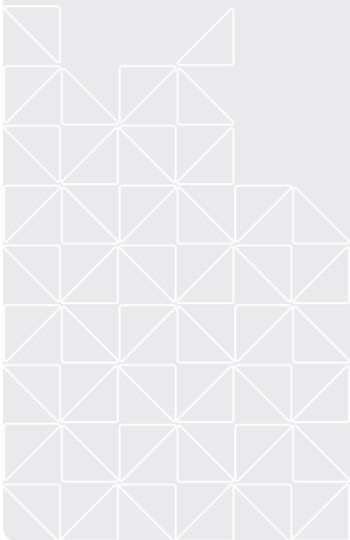


# Debt and Tenancy Legal Help for Prisoners

Twelve month project report

January 2016



## Acknowledgements

Justice Connect Homeless Law takes this opportunity to express our sincere thanks to:

- The Ian Potter Foundation for its generous funding of the Debt and Tenancy Legal Help for Prisoners Project;
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# 1. Executive summary – 12 observations on access to justice for Victorian prisoners

The Debt and Tenancy Legal Help for Prisoners Project (**Project**) started as a 12 month pilot program of Justice Connect Homeless Law.

The Project was developed in response to the high level of unmet civil legal need of Victorian prisoners, utilising Homeless Law pro bono lawyers' expertise in debt, fines and tenancy matters. It recognises the links between homelessness and imprisonment: 35% of prisoners are homeless prior to entry into prison and, upon release, the rate of homelessness increases to 43%.<sup>1</sup> The Project is informed by research such as the 2006 study of ex-prisoners and homelessness in Victoria and NSW, which found that ex-prisoners are more than twice as likely to return to prison within nine months of release if they are homeless.<sup>2</sup>

The Project aims to prevent homelessness, reduce disadvantage and increase the likelihood of successful reintegration of prisoners by:

- sustaining tenancies for prisoners; and
- reducing, resolving and managing debts and infringements.

The Project does this by providing prisoners in Port Phillip Prison with legal advice and representation from pro bono lawyers through a monthly clinic at the prison, and by providing legal advice and representation via phone appointments for other Victorian prisoners. Throughout the Project, Homeless Law is collecting data and insights about the impact of housing and debt issues on prisoners, with a view to informing Homeless Law's advocacy regarding systemic factors that contribute to the revolving door between prison and homelessness.

This report brings together the data and insights from 12 months of running the Project. It sets out 12 observations on improving access to justice for Victorian prisoners and on preventing homelessness, reducing disadvantage and increasing the likelihood of successful reintegration.

<sup>1</sup> Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (2012) 26–8.

<sup>2</sup> Eileen Baldry et al., 'Ex-Prisoners, Homelessness and the State in Australia', (2006) 39 *The Australian and New Zealand Journal of Criminology* 20, 24.

## 1. Increasing access to civil legal assistance for Victorian prisoners

Since August 2014, Homeless Law has provided legal assistance to 96 prisoners, including 54 seen at initial appointments at Port Phillip Prison and 42 at other Victorian prisons or seen outside the monthly clinic.

This is an increase of 1300% since the year prior to the Project's commencement (1 August 2013 – 31 July 2014) when Homeless Law provided legal assistance to seven clients in prison.

The expansion of Homeless Law's work in Victorian prisons is a direct result of the Project, including our new relationships and visibility amongst workers and organisations operating in Victorian prisons.

## 2. Improving access to justice for prisoners in Port Phillip Prison through face-to-face appointments

In its first 12 months, the Project enabled 54 prisoners at Port Phillip Prison to access ongoing civil legal advice and representation through face-to-face appointments.

From 1 August 2014 to 31 July 2015, 66 client appointments were available at Port Phillip Prison. All 66 available appointments were booked, with 12 unforeseen cancellations. Of the 54 clients seen face-to-face:<sup>3</sup>

- 75% presented with a credit and debt issue;
- 35% presented with an infringement issue;
- 20% presented with a housing issue; and
- 27% had more than one of the above legal issues.

Given the absence of other services providing civil legal assistance to prisoners, discussed in part 3 of

<sup>3</sup> An additional seven prisoners also received phone appointments outside of the regular monthly clinic.

this report, without the Project these clients would not have otherwise been able to resolve their civil legal issues while in prison.

### **3. The benefits of preventing prisoners exiting prison into homelessness**

Through the provision of legal representation, Homeless Law has assisted 25 Victorian prisoners to avoid eviction. These 25 people have returned, or will return, to their homes instead of being released from prison into homelessness.

