transparency. However, we are concerned that the discretion afforded to police as to when they activate body worn cameras undermines their effectiveness in preventing the unreasonable use of force. Police also have discretion as to whether footage captured on BWV should be 'tagged' as having evidentiary value. This is a procedural fairness issue, as overwhelmingly, footage is relied upon in circumstances only where police believe it will strengthen the case for the prosecution.

#### Yousef

Yousef says he is searched every time he is approached by police after being the victim of unreasonable force on a number of occasions. 'That's why I say turn the cameras on. I got searched by one bloke and I said, "Turn on the cameras", and he just laughed.'

When asked whether he thought having body worn cameras had changed the way police interact with people sleeping rough, Yousef said, 'No, because sometimes they don't turn them on. If they don't want to get caught they won't turn them on, and also some people don't know to tell them to turn it on.'

41 NSW Police Force, *Body Worn Video Brochure* (Brochure, 2018) [www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0008/586484/Updated\\_Brochure\\_BWV.pdf](http://www.police.nsw.gov.au/_data/assets/pdf_file/0008/586484/Updated_Brochure_BWV.pdf).

PIAC supports changes to the standard operating procedure to ensure greater clarity: for example, that police officers are required to turn BWV cameras on when requested to do so by a member of the public, before and during any encounter with a member of the public who may be vulnerable, and prior to any use of police power or use of force. Discretion as to whether footage might be of evidentiary value should also be removed, and footage should be made available to accused persons and their legal defence upon request.<sup>42</sup>

Removal of police discretion is a first step towards clear regulation for the use of BWV cameras. Further community consultation, including stakeholders such as NSW Police and community legal centres, should guide whether other legislative or policy reforms are required.

## 4 Recommendation 4

### Removal of police discretion in regards to body worn video (BWV) cameras

Amend Standard Operating Procedures to remove police discretion for the use of BWV cameras by developing clear, robust, publicly available guidelines around activation, tagging, retention and release regarding BWV camera use and footage by police.

#### 4.4 Effect of the unreasonable use of force

Several participants described the impact of what they felt was unreasonable use of force by police. In addition to the physical effects, participants detailed the mental and psychological effects: feelings of powerlessness, injustice and hopelessness were commonly cited. In addition, participants said that the repeated negative treatment by police over the course of many years has contributed to feelings of disenfranchisement and social isolation, and made them distrusting and paranoid about interacting in any way with government officials.

##### Ethan's story

*'I just felt worried for my safety, because like, I was told to move on from the park and we were just sitting there, but because I was a bit talking back to the officer, saying that there's nowhere else to go, he just verbally started abusing me... I felt like I was in danger. The police man told my friend to leave, and I said, don't leave, I want a witness, because I was feeling anxious, because I was thinking, he's got a gun, and the other police are going to listen to what the police officer has to say, that's what they do in every sort of case, they don't listen to what the victim...'*

#### 4.5 Limitations of complaints mechanisms

The effects of poor policing and police attitudes towards people experiencing homelessness are compounded by the significant limitations of complaints mechanisms which further entrench feelings of powerlessness.

None of the participants who reported that they had been physically or verbally abused by a police officer had made a complaint or considered taking legal action. They explained that they saw no point in making a complaint because they had no faith that a just outcome would be obtained, and feared reprisal by police if they were to pursue a complaint.

##### Greg's story

*'I have been held in police cells over the years and absolutely bashed like to the point where I've needed hospitalisation, but there is no point saying anything, wasting my time like I'm just making it worse for me in the future. If I make a complaint, the officer next to him is gonna back him up, he's not gonna back me up, why would he? That's just the way that stuff works. It's always been like that. In the past when I have complained, I've been harassed more definitely. The more you draw attention to yourself the more they are going to pick you out, single you out. That's been my experience my whole life with them.'*

In part, these responses appear to reflect the disempowered position of people experiencing homelessness and their low expectations that their rights will be upheld.

<sup>42</sup> Redfern Legal Centre holds similar views and recently concluded that 'police discretion to activate [the cameras] should be removed and for there to be robust operational guidelines around activation, tagging, retention and release to promote greater police accountability and transparency.' See Michael McGowan, 'NSW Police are told to film strip searches, documents reveal', *The Guardian* (online, 2 August 2019) [www.theguardian.com/australia-news/2019/aug/02/nsw-police-are-told-to-film-strip-searches-documents-reveal](http://www.theguardian.com/australia-news/2019/aug/02/nsw-police-are-told-to-film-strip-searches-documents-reveal). See also Redfern Legal Centre, 'RLC obtains standard operating procedures guiding the use of police body worn video cameras', *Redfern Legal Centre Website*, (Web Page, 2019) [rlc.org.au/article/rlc-obtains-standard-operating-procedures-guiding-use-police-body-worn-video-cameras](http://rlc.org.au/article/rlc-obtains-standard-operating-procedures-guiding-use-police-body-worn-video-cameras).

While people sleeping rough may be able to access legal support to bring a civil claim for police misconduct through community legal services such as Redfern Legal Centre or the Homeless Persons' Legal Service, this remains a difficult course for many to pursue. Litigation is often time-consuming and requires sustained engagement with a legal team over an extended period of time. This can be very difficult for people who are sleeping rough and experiencing crises. The litigation process may also cause re-traumatisation.

It also reflects that there is no specific complaint procedure about adherence to the Protocol that affords anonymity to complainants. All participants were informed of the option to make a complaint to the Law Enforcement Conduct Committee (LECC), but were also advised that it would be very difficult for the LECC to investigate or take further action if they were unable to provide details of the alleged misconduct. By identifying the specific incident (necessary to enable a proper and fair investigation), the police would, inevitably, be able to identify the complainant.

Several people we spoke to were under other criminal justice enforcement conditions, such as parole or extended supervision orders. They expressed fears that complaining about police would draw attention to themselves and may have consequences for their conditional liberty.

PIAC believes there is value in developing stronger accountability mechanisms for all signatories of the Protocol separate from existing LECC complaint processes. An independent complaint mechanism, separate from signatories and able to investigate anonymous complaints, would assist in stronger implementation of the Protocol and better outcomes for people experiencing homelessness. This would provide more opportunities to resolve concerns without litigation and encourage best practice across all signatories.

#### Liam's story

Liam reported his experience as a result of raising a complaint to the local area command. After an incident of unreasonable force during a stop and search, he attended the local police station to file a complaint against the officer. He explains *'I went up and complained to the boss at [suburb] station, saying that I just got abused by one of your officers. Well, two days later, a couple of his friends came down. I was just standing there, having a cigarette, and out of nowhere, there were four police officers surrounding me, dressed in riot gear, demanding me to get up against the wall. It was quite scary, because you don't know whether they're going to stomp on your head or not.'*

PIAC strongly supports the recommendations made by the Committee on Community Services during the Inquiry into the Protocol for Homeless People in Public Places, in particular recommendations 1 and 2 that call for a review mechanism and greater accountability.<sup>43</sup>

The implementation of these recommendations by NSW Government would significantly improve operation of the Protocol and support best practices for all signatories.

## 5 Recommendation 5

### Implement recommendation 1 and 2 from the final report of the Inquiry into the Protocol

Department of Communities and Justice to consider, in consultation with all signatories and stakeholders:

- (a) the development of a review mechanism, implementation plan and accountability mechanisms for signatory agencies to demonstrate that they are implementing the Protocol for Homeless People in Public Places in a consistent way (Recommendation 1)
- (b) the development of an independent complaint mechanism for people experiencing homelessness and other stakeholders with respect to the implementation of the Protocol for Homeless People in Public Places by signatory agencies (Recommendation 2).

<sup>43</sup> Legislative Assembly Committee on Community Services, New South Wales Parliament, *Inquiry into The Protocol for Homeless People in Public Places* (Final Report, 19 November 2020) Report no. 1/57, Recommendation 1 p4, Recommendation 2 p6.

## 5. Mental health and other vulnerabilities

People who are sleeping rough often have comorbid mental health concerns, substance use disorders, complex trauma histories and other intellectual and psychosocial disabilities. People experiencing homelessness may also turn to alcohol or drugs in an attempt to reduce their distress. Data from the 2015 Registry week demonstrates that the majority of people sleeping rough (86%) require support to overcome multiple barriers to access housing, a subset of which (35%) require intensive ongoing support, in some cases for the duration of their lives.<sup>44</sup>

The correlation between mental health disorders and homelessness is well-established.<sup>45</sup> Of the people we interviewed for the present study, 96% (26 of 27 participants) identified that they suffered either from a mental health disorder, substance use disorder, or both. The remaining participant chose not to answer this question. Many participants also identified that they suffered significant past trauma.

### 5.1 Service user experiences

Interactions with police have psychological effects on already vulnerable and disenfranchised people, as a result of explicit or implicit judgment and disapproval. When these interactions lead to criminalisation, this creates additional barriers to social reintegration. Similarly, the criminalisation of a mental health presentation may further isolate and alienate people from suitable supports.<sup>46</sup>

#### Riley, Paul and Vera

*Riley told us that he was suffering from a mental health crisis and, having previously attempted suicide on multiple occasions, jumped in front of an oncoming train in an attempt to end his life. He was detained by staff at the railway station and police were called to attend. 'I've tried to commit suicide a couple of times, I tried to jump in front of a train, but I was pulled up by state rail. When the police came, instead of just talking to me, and saying, we'll go take you to the hospital, I was arrested and taken to the police station.'*

*He was charged with an offence relating to obstructing the train service. No further follow up or referrals were conducted and no assistance provided to Riley in relation to his ongoing mental health issues.*

*Paul reported that he was recently released from prison and was staying in a specialist homelessness service. Paul suffers from comorbid PTSD, substance abuse disorder and other mental health issues. Paul had recently relapsed, had used methamphetamine and was experiencing drug induced psychosis. He reported being disorientated, confused and experiencing hallucinations and paranoia. Paul attended the local police station to seek assistance as he was unable to find his way back to his accommodation and was scared for his safety and his physical wellbeing.*

*'I went to the police that night, and they treated me like shit. I went there for help, because I was spinning out, I didn't know how to get back home and I was scared. I wanted a cup of water, and they wouldn't give me a cup of water, or nothing. In the end, one of them did, he was only a young bloke, but he was really cocky, he was talking down to me for a while. He gave me a cup of water, and when I went to drink it, he grabbed it out of my hands, he wouldn't let me drink it. He was yelling at me.'*

*Paul reported that he felt the police were condescending and offered little assistance, mocking and laughing at him whilst making derogatory comments towards him.*

*Vera is an Aboriginal woman who has multiple compounding mental health issues and learning difficulties.*

*'Yeah, over the last year or two they've been disgusting. The police, the sirens, everything, has been going past, running around, chasing us, for the last year...'*

*Vera told us that on several occasions, in the course of a stop or search, police have brought up extremely traumatic events that have happened in Vera's life, including childhood abuse in her family home, the removal of her children from her care, and previous domestic violence incidents. She complains that police have often made derogatory, sarcastic and offensive comments about Vera and her life. This has made Vera untrusting and unwilling to cooperate with police as she feels deeply offended and disrespected. She also feels as though she, and others, are targeted by police because of their Aboriginality.*

<sup>44</sup> Homelessness New South Wales (n 12).

<sup>45</sup> Nicola Brackertz, Alex Wilkinson and Jim Davison *Housing, homelessness and mental health: towards systems* (Research report, November 2018, Australian Housing and Urban Research Institute) [www.ahuri.edu.au/\\_data/assets/pdf\\_file/0023/29381/Housing-homelessness-and-mental-health-towards-systems-change.pdf](http://www.ahuri.edu.au/_data/assets/pdf_file/0023/29381/Housing-homelessness-and-mental-health-towards-systems-change.pdf)

<sup>46</sup> *Ibid.*; S. Henderson, Mental Health Co-ordinating Council, *Mental illness and the Criminal Justice System* (Report, 2003); T. Butler and S. Allnutt, New South Wales Corrections Health Service, *Mental Illness Among New South Wales Prisoners* (Report, 2003).





Photo by Keith Saunders.

These case studies demonstrate a lack of understanding, empathy and compassion shown by some police officers towards people experiencing homelessness.

Our participants consistently reported that they believe that many police officers who interact with homeless people are young, poorly trained and ill-equipped to respond appropriately to signs of mental health crisis. Others observed that it was usually young officers who were just starting out that approached them aggressively and treated them unfairly.

Several service providers we spoke to suggested a need for police to develop a better understanding of the intersections between trauma, mental health and substance use disorder that commonly affect their clients. These clients tend to have unfavourable interactions with police that result in arrest, often because police do not have the skills required to engage with these presentations and de-escalate potentially harmful situations. This creates a 'revolving door', where people cycle between the criminal justice system and the street, with little opportunity for appropriate and effective intervention.<sup>47</sup> This can have significant emotional and psychological effects on people, who become increasingly isolated, disenfranchised and hopeless with each negative interaction.<sup>48</sup>

The experiences of the people we spoke to suggest a skills deficit in NSW Police and the need for greater training, especially in relation to mental illness and dealing with vulnerable people.

### Regan

*'It'd be nice if they could just understand that, you've just gotten out of jail, you're fighting addiction, you're homeless, 9 times out of 10 they've lost their kids, just to take it easy... but police don't really take mental illness and drug addiction into consideration when they're arresting you... you might be having some sort of drug psychosis and they take it as you're resisting, and the next thing you know, you're getting tasered or bashed. I think they need to get a bit more training on mental illness and the effects of ice. I know a lot of people with mental illness, and when they have ice, it affects them a whole different way. So I think they should do more training.'*

47 Ibid.

48 Ridson Slate, Jacqueline Buffington-Vollum, Wesley Johnson *The Criminalisation of mental illness: Crisis and Opportunity for the Justice system* (Carolina Academic Press, 2013).

**Theo**

*'I just think they need a little more understanding as to where a person is actually coming from, and not just instantly think that you are up to no good. I think a lot of the time when they know you are doing well, they go out of your way to make sure that you are walking away feeling like shit from it all after the encounter.'*

Ideally, first responders to mental health crisis and emergencies should always be health professionals with specific skills and understanding. Providing a health response for people experiencing mental health crisis would deliver better outcomes for people in crisis and reduce the amount of NSW Police resources used to deal with mental health crisis. Adequate funding and resources for NSW Health and other relevant services would allow for health responses to mental health emergencies to be prioritised.<sup>49</sup> The recent \$6.1 million investment for 36 specialist mental health clinicians across 10 Police Area Commands is a step in the right direction.<sup>50</sup> Adequate funding for assertive outreach teams and other SHS would also increase the number of people experiencing homelessness who are able to access support before they reach crisis point.

It is important to recognise, however, that NSW Police are often the first responders to crisis, particularly for people experiencing homelessness in public places, and are likely to continue being first responders for some time. Safety of emergency personnel and community members is also an important consideration. Greater investment in health responses is likely to contribute to reducing the number of situations in which NSW Police are first responders over time.

## 6 Recommendation 6

### Fund NSW Health and related services to increase number of health responders to mental health incidents

Increase specific funding to NSW Health, Ambulance NSW and programs such as Police Ambulance Clinical Early Response (PACER) to increase number of health first responders to mental health crisis and emergencies.