Using figures from a 2013 Australian Housing and Urban Research Institute study, this represents a cost saving of \$736,250 to the health, justice and welfare systems.<sup>4</sup>

Given that all 25 of the prisoners were in public housing, the costs of support if evicted would have been approximately \$850,000.<sup>5</sup>

The Project's eviction prevention work is underpinned by research showing the links between homelessness and re-offending.<sup>6</sup> With recent figures showing that Victoria's recidivism rate is at an all-time high, with 44.9% of released prisoners re-entering prison, and knowing that incarceration costs approximately \$98,389.40 per person per year,<sup>7</sup> sustaining tenancies and improving chances of successful reintegration is an important component of tackling Victoria's personally and financially costly imprisonment rate.

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<sup>4</sup> Kaylene Zaretsky and Paul Flatau, *The cost of homelessness and the net benefit of homelessness programs: a national study*, (Final Report No 205, Australian Housing and Urban Research Institute, December 2013.) 4. This AHURI study identified that people experiencing homelessness had higher interaction with health, justice and welfare systems than people with stable housing and estimated that an individual experiencing homelessness represents an annual cost to government services that is \$29,450 higher than for the rest of the Australian population. Of this increased cost, \$14,507 related to health services, \$5,906 related to justice services, and \$6,620 related to receipt of welfare payments.

<sup>5</sup> Department of Human Services, *Support for High Risk Tenancies Strategic Project* (October 2006), cited in Department of Human Services, *Human Services: The case for change* (December 2011) 12. Based on this Victorian Government paper, there is a potential cost of over \$34,000 per year to support a tenant evicted from public housing through homelessness services. This was compared to approximately \$4,300 in service costs per year for a household in public housing.

<sup>6</sup> Baldry et al, above n 2.

<sup>7</sup> Based on The Council of Australian Governments' calculation of \$269.56 in net operating expenditure per Victorian prisoner per day in 2013-14 (see: Department of Justice and Regulation (2015) *Corrections Statistics* <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>>).

### **4. Resolving housing debts to enable access to housing for vulnerable prisoners**

Debts to the Office of Housing for rental arrears, repairs or compensation are a significant barrier to prisoners being offered public housing upon their release from prison.

Homeless Law has assisted eight clients with debts to the Office of Housing totalling \$58,125.18.

Of the 5 files that have been resolved with debts totalling \$31,117.62, Homeless Law was successful in clearing \$22,380.97 (i.e. 72%) of this debt either through negotiation with the Office of Housing or through representation of the clients at VCAT hearings. The other three files are ongoing.

### **5. Addressing debts to enable prisoners to exit with a clean slate**

Homeless Law has assisted approximately 34 prisoners at Port Phillip Prison with advice and representation in relation to their debts. The total amount of debt owing was \$290,560 (not including infringements debt or housing debt). The debts ranged from as little as \$390 to \$133,000. Of the 218 referrals received, 85% had debt issues.

Common creditors include the Office of Housing, Centrelink, Australian Taxation Office, utility providers, banks and phone companies.

Outcomes to date have included:

- Negotiating the waiver of a \$1700 utilities debt;
- Negotiating the waiver of a \$3196 phone bill;
- Negotiating the waiver of a \$1450 bank debt;
- Negotiating a deferred payment plan for a \$5000 credit card debt;
- Advising several clients on repayment of Centrelink debts via payment plan upon release from prison;
- Obtaining credit reports for clients which give the client assurance that they have no public record of outstanding debts; and
- Advising on debts that are too old to be enforceable.

## 6. The need for civil legal services in Victorian prisons

From 1 August 2014 to 31 July 2015, the Port Phillip Prison clinic received 218 referrals. 40% of referrals were for sentenced prisoners and 60% were for prisoners on remand.

Of the 218 prisoners referred to the Project:

- 85% had a debt or credit issue;
- 43% had an infringements issue;
- 30% had a tenancy or housing issue; and
- 47% had a combination of two or more legal issues.

These figures demonstrate high levels of civil legal need amongst prisoners in Port Phillip Prison.

## 7. Histories of homelessness amongst prisoners

Based on the information provided by clients at their initial appointments at Port Phillip Prison, we know that of the clients we are assisting, prior to entering prison:

- 37% were living with a friend or relative;
- 26% were living in a private rental;
- 9% were living in public housing;
- 9% were living in a rooming house;
- 4% were sleeping rough;
- 4% were living in a car;
- 4% were living in emergency accommodation;
- 5% had other tenancy or housing; and
- 2% were living in transitional housing.