## 7 Recommendation 7

### Stronger accountability and integration of the Protocol into signatories' processes and practices

All signatories to the Protocol, including NSW Police, must be held accountable through mandatory reporting obligations, whole-of-organisation training in trauma-informed care and integration of the Protocol into organisational frameworks and codes of practice.

49 As previously noted by PIAC; Public Interest Advocacy Centre, Submission 21 to Legislative Assembly Committee on Law and Safety, *Inquiry into assaults on members of the NSW Police Force* (September 2020) page 6.

50 Bronnie Taylor, Minister for Mental Health, 'Groundbreaking first responder and mental health collaboration boosted by \$6 million investment' (Media release, 10 August 2020). [www.health.nsw.gov.au/news/Pages/20200610\\_01.aspx](http://www.health.nsw.gov.au/news/Pages/20200610_01.aspx)

## 6. Good Practice

Several interview participants recounted examples of positive interactions with police, and nearly all participants were aware of instances of good practice.

### 6.1 The appropriate use of police discretion

Police discretion is a defining feature of Australia's criminal justice system. It has been recognised that 'strict adherence to the letter of the law in many cases would be too harsh and justice may be better served by not introducing an offender into the criminal justice process'.<sup>51</sup> It is broadly accepted that it is preferable to deter people from entering the criminal justice system, particularly for members of disadvantaged groups, due to the negative consequences of criminalisation.<sup>52</sup>

In our view, the appropriate use of police discretion involves refraining from issuing sanctions, conducting searches or utilising powers of arrest where the potential harm to the individual is disproportionate to the potential benefit to the wider community.

The Protocol emphasises the importance of the appropriate use of discretion, which includes taking into consideration both the individual circumstances and the prevalence of mental health disorders and substance use disorder amongst the homeless population. It also encourages police to facilitate referral pathways to appropriate services for people sleeping rough.

The following case studies are examples where police have exercised their discretion not to lay charges and/or instead assisted with appropriate referrals:

#### Paolo and Owen

*Paolo told us that he had recently been released from prison when he was apprehended by police on suspicion of shoplifting. He was staying in a residential homelessness program at the time. During this encounter, police contacted his caseworker, who advocated for him to be able to return to the service.*

*'In the end, they were good, you know, and they rang [caseworker] and she advocated for me to come back here [to the service], because she knew what they would do to me, it would shatter me, I would be in there thinking, "I'm not getting back out". So, I came back... In the end, they were really good to me, they walked me out and they were actually talking to me, not down to me, for once... It's the first time I've ever experienced interaction with police like that.'*

*Owen was experiencing a period of rough sleeping, in which he was sleeping in his car with his young daughter. He disclosed that it was an interaction with a particular police officer that led him to engaging in services. Owen described the officer's genuine concern and respectful communication while explaining what services were available for Owen in the local area and how he could contact them.*

*'They said, "You can't be doing this, you need to find somewhere, otherwise DOCS are going to end up getting involved" and that's how I ended up in [service].'*

*Owen noted that prior to this interaction, he had had over ten similar interactions with police where no such support or advice was mentioned.*

These examples highlight the power of effective community policing in enabling people experiencing homelessness to access services and reducing their contact with the criminal justice system.

### 6.2 Strategies for community engagement and dealing with vulnerable groups

One service provider we spoke to told us about the 'Beach Reach' program, an example of a collaborative initiative between community services and police designed to deter young people from contact with the criminal justice system in Sydney's northern beaches.

Under the program, police who identify a young person who is intoxicated contact local youth services. These services then assist the young person, using their training and skills to effectively manage the situation and ensure the young person's safety and security, while minimising negative contact between the young person and police. This kind of collaborative referral process is a good example of best practice that could be adopted in the homelessness sector.

51 Richard Wortley, 'Measuring Police Attitudes toward Discretion' (2003) 30(5) *Criminal Justice and Behavior* 538, 540.

52 William Bales and Alex Piquero, 'Assessing the impact of imprisonment on recidivism' (2012) 8 *Journal of Experimental Criminology*, 1, 71; *Bugmy v The Queen* [2013] HCA 37 at 42.

Another service provider we spoke to noted that for a period of time some years ago, police worked cooperatively with a large inner-Sydney homelessness service in a multi-disciplinary patrol offering people sleeping rough the opportunity for referrals and assistance. The service provider commented that many service users took up offers of assistance and were transitioned to more permanent housing options and supports.

### 6.3 Rethinking the role of police

Significant events that took place during the writing of this report highlight the need to continue to monitor the role police play in contemporary society. In the United States, following the death of George Floyd, people took to the streets in prolonged and large-scale demonstrations, demanding change and an end to racialised policing. Across the world, including in Australia where Aboriginal people are overrepresented at every stage of our criminal justice system, there was renewed focus on the relationship between minority groups and police, and more broadly the role of police. Some activists and civil society organisations called for a reduction of police funding and an increase to funding for community services in order to limit disproportionate and overwhelmingly harmful interactions between police and vulnerable people.

PIAC believes strongly that community services, such as mental health and homelessness services, are better placed to deal with the complexities of homelessness than police. However, we recognise that some degree of police interaction will continue to be a reality for many vulnerable people for the foreseeable future. With that in mind, we support a reform agenda focusing on appropriate, cross-disciplinary, trauma informed training for all NSW Police to achieve meaningful change.

Better cross-sector cooperation between NSW Police, Department of Communities and Justice and Department of Health can assist in the achievement of the Premier's Priorities aimed at reducing homelessness.

NSW Police are well positioned to play an important role in achieving many of the Premier's Priorities, including:

- reducing **street homelessness** across NSW by 50% by 2025;
- reducing **adult reoffending** following release from prison by 5% by 2023; and
- reducing the rate of **suicide deaths** in NSW by 20% by 2023.<sup>53</sup>

NSW Police are sometimes one of the only services that have ongoing contact with the most vulnerable and disenfranchised people experiencing homelessness. This is because people may feel reluctant, or unable to engage with support services. This means that NSW Police may play an important role in providing referrals and avenues of support.

This report includes a number of examples demonstrating that when NSW Police work cooperatively with specialist homelessness services they can help to improve outcomes for people experiencing homelessness by making appropriate referrals and facilitating support.

Strengthening cross-sector collaboration between NSW Police and other community-based support services, for example, the Homelessness Outreach Support Team (HOST) and the Homelessness Assertive Response Team (HART), as well as local specialist homelessness services (SHS) and mental health services would increase the number of people able to gain the support of services.



## Recommendation 8

### Relationship building between Police and Specialist Homelessness Services

Police Area Commands should commit to building relationships with local specialist homelessness services so police are able to provide appropriate referrals and information for people experiencing homelessness who may not be currently in contact with any homelessness services.

This should include development of referral pathways with assertive outreach teams such as HOST, HART, and Newtopian Outreachers in inner Sydney.

This report identifies the need for a renewed and strengthened commitment to the Protocol (**see recommendations 5 and 7**). The Protocol was designed to be reviewed and re-signed by all signatories every two years since its inception in 2012. The Protocol sets out appropriate rights-based standards for all organisations with regular contact with people experiencing homelessness. The Protocol highlights the proper use of police discretion to mitigate the disproportionate effect that the exercise of police powers such as stop and search and move on orders have on people experiencing homelessness. It also encourages referrals to appropriate support services, such as a mental health crisis team, rather than criminal sanctions.