In summary, 60% of these clients were homeless before they entered prison, compared to 40% who had housing.

## 8. High levels of vulnerability

Based on the information provided by clients at their initial appointments at Port Phillip Prison, we know that of the clients we are assisting:

- 58% identified as having experienced homelessness;<sup>8</sup>

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<sup>8</sup> Note that some clients that are classified as homeless would not necessarily identify as experiencing homelessness, for example where they are couch surfing or in temporary accommodation (secondary homelessness) or staying in boarding houses or caravan parks (tertiary homelessness).

- 65% were receiving Centrelink benefits prior to entering prison;
- 52% have, or have had, alcohol or drug dependence issues;
- 37% have mental health issues;
- 24% have a physical disability;
- 17% have an intellectual disability;
- 13% have an acquired brain injury (ABI); and
- 43% have, or have had, a combination of two or more of the above issues (substance dependence, mental health issues, physical disability, intellectual disability or ABI).

These figures paint a picture of high levels of vulnerability amongst the prisoners Homeless Law was assisting.

## 9. Worrying about exiting prison with unresolved legal issues

During their initial appointments, 69% of clients told us their financial situation will place stress on their relationships when they leave prison and 63% were worried about their ability to obtain housing upon release.

72% of the clients reported feeling 'worried' or 'very worried' about the financial issues they will face when they leave prison and only 20% of clients felt prepared to deal with their financial issues upon release.

## 10. New relationships linking prisoners with legal services to prevent homelessness

Since 1 August 2014, 40 clients with housing matters have been referred to Homeless Law by housing workers and caseworkers from Port Phillip Prison, the Metropolitan Remand Centre, Dhurringile Prison, Hopkins Correctional Centre, Marngoneet Correctional Centre, Barwon Prison and Dame Phyllis Frost Correctional Centre.

The majority of these matters have related to sustaining the tenancies of prisoners serving short sentences or on remand.

In the 12 months prior to commencement of the Project, only seven clients in prison were referred to Homeless Law for assistance with their housing.

Homeless Law's expertise in working with prison-based clients, as well as a physical presence in the prison, has significantly increased the ability of Victorian prisoners to access legal assistance for legal issues related to housing.

### 11. Using pro bono legal capacity to respond to legal need

17 pro bono lawyers have been trained and supported to participate in the Project through specialist training sessions, resources and ongoing supervision and support.

Through Homeless Law's pro bono relationships and the existing skills of Homeless Law lawyers, we have been able to extend the reach of the Project, as well as to build pro bono lawyers' understanding of the legal and non-legal issues facing Victorian prisoners.

### 12. Using new evidence to advocate for systemic change

Through our direct legal representation of Victorian prisoners, Homeless Law has identified a number of systemic issues that have limited our clients' ability to access the justice system or get fair outcomes.

We have used our evidence to inform our advocacy and policy work in relation to:

- **The importance of being able to address fines while in prison** – Homeless Law has communicated with the Victorian Government about the benefits of retaining the current mechanism that allows prisoners to convert their infringements to run concurrently with their term of imprisonment (section 161A of the *Infringements Act 2006* (Vic)). We are optimistic that the Government will recognise that, in allowing prisoners to acknowledge their debt, call in their warrants and serve the prison time concurrently with their existing prison term, this mechanism allows prisoners to exit prison without the strain of fines which can be a barrier to reintegration.
- **Sustaining tenancies for prisoners** – Homeless Law has relied on evidence from the Project to inform discussions regarding 'temporary absence' policies, which allow public (and sometimes community) housing tenants to pay a reduced rate of rent (\$15 per week) while they are temporarily absent from their property, including due to imprisonment. These policies – and accompanying financial brokerage – are an essential component of strategies designed to avoid prisoners unnecessarily exiting prison into homelessness.

- **Access to eviction hearings for tenants in prison** – through the Project, Homeless Law identified that VCAT video link fees of \$82.50 were barriers to accessing VCAT hearings for prisoners. Our evidence-based advocacy resulted in legislative change, which now allows VCAT's video link fees to be waived so prisoners will be able to participate in hearings. Hansard records the following statement in moving the amendment, which was passed in May 2015:

*Homeless Law routinely provides pro bono legal assistance to tenants in prison who are respondents to possession order applications at VCAT. These inmates have no income or access to any funds. They cannot participate in the hearing unless they can apply for a fee waiver in relation to a video link application...*<sup>9</sup>

- **The high level of debt experienced by prisoners and barriers to housing** – Homeless Law has advocated for greater financial and legal assistance for prisoners pre-release through the Victorian Legal Assistance Forum (VLAF).

This report discusses the research and experience that informed the Project and the practical benefits of the prison-based clinic model. It also explains the operation of the Project and summarises the outcomes achieved to date.

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<sup>9</sup> Victoria, *Parliamentary Debates*, Legislative Council, 28 May 2015, 1573 (Colleen Hartland).

## In its first 12 months...

The Debt and Tenancy Legal Help for Prisoners Project assisted:

96

prisoners with debt, tenancy or infringement issues.

25

prisoners to keep their housing upon release from prison.

34

prisoners to resolve outstanding debt issues.

5

prisoners to resolve housing debt worth over \$22,000 total.



Of the Port Phillip Prison clients...

60%

had experienced homelessness.

65%

were receiving Centrelink benefits prior to entering prison.

37%

had a mental illness.

52%

had a substance abuse issue.

30%

had an intellectual disability or acquired brain injury.



The Prison Project saved...

**\$736, 250**

for the health, justice and welfare systems, achieved through the prevention of 25 evictions (AHURI, Dec 2013).



## 2. Five recommendations for improving access to justice, preventing homelessness and reducing disadvantage for Victorian prisoners

Recommendation	Details
<b>1. Expand targeted specialist civil legal services for Victorian prisoners</b>	Access to legal representation has proven to be effective in addressing debts and fines and preventing homelessness for Victorian prisoners. In an environment of growing prisoner numbers and escalating rates of recidivism, there needs to be a focus on – and investment in – legal services that give prisoners a greater chance of successful reintegration and reduce the risk of recidivism. The Debt and Tenancy Legal Help for Prisoners Project is one model for providing legal representation to Victorian prisoners. This model involves ongoing legal casework in relation to debts, tenancy issues and fines and can include assistance with multiple legal issues (e.g. fines, debts and housing). Another innovative and effective specialist model is the Clean Slate Project which focusses on bulk negotiation of debts on behalf of prisoners. <sup>10</sup> These targeted legal services should be supported to become a sustained feature of the access to justice landscape for Victorian prisoners.
<b>2. Strengthen pre and post release supports for prisoners</b>	Given the high level of vulnerability and disadvantage experienced by prisoners, an investment in housing, financial counselling, drug and alcohol and mental health support would reduce the risks of vulnerable Victorians cycling in and out of prison when their needs could be better met outside a system that costs \$98,389.40 per prisoner per year. <sup>11</sup> In particular, more housing workers should be employed in Victorian prisons who – together with legal services – could prevent prisoners exiting prison into homelessness. <sup>12</sup>
<b>3. Build links between legal and non-legal services and support collaboration and co-ordination</b>	Over a 12 month period, Homeless Law opened casework files for 96 prisoners from seven Victorian prisons. This represented a 1300% increase from the previous year and stemmed from new relationships and links with workers and services operating in Victorian prisons. These relationships and referrals pathways are crucial to supporting prisoners to access the legal and non-legal services they need. This is consistent with the findings of the Productivity Commission in their report into Access to Justice Arrangements. <sup>13</sup>
<b>4. Retain provisions that allow prisoners to address fines while in prison</b>	The current mechanism that allows prisoners to convert their infringements warrants to run concurrently with their term of imprisonment (section 161A of the <i>Infringements Act 2006</i> (Vic)) should be retained, so that prisoners can exit prison without the strain of fines which can be a barrier to reintegration.
<b>5. Improve policies and programs that sustain housing for prisoners</b>	Policies such as 'temporary absence' policies, which allow public (and sometimes community) housing tenants to pay a reduced rate of rent (\$15 per week) while they are temporarily absent from their property (including due to imprisonment) are an essential component of strategies designed to avoid prisoners unnecessarily exiting prison into homelessness. Given the current correctional context which has seen a significant increase in remand prisoners and prisoners serving short sentences, <sup>14</sup> the temporary absence policy should be amended to allow for greater flexibility to extend temporary absences to ensure that prisoners remain housed where possible.  Funding should be increased for housing programs in Victorian prisons to ensure that all prisoners have access to housing support pre-release. These programs should also include brokerage funds to help sustain tenancies while prisoners are in prison and assist prisoners to access housing upon release from prison.

<sup>10</sup> See Brimbank Melton Community Legal Centre, *Clean Slate Pilot Project Report*, 2015 <<http://www.communitywest.org.au/resources/ID1431911107.pdf>>.