A 'community of practice' is a group of people with a common interest who work together to gain knowledge and improve their practices. Members of the group can learn by sharing information and experiences related to their shared practice of service delivery.<sup>54</sup> PIAC would welcome the establishment of a community of practice between all signatories to the Protocol and other organisations in contact with people experiencing homelessness. This broadly aligns with recommendation 8 and 16 of the Inquiry into the Protocol.<sup>55</sup>

## 9 Recommendation 9

### Establish a community of practice about the Protocol

- (a) Establish a community of practice about the Protocol for all signatories, convened regularly by an independent chair, so that good practice can be shared and issues discussed between all stakeholders.
- (b) Appoint a 'Protocol Liaison Officer' within NSW Police who will attend the community of practice and be a central point of contact for all policy and practice discussions linked to the Protocol.

<sup>54</sup> Etienne Wenger, *Communities of Practice: Learning, Meaning, and Identity* (Cambridge University Press, 1998)

<sup>55</sup> Legislative Assembly Committee on Community Services, New South Wales Parliament, *Inquiry into The Protocol for Homeless People in Public Places* (Final Report, 19 November 2020) Report no. 1/57, p20-22, p33-36.

## Conclusion

In July 2019, NSW Premier Gladys Berejiklian announced an 'ambitious' set of priorities designed to 'tackle tough community challenges'<sup>56</sup>. Aiming to 'break the cycle of disadvantage', the Premier set a target of reducing street homelessness across NSW by 50% by the year 2025. This target has been welcomed by the homelessness sector, including the authors of this report.

Criminalisation and over-policing of people sleeping rough entrenches disadvantage and creates additional barriers to social re-integration.<sup>57</sup> Reducing street homelessness cannot be achieved without respecting the rights of people experiencing homelessness, including the right to enjoy public spaces. Appropriate use of police discretion can support vulnerable people by reducing the impact of 'law enforcement' interventions on their lives, which are often complex and marked by trauma. Assertive outreach programs, are an important model to re-engage people with long and complex histories of rough sleeping.

From the perspective of service users and providers that we spoke to for this report, policing of public spaces is all too often arbitrary, excessive, and unjust, particularly in relation to searches and move on orders. This can exacerbate and compound existing barriers to social reengagement and recovery.

Continuing to move away from criminalisation of people experiencing homelessness and towards a holistic support model is key to achieving some of the 'Premier's Priorities', and beyond, to end homelessness.

This report identifies opportunities for improvement and recommendations based on the recent experiences of homelessness of some NSW residents. We hope that it can contribute to law and policy reform and the improvement of police practices, to ensure that the human rights of people experiencing homelessness are recognised and respected.

56 New South Wales Government 'Ambitious targets at the heart of new premier's priorities' (Media release, 28 June 2019) [www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/ambitious-targets-at-the-heart-of-new-premiers-priorities/](http://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/ambitious-targets-at-the-heart-of-new-premiers-priorities/).

57 Monica Taylor and Tamara Walsh, 'Nowhere to go: the impact of move on powers on homeless people in Queensland' (Research report, University of Queensland, November 2006) [http://www.lawright.org.au/\\_dbase\\_upl/Nowhere%20to%20Go.pdf](http://www.lawright.org.au/_dbase_upl/Nowhere%20to%20Go.pdf).

# Appendix One

## Methodology

27 interviews were conducted with clients of Specialist Homelessness Service (SHS). Participants were nominated by specialist homelessness services across City of Sydney, Kings Cross and Inner West areas.

Participants were selected on the basis of having spent at least one night sleeping rough within the past two years, and having had at least one interaction with police during that time.

All participants were provided with an information sheet, detailing the purpose of the interview, and a consent form, as per responsible research practice.

Each participant was reimbursed for their time with a \$30 supermarket voucher.

Interviews were semi-structured. People were asked questions about; where they had been living over the past two years, and about their interactions with police and other government officials during that time. People were asked directly about the number of times they had been told to move on, been arrested, and been searched by police during this time period. They were also asked to recount any interactions they felt were unfair or where they felt they had been treated disrespectfully. They were also asked about housing support they had received during this time, including any contact with assertive outreach teams.

The prompt questions are on the following pages.

## Confidentiality and data-recording process

All interviews were assigned a letter based on the order of interviews conducted. The first interview that was conducted was assigned the letter 'A', the second, 'B', etc. These letters were used to codify recordings and transcripts to ensure anonymity and confidentiality. These letters were then used as the first letter of the aliases of the case studies used throughout the report.



## Consumer Interviews: Prompt Questions

### 1. Demographic information

- a. Male/Female/Other
- b. Age range: 18-24 25-34 35-49 50-64 65+
- c. Australian Citizen or Permanent Resident?
- d. Identify as Aboriginal or Torres Strait Islander?
- e. Other culturally or linguistically diverse background?
- f. Disability?
- g. Mental health/AOD?
- h. Source of income
- i. Parent of dependent children?
- j. Carer?
- k. History of domestic violence?
- l. Criminal Record?

**2. Can you tell me a little about where you have been living over the past few years? Were you sleeping rough 18 months ago? What period of time were you sleeping rough?**

**3. Can you tell me a little about your interactions with police over the past few years?**

- a. Have there been any interactions where you feel you were treated unfairly, or disrespected?
- b. Do you think police are trying to give you trouble, or are they trying to help you out?
- c. What do you think police could be doing differently to help people who are homeless?
- d. Have your interactions with police changed at all, in nature or frequency, in the last 18 months or so?

**4. In the last 18 months, how many times have you been approached by the police?**

- i. Never
- ii. One time
- iii. 2-5 times
- iv. 6-10 times
- v. Over 10 times

**5. Of those approached by the police in the last 18 months were you:**

- Told to move? YES/ NO
- Given a penalty for consuming alcohol in public YES/NO
- Searched YES/NO
- Checked for arrest warrant YES/NO



- Did they arrest you? YES/NO

**6. In the last 18 months, how many times have you been approached by railway staff/transit officer (ie someone from State Rail etc)**

- Never
- One time
- 2-5 times
- 6-10 times
- Over 10 times

**7. Of those approached by the railway staff/transit officer in the last 18 months were you:**

- Told to move? YES/ NO
- Given a penalty notice YES/NO

**8. Can you tell me a little about your interactions with FACS Housing while you have been sleeping rough. Have you been approach by an outreach team? If so:**

- Have you engaged with outreach services? Why/Why not?
- If you did not engage, did you feel like you experienced any consequences for this?
- Have there been any interactions where you feel you were treated unfairly, or disrespected?
- Have you felt pressure to move from a particular location?
- Have you felt supported to move into temporary/permanent housing?
- Do you feel as though you've received all the support you need?
- Have your interactions with NSW FACS changed at all, in nature or frequency, in the last 18 months or so? If so why?

**9. Of those who were told to move on by Police/State Rail**

- Where did you go after being told to move on?
- Did this impact where you were sleeping/ decided to sleep?
- How did this impact your feeling of safety/community?

**10. Have you been approached by several different people, from different government departments (Eg Police, FACS)?**

- Do you get approached by several different people within a short period of time?
- Do you feel like there are any similarities, or differences, between different people, from different types of government organisations who approach you?
- Do you respond differently, depending on who is approaching you? Why/Why not?
- How do you feel like the approach has changed over the past 18 months?

# Appendix Two

## The Protocol for Homeless People in Public Places

### Other useful contacts include:

#### Domestic Violence Line

1800 656 463 (free call)

This service provides counselling, information and referrals for those experiencing domestic or family violence.

#### LifeLine

131 114

This service provides counselling to people needing emotional support and provides services in suicide prevention, crisis support and mental health support.

#### NSW Rape Crisis Centre

1800 424 017

This service provides crisis counselling, support and referrals for anyone who has experienced sexual violence.

#### Salvo Care Line

1300 36 36 22 (Regional NSW)

8736 3292 (in Sydney)

This service is staffed by trained counsellors available to listen, assist and provide referrals for people facing a crisis in their lives.

#### Alcohol and Drug Information Service

1800 422 599 (Regional NSW)

9361 8000 (in Sydney)

This service provides information, referral, crisis counselling and advice about alcohol and other drugs.

#### NSW Mental Health Line

1800 011 511

This service is staffed by mental health professionals and provides mental health information and referral services.



Protocol for Homeless People in Public Places

For more information visit the Housing NSW website at [www.housing.nsw.gov.au](http://www.housing.nsw.gov.au)

Department of Family and Community Services  
Housing NSW  
August 2014

## Protocol for Homeless People in Public Places

Homeless people have the same right as everyone else to be treated respectfully



## Protocol for Homeless People in Public Places

The NSW Government introduced the *Protocol for Homeless People in Public Places* to help ensure that homeless people are treated respectfully and appropriately and are not discriminated against.

Homeless people are marginalised in our communities and experience barriers to participation in social, recreational, cultural and economic life. Homeless people who use public spaces to sleep, store their belongings and gather together often face difficulties.

The Protocol provides information to government and non-government organisations about how to interact with homeless people in public places. It acknowledges that homeless people have a right to be in public places and to participate in public events, while at the same time respecting the right of local communities to live in a safe and peaceful environment.

The following government organisations are signatories to the Protocol which means they will adopt and abide by its principles:

- Housing NSW
- Community Services
- Department of Premier and Cabinet
- NSW Police Force
- Office of Environment and Heritage
- NSW Health
- RailCorp
- State Transit Authority of NSW
- Sydney Harbour Foreshore Authority
- Sydney Olympic Park Authority
- Aboriginal Affairs
- Ambulance Service NSW

### Did you know that homeless people should be left alone unless:

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

The Protocol does not prevent organisations from taking appropriate action where health or safety is at risk or if there is a breach of the peace, or if unlawful behaviour has occurred.

### What can I do if a homeless person needs assistance?

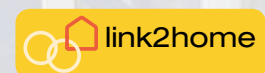
You can involve an appropriate service directly, or provide advice, information or contact details of services that can help.

### What agencies can provide a homeless person with assistance?

Many services across NSW provide assistance to homeless people including:

Link2home is the new statewide telephone information and referral service for NSW. Link2home is available for people who are homeless or at risk of homelessness. It provides information, assessment of people's needs and referrals to specialist homelessness services, support services, temporary accommodation and other services.

The telephone service is available 24 hours a day, 7 days a week, every day of the year. People who are homeless or at risk of homelessness, or their advocates can call **Link2home on 1800 152 152**.



### Child Protection Helpline

General community – **132 111**  
Mandatory reporters – **133 627**

This service is staffed by professionally qualified caseworkers and is available for reporting suspected abuse, neglect or risk of significant harm.

# Appendix Three

## **The Protocol for Homeless People in Public Places: Guidelines for Implementation**



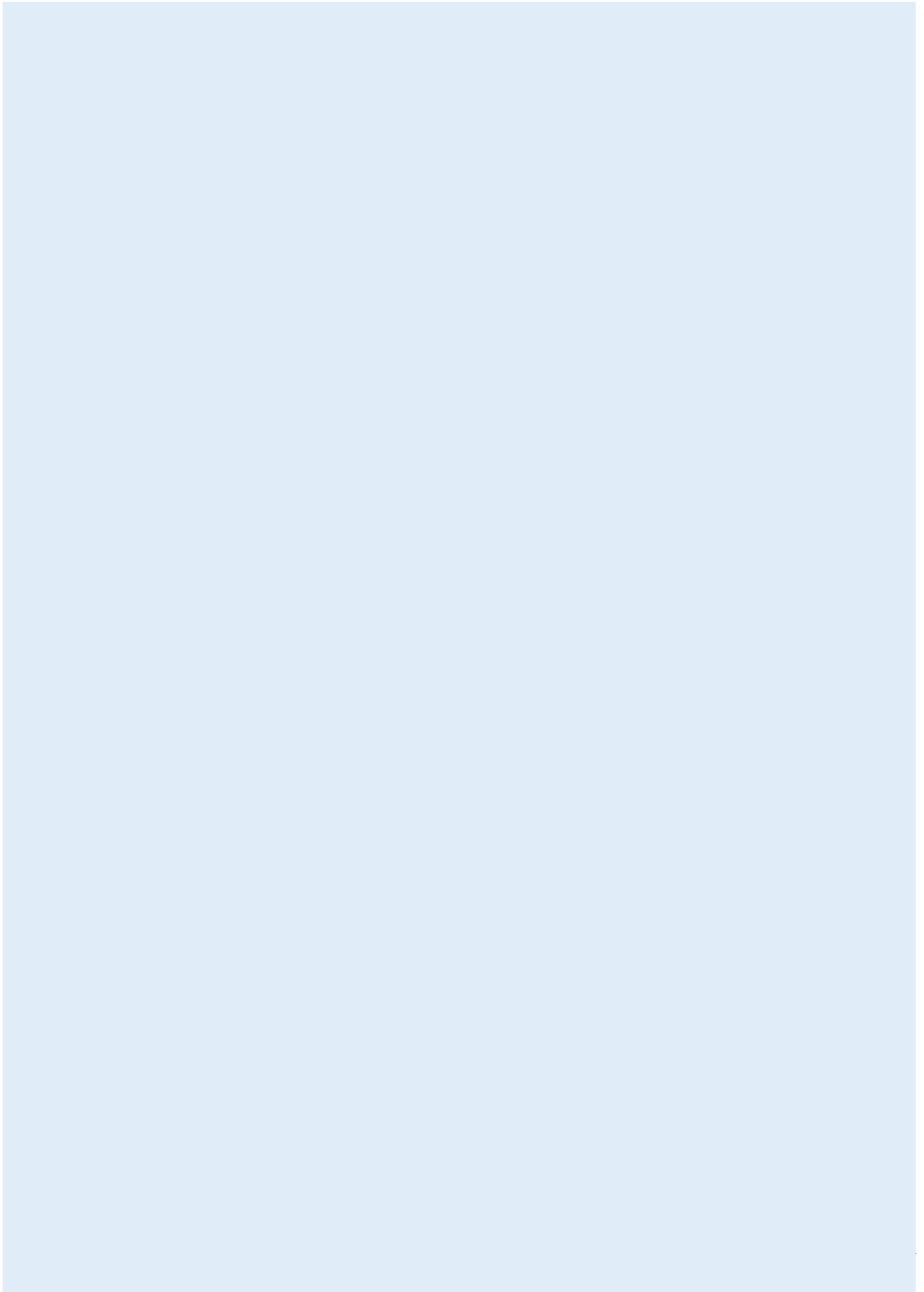
**Family &  
Community Services**  
Housing NSW

# Protocol for Homeless People in Public Places

## Guidelines for Implementation

May 2013





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## 1 Background

Homeless people are marginalised within the community and experience barriers to participation in social, recreational, cultural and economic life. There are particular issues faced by homeless people who use public spaces to sleep, store their personal belongings and gather together.

The NSW Government introduced the *Protocol for Homeless People in Public Places* (the Protocol) to help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their situation. The Protocol aims to assist homeless people to receive services if they need, or request them. It is an important element in the NSW Government's strategy for responding effectively to homelessness.

The Protocol has been endorsed by a number of NSW Government organisations who are responsible for public places, come into contact with homeless people and/or provide services to them. Many non-government organisations also support the Protocol. All local councils have been advised of the Protocol and are encouraged to use it to guide their response to homeless people in public places.

Current signatories to the Protocol are:

- Housing NSW
- Community Services
- Department of Premier and Cabinet
- NSW Police Force
- Office of Environment and Heritage
- NSW Health
- RailCorp
- State Transit Authority of NSW
- Sydney Harbour Foreshore Authority
- Sydney Olympic Park Authority
- Aboriginal Affairs
- Ambulance Service of NSW

The aim of the *Guidelines for Implementation* (the Guidelines) is to assist government organisations to implement the Protocol. Implementation is expected to be consistent with current legislation and each organisation's policies and procedures. Many organisations already abide by its principles.



## 2 The Protocol for homeless people in public places

The aim of the Protocol is to provide a framework for interactions between officials and homeless people in public places. The Protocol acknowledges that, like all other members of the public, homeless people have a right to be in public places and to participate in public events, at the same time respecting the right of local communities to live in a safe and peaceful environment. The Protocol states that homeless people should not be approached unless:

- they request assistance
- they appear to be distressed or in need of assistance
- an official seeks to engage with the person for the purpose of information exchange or provision of a service
- their behaviour threatens their safety or the safety and security of people around them
- their behaviour is likely to result in damage to property or have a negative impact on natural and cultural conservation of environment, including cultural heritage, water pollution and fire risks
- they are sheltering in circumstances that place their or others' health and safety at risk (e.g. staying in derelict buildings, high risk areas)
- they are a child who appears to be under the age of 16 (see section 6.3)
- they are a young person who appears to be 16 to 17 years old who may be at risk of significant harm (see section 6.3)
- they are a child or young person who is in the care of the Director-General of the Department of Family and Community Services or the parental responsibility of the Minister for Family and Community Services (see section 6.3).

The Protocol is attached at **Appendix A**.

The Protocol includes guidance on what officials should do if they encounter people who appear to be homeless and some underlying principles regarding the rights and responsibilities of homeless people, other members of the public and officials.

The term 'officials' refers to members of staff employed by government organisations. Organisations will need to consider whether any contractors or volunteers who may come into contact with homeless people should be covered by the Protocol or whether they should refer situations involving homeless people to a member of staff. It is recommended that contracted security staff who come into contact with the public should be made familiar with the Protocol and encouraged to abide by its principles.

Under the Protocol, officials should give homeless people contact telephone numbers of local organisations which may be able to help them or contact a service on their behalf, for example by contacting the Homeless Persons' Information Centre or the Housing NSW After Hours Temporary Accommodation line (numbers listed on pages 13 and 14). if the homeless person requires or asks for it. This should be done when and where it is appropriate and practical.

### 2.1 Homelessness definition

The most common homelessness definition identifies three types of homelessness: primary, secondary and tertiary<sup>1</sup>. For the purpose of the Protocol, the primary homelessness definition is most relevant, whereby *'a person lives on the street, sleeps in parks, squats in derelict buildings, or uses cars or railway carriages for temporary shelter'*.

Government organisations should use their own discretion to identify whether a person may be homeless or not.

<sup>1</sup> Chamberlain, C., & Mackenzie, D. (1992) Understanding Contemporary Homelessness: Issues of Definition and Meaning. *Australian Journal of Social Issues*, 27(4), 274-297.

### 3 Application of the Protocol

The Protocol applies to homeless people in public places such as parks and outdoor spaces ordinarily accessible to the public. It does not apply to private property or property which is not accessible to the general public.

### 4 Legal status of the Protocol

The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. The Protocol does not override existing laws, statutory requirements or regulations. It does not reduce the powers of organisations or their authority to enforce specific laws and regulations.

The Protocol encourages officials to take the Protocol and the homeless individual's circumstance into consideration when enforcing laws and regulations and to use discretion as is appropriate under their own policies and procedures. This discretion should take account of the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment.

### 5 Implementation of the Protocol

Each government organisation covered by the Protocol will be responsible for deciding how it will be implemented within its own business and resources. It is acknowledged that policy and operational issues affecting the implementation of the Protocol will vary across each organisation. Implementation of the Protocol will require organisations to:

- identify a person to have responsibility within the organisation for overseeing the implementation of the Protocol
- identify the types of public places within the organisation's jurisdiction where the Protocol will apply
- determine any specific issues that may be relevant in particular geographic locations
- communicate the requirements of the Protocol to officials and explain these in the context of the organisation's own policies, procedures and regulations
- provide officials with access to relevant local contact telephone numbers where appropriate, and use the contact numbers listed in the Protocol
- if applicable, devise an organisation-specific Protocol document based on the NSW Protocol
- conduct internal monitoring/review of the Protocol as well as participate in a formal review of the Protocol every two years (See Section 8).

For signatories, the Protocol and Guidelines for Implementation should be provided to all relevant staff. It would also be good to include information about the Protocol in induction training for new staff, when development training for existing staff as well as to contractors and volunteers.

To facilitate this training, Housing NSW has created a Protocol Training Package which includes a *Facilitator Guide* and *Participant Guide*. This is available to other government organisations and Housing NSW can also provide guidance on including the Protocol in staff training programs.

#### 5.1 Complaints

Complaints regarding the Protocol should be dealt with under each government organisation's existing policies and procedures.

## 6 Responding to homeless people in public places

### 6.1 Information about services for homeless people

Government organisations implementing the Protocol are not required to coordinate or provide services for homeless people. If homeless people request assistance, officials should put them in touch with local services, or pass on contact details to the homeless person.

The Protocol contains a list of useful contact numbers for both local and state-wide telephone services. This includes:

- In greater metropolitan Sydney and the Central Coast, a telephone number is available for homeless people to contact the Homeless Persons' Information Centre for information, advice and referral. In these areas, this is the telephone number which officials should give to homeless people.
- There are also a number of state-wide telephone services for specific issues (such as domestic violence, child protection, homeless young people, homeless Aboriginal people, etc), which may be given out as required.

In addition, many areas have local services for homeless people; officials should give contact details of such services as requested by homeless people.

If a homeless person is in need of medical treatment or NSW Police Force assistance, officials should respond in the same way as they would for any other member of the public requiring such assistance.

### 6.2 Appropriate responses to homeless people

Each government organisation implementing the Protocol has different roles, responsibilities and locations of service provision. Organisations will come into contact with homeless people who present with differing needs and circumstances. Each organisation will be responsible for providing its own individual response to homeless people according to its policies and procedures.

Government organisations are encouraged to consider training staff in the identification of distress or mental health issues through courses such as Mental Health First Aid. Such training may improve the capacity of officials to respond appropriately to the needs of homeless individuals.

### 6.3 Appropriate responses to children and young people

A majority (55%) of homeless people in NSW in 2006 were in the younger age groups. 18% were teenagers aged 12 to 18, while 11% were children under 12 who were with one or both parents<sup>2</sup>.

In NSW, any person in the community who believes that a child or young person may be at risk of significant harm can make a report to the Child Protection Helpline on **132 111**<sup>3</sup>. Any person can also report the homelessness of a child under 16 years<sup>4</sup> to the Child Protection Helpline and that of a young person aged 16 to 17 years with their consent<sup>5</sup>.

Specific legal and policy requirements apply when staff in the course of their work, respond to children and young people who may be homeless. Reporting requirements depend on the child/young person's age, whether they are in out-of-home care and whether they are at risk of significant harm.

Reporting requirements are contained in the *Children and Young Persons (Care and Protection) Act 1998*. In addition, many organisations provide policy directives to their staff that specify their reporting obligations in particular employment contexts.

<sup>2</sup> Chamberlain C & MacKenzie D 2009. Counting the homeless 2006. Cat. No. HOU 213. Canberra: AIHW

<sup>3</sup> Refer to section 24 of the *Children and Young Persons (Care and Protection) Act 1998*

<sup>4</sup> Refer to section 120 of the *Children and Young Persons (Care and Protection) Act 1998*

<sup>5</sup> Refer to section 121 of the *Children and Young Persons (Care and Protection) Act 1998*

All staff should be familiar with their reporting requirements and other information related to the safety, welfare and wellbeing of children and young people. Relevant information can be accessed via <http://www.keepthemsafe.nsw.gov.au/home>. This includes mandatory reporting requirements.

Mandatory reporters are legally required to report a child under 16 years of age who may be at risk of significant harm to the Child Protection Helpline<sup>6</sup>. They may also report a young person 16 to 17 years of age if they are concerned the young person is at risk of significant harm. Mandatory reporters should always use the online Mandatory Reporter Guide to decide whether to make a report to the Child Protection Helpline whenever they are concerned about a child or young person. It is readily accessible from the Keep Them Safe website: <http://sdm.community.nsw.gov.au/mrg/app/summary.page>

The contact number for the Child Protection Helpline for mandatory reporters is **133 627**.

Mandatory reporters in NSW Health, the NSW Police Force, Department of Education and Communities, and the Department of Family and Community Services can also contact their Child Wellbeing Unit for advice and guidance about whether to make a report, or what other support may be needed to assist a child/young person or their family.

Any person (including staff from Housing NSW or youth refuges) who provides residential accommodation and has reasonable grounds to suspect that a child under 16 years of age is living away from home without parental permission, should inform the Child Protection Helpline of the child's whereabouts<sup>7</sup>.

A mandatory reporter should not make a report to the Child Protection Helpline about a young person aged 16 to 17 years who is homeless without their consent<sup>8</sup>. If the young person is unwilling to give consent, it may be more appropriate to refer him/her to another support service or offer other assistance. No consent is required to report a child under 16 years of age who is homeless.

A mandatory reporter should inform the Child Protection Helpline of a child or young person in the care of the Director General of the Department of Family and Community Services or under the parental responsibility of the Minister for Family and Community Services, who is homeless.

## 6.4 Appropriate responses to Aboriginal people

Aboriginal people are over-represented in the homeless population. In 2009/2010, 18% of Specialist Homelessness Services clients in NSW were Aboriginal or Torres Strait Islander, which is disproportionate to the Indigenous population's size in NSW of 2.2%<sup>9</sup>.

Aboriginal people's connection and sense of belonging to country is an integral part of their cultural identity. This traditional connection to country supersedes contemporary land tenure and boundaries. Therefore the 'public' and 'private' land distinctions are viewed differently by Aboriginal people compared to non-Aboriginal people. Public places have often been gathering places for Aboriginal people.

Past and current indicators demonstrate that Aboriginal people are the most disadvantaged sector in the NSW population, including over-representation in the criminal justice and child protection systems. This over-representation has been attributed to past government assimilation and removal policies, dispossession of land and historical and ongoing discrimination. As a result of past policies and practices and the current levels of disadvantage, some Aboriginal people may have a negative perception of government and their officials.

This perception may lead to hostility towards officials approaching them in public places. A culturally respectful approach can assist with building more positive relationships and prevent behaviours that may cause problems in public spaces.

<sup>6</sup> Refer to section 27 of the *Children and Young Persons (Care and Protection) Act 1998*

<sup>7</sup> Refer to section 122 of the *Children and Young Persons (Care and Protection) Act 1998*

<sup>8</sup> Refer to section 120 of the *Children and Young Persons (Care and Protection) Act 1998*

<sup>9</sup> AIHW 2011. Government-funded specialist homelessness services: SAAP National Data Collection annual report 2009-10: Australia. Cat. no. HOU 246. Canberra: AIHW.

Government organisations should promote staff participation in Aboriginal cultural awareness training and, in turn, empower their staff to create culturally respectful approaches to assist with this process.

In addition, the involvement of Aboriginal workers and Aboriginal specific services in Protocol implementation may assist with relationship building between officials and homeless people and resolving any issues that are creating problems.

### 6.5 Appropriate responses to people of different cultural, linguistic, or religious backgrounds

NSW is the most culturally diverse state in Australia. People from around 200 birthplaces have made the state their home; in addition, nearly a quarter of the population speak a language other than English at home<sup>10</sup>. In 2009/10, 17.2% of all Specialist Homelessness Services clients in NSW were born overseas<sup>11</sup>.

People who are new arrivals to Australia – particularly those who come as refugees or asylum seekers – can be at risk of homelessness because of their low incomes, their potentially limited abilities with the English language and relatively weak community ties.

People with different cultural backgrounds and/or with experiences of different political systems may also lack trust in officials who engage with them in public places. It is important that officials respect that people of different cultural, linguistic, or religious backgrounds may have different priorities, values, beliefs and customs. In most cases better understanding can be reached by asking the person questions about their circumstances.

Officials should use interpreter services to assist with understanding the circumstances of the homeless person and referring people to relevant services as required.

### 6.6 Recognising the complex needs of people who are homeless

**People who experience chronic homelessness are more likely to have a range of complex needs. They may have one or more of the following: cognitive impairment, traumatic brain injury, serious physical health problems, history of abuse or trauma, mental illness, mental disorder, psychiatric disability or addictions.**

It is estimated that up to three quarters of the homeless population in some areas have a significant mental illness<sup>12</sup>. The reasons for this are complex. For some people it is the experience of having a severe mental disorder, such as psychotic illnesses, which is a major contributing factor to their homelessness. For others, drug and alcohol abuse, social isolation and mental disorders can be consequences, as well as causes, of homelessness.

Experiencing past or current trauma is an important factor that contributes to homelessness. People experiencing homelessness report a disproportionate level of victimisation, including repeated experiences of childhood abuse, domestic and family violence, rape, physical and sexual assault, and robbery<sup>13</sup>. A new episode of violence or abuse can trigger someone to leave their accommodation and become homeless again. However, being homeless carries a high risk of violence that can exacerbate mental disorders and further entrench a cycle of moving between temporary accommodation, sleeping rough and hospitalisation.

Officials approaching homeless people in public places should recognise the impact that these issues may be having on the person's behaviour. The Protocol encourages a non-discriminatory response and, if possible, a referral of that person to services with relevant expertise. This response is particularly important when the official considers that the person is at risk of harming themselves or other people.

<sup>10</sup> Australian Bureau of Statistics, 2006 Census of Population and Housing, New South Wales

<sup>11</sup> AIHW 2011. Government-funded specialist homelessness services: SAAP National Data Collection annual report 2009-10: Australia.Cat. no. HOU 246. Canberra: AIHW.

<sup>12</sup> Cycles of Homelessness *AHURI Research Bulletin*, Issue 39, March 2004.

<sup>13</sup> Robinson (2010), *Rough Living Surviving Violence & Homelessness*, PIAC and UTS Shopfront.

## 7 Use of the Protocol during major events

The Protocol should be applied during large scale events in NSW to minimise disruptions to homeless people who are living in the declared areas during these events. Previous events where the Protocol has been used include World Youth Day, Asia-Pacific Economic Coordination (APEC) and the Olympics.

During such events, it is important that agencies encourage adherence to the Protocol by all security staff.

## 8 Monitoring and review of the Protocol

Government organisations are responsible for monitoring the implementation of the Protocol within their organisation. Any feedback regarding the Protocol which requires further action will be handled directly by the organisation involved. Should Housing NSW receive information about areas or organisations where the Protocol is not being followed, contact will be made with the organisation to discuss the issues for non-adherence to the Protocol, and, if required, agree on actions to address the issues.

There is also opportunity for local councils, non-government organisations, and homeless people (through homeless people's organisations such as StreetCare) to provide advocacy and operational feedback on the implementation of the Protocol and its effects on homeless people and the service system. Feedback should be provided directly to the signatory government organisation involved and to Housing NSW as the lead Government organisation for homelessness.

The Protocol will be reviewed formally every two years from the date of publication, October 2012. The review will be managed by Housing NSW which will:

- seek feedback from signatory government organisations on:
  - actions taken to implement the Protocol
  - any issues arising and suggestions for amendments
  - any positive changes occurring as a result of implementation of the Protocol in the organisation.
- seek feedback from the peak non-government homelessness organisations on:
  - implementation of the Protocol
  - effects on homeless people and the service system
  - any issues arising and suggestions for amendments.
- seek feedback from homeless people through a consultation mechanism on:
  - their views on the extent of implementation of the Protocol and how the Protocol has affected them
  - any issues arising and suggestions for amendments.

## 9 More information

Housing NSW is the lead government organisation for the Protocol and will be coordinating information on the implementation of the Protocol. For more information, please contact the Housing NSW Homelessness Policy and Programs Unit via the Housing NSW website, [www.housing.nsw.gov.au](http://www.housing.nsw.gov.au).

## Appendix A

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### What is the Protocol?

The NSW Government introduced the Protocol to help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status. The Protocol also aims to assist homeless people to receive services if they need or request them. It is an important element in the Government's strategy for responding effectively to homelessness.

#### The Protocol

A homeless person is not to be approached unless:

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

The Protocol does not prevent organisations from taking appropriate action where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred.

If homeless people require assistance, officials can:

- involve appropriate services directly
- provide advice or information on available services
- provide a contact point that the homeless person can either call or go to for further advice or help.

### Underlying principles of the Protocol

The Protocol is based on the following principles:

- Homeless people have the same entitlement as any member of the public to:
  - be in public places, at the same time respecting the right of local communities to live in a safe and peaceful environment
  - participate in public activities or events, and
  - carry with them and store their own belongings.
- Organisations that work in areas where their responsibilities are likely to bring them into contact with homeless people will receive sufficient information to enable them to assist homeless people if required, or help homeless people make contact with appropriate services.

- Homeless people have diverse backgrounds and needs. These should be considered in any response:
  - Cultural sensitivity and respect should be applied when engaging with Aboriginal homeless people and those from different cultural, linguistic or religious backgrounds
  - Many homeless people have complex needs such as mental health and/or drug and alcohol issues, or cognitive impairment. These issues may result in behaviour that is seen to be antisocial
  - Homeless people may have experienced other issues that affect their needs. For example, they may have experienced domestic violence or left custody or statutory care, or they may be asylum seeking refugees with no contacts in the community
  - The Protocol does not override existing laws, statutory requirements or regulations. It does not reduce the powers of organisations or their authority to enforce specific laws and regulations.
- Homeless people have the same access to a right of reply and appeals/complaints mechanisms as all members of the public.

### **Where the Protocol applies**

The Protocol applies only to public places such as parks and outdoor spaces ordinarily accessible to the public. It does not apply to private property, or property which is not generally accessible to the public.

### **Protocol for Homeless People in Public Places October 2012**

The following government organisations with an operational presence in public places or who provide a service to assist homeless people have endorsed the Protocol:

- Housing NSW
- Community Services
- Department of Premier and Cabinet
- NSW Police Force
- Office of Environment and Heritage
- NSW Health
- RailCorp
- State Transit Authority of NSW
- Sydney Harbour Foreshore Authority
- Sydney Olympic Park Authority
- Aboriginal Affairs
- Ambulance Service of NSW

Each of the above organisations will implement the Protocol within its own business and will determine how it should be used by all relevant staff, including contract staff such as security officers. Organisations will deal with complaints about the application of the Protocol through their existing complaints mechanism.

Local councils have been advised of the Protocol to inform their responses.

### **Review of the Protocol**

This Protocol will be reviewed every two years from the date of its publication, October 2012.



**For further information contact:**

Manager, Homelessness Policy and Programs  
 Housing NSW  
 Locked Bag 4001  
 ASHFIELD BC 1800

or go to the Housing NSW website at [www.housing.nsw.gov.au](http://www.housing.nsw.gov.au)

**Useful contact numbers****Homeless Persons Information Centre**

**1800 234 566** (toll free) or **02 9265 9081** (in Sydney)  
 (7 days, 9am – 10pm, closed each day between 1pm – 2pm)

This is a telephone information and referral service for crisis accommodation for people aged over 18 years who are homeless or at risk of homelessness.

**Housing NSW After Hours Temporary Accommodation Line**

**1800 152 152** (free call)  
 (4.30pm – 10pm Monday to Friday  
 10am – 10pm weekends and public holidays)

This state-wide telephone service provides temporary accommodation for homeless people outside normal Housing NSW office hours. Clients are offered accommodation for a limited number of nights and are asked to visit a local Housing NSW office the next working day to make arrangements for more suitable longer-term accommodation.

**LawAccess NSW**

**1300 888 529**  
 (9am – 5pm Monday to Friday, excluding public holidays)

This state-wide telephone service provides free legal information, referrals and, in some cases, advice to people in NSW who have a legal problem.

**Aboriginal Legal Service (NSW/ACT) Limited**

**02 8303 6600** (Redfern – Zone Office)  
 (8.30am – 5.30pm Monday to Friday)

This service assists Aboriginal people and Torres Strait Islander people with representation in court, advice and information, and referral to further support services.

**Centrelink Indigenous Phone Service**

**136 380**  
 (8am – 5pm Monday to Friday)

This state-wide telephone service is for Indigenous Australians living in regional and remote areas who would like advice on Centrelink payments and services.

**Centrelink Employment Services and Job Network**

**132 850**  
 (8am – 5pm Monday to Friday)

This state-wide telephone service assists individuals with their Centrelink payments. This line can also be used to book an appointment with the nearest Centrelink social worker.

**State-wide services available 24 hours, 7 days**

**Child Protection Helpline** - general community 132 111  
- mandatory reporters 133 627

This telephone service, staffed by professionally qualified caseworkers, is available for reporting suspected abuse, neglect or risk of significant harm of children and young people.

The Mandatory Reporter Guide can be accessed via <http://sdm.community.nsw.gov.au/mrg/app/summary.page>.

The NSW Government's *Keep Them Safe*: a shared approach to child and wellbeing action plan can be accessed via <http://www.keepthemsafe.nsw.gov.au/home>

**Domestic Violence Line**

**1800 656 463** (free call)

**1800 671 442** (TTY)

This telephone service provides counselling, information and referrals for those experiencing domestic violence.

**Lifeline**

**131 114**

This telephone counselling service takes calls from people needing emotional support and provides services in suicide prevention, crisis support and mental health support.

**NSW Rape Crisis Centre**

**1800 424 017** (free call)

This telephone and online service provides crisis counselling, support and referral for anyone who has experienced sexual violence.

**Salvo Care Line**

**1300 36 36 22** (Regional NSW)

**02 8736 3292** (Sydney metropolitan)

This telephone service is staffed by trained counsellors available to listen, assist and provide referrals for people facing a crisis in their lives.

**YConnect Line (young people)**

**1800 424 830**

**02 9318 1531** (Sydney metropolitan)

This telephone service provides access to services, accommodation or referral for young people who are homeless or at risk of homelessness.

**Alcohol and Drug Information Service**

**02 9361 8000** (Sydney metropolitan)

**1800 422 599** (outside Sydney)

This telephone service provides information, referral, crisis counselling and advice about alcohol and illegal drugs.

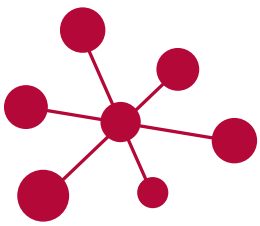
**NSW Mental Health Line**

**1800 011 511**

This telephone service is staffed by mental health professionals and provides mental health information and referral services.

Department of Family & Community Services  
**Housing NSW**

Locked Bag 4001  
Ashfield BC 1800  
[www.housing.nsw.gov.au](http://www.housing.nsw.gov.au)



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9:00am - 5:00pm

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