<sup>11</sup> See part 3 of this report for relevant statistics regarding vulnerability of prisoners and costs of imprisonment.

<sup>12</sup> See Lou Schetzer, StreetCare, Public Interest Advocacy Centre, *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*, June 2013.

<sup>13</sup> Productivity Commission Inquiry Report, *Access to Justice Arrangements*, no 72, 5 September 2014, section 5.3, 162–4.

<sup>14</sup> Remand prisoners now account for almost a quarter of the prison population in Victoria, see Victorian Ombudsman, 'Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria' (Report, Victorian Ombudsman, 17 September 2015). 26.2% of

## 3. Context for a prison-specific project

### 3.1 Increasing prison population and recidivism rates

Australia's prison population has grown at an unprecedented rate over the past two decades, resulting in a ten year high of 33,791 prisoners in Australia's prisons at 30 June 2014.<sup>15</sup> This is Australia's highest rate of incarceration since 2004.<sup>16</sup>

Victoria currently has the highest rate of growth in imprisonment in Australia. Between 2009 and 2014, the Victorian imprisonment rate increased by 40.5%.<sup>17</sup> The number of prisoners on remand has doubled since 2011, now accounting for almost a quarter of all Victorian prisoners. Over the past 5 years, recidivism rates have also increased by 10.8% to an all-time high of 44.9%.<sup>18</sup>

This rapid increase in prisoner numbers has raised concern over the cost, both financial and social, of imprisonment. From a social policy perspective, the issue remains how best to address offending behaviour and reduce recidivism. As the Victorian Ombudsman recognised in her recent report, 'while there are many reasons people reoffend and return to prison, it is evident that insufficient access to rehabilitation and reintegration programs has a significant bearing on the likelihood of returning.'<sup>19</sup>

### 3.2 Disadvantage and imprisonment

Research shows that people who are or have been imprisoned are typically from highly disadvantaged backgrounds. The recent report by the Victorian Ombudsman highlights that only 6% of male prisoners and 14% of female prisoners have completed high school, and that the average prisoner is unemployed at the time of committing an offence, as well as having a history of substance abuse. Furthermore, 40% of Victorian prisoners have been assessed as having a mental health condition.<sup>20</sup> There is also a growing body of research indicating that levels of arrest and imprisonment are much higher among people experiencing homelessness and those in debt than the general population.<sup>21</sup>

Further, people exiting prison face serious barriers in accessing and securing accommodation upon release from prison, including loss of tenancy whilst incarcerated and lack of access to public housing.<sup>22</sup> Over 40% of female prisoners in Victoria exit prison into homelessness.<sup>23</sup> Research suggests ex-prisoners are far more likely to return to prison if they are homeless or transient post-release, do not have accommodation support, have suffered from alcohol or other drug issues, or are in debt.<sup>24</sup>

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Victoria's prison population are serving a sentence of less than one year, see Corrections Victoria, *Key statistics on the Victoria Prison system 2009-10 to 2013-14*, Table 6 Historical Trends all prisoners as at 30 June 2014, 12.

<sup>15</sup> Australian Bureau of Statistics (ABS), *Prisoner Characteristics Australia* (ABS Catalogue No 4517.0, Australian Bureau of Statistics, 17 April 2015).

<sup>16</sup> Ibid; Statistics Canada, *Adult Correctional Statistics in Canada, 2013/2014* (Juristat No 85-002-X, Statistics Canada, 22 April 2015);

<sup>17</sup> Marie Segrave, Anne Eriksson and Emma Russell, *State of Imprisonment: Victoria is Leading the Nation Backwards* (13 April 2015) The Conversation <<http://theconversation.com/state-of-imprisonment-victoria-is-leading-the-nation-backwards-38905>>.

<sup>18</sup> Victorian Ombudsman, 'Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria' (Report, Victorian Ombudsman, 17 September 2015).

<sup>19</sup> Ibid 8.

<sup>20</sup> Ibid.

<sup>21</sup> Anne Grunseit, Suzie Forell and Emily McCarron, 'Taking Justice into Custody: The Legal Needs of Prisoners' (Report, Law and Justice Foundation of NSW, July 2008) 68–80; Eileen Baldry et al, 'Ex-Prisoners, Homelessness and the State in Australia' (2006) 39 *The Australian and New Zealand Journal of Criminology*, 20; Matthew Willis and Toni Makkai, 'Ex-prisoners and Homelessness: Some key issues' (2008) 21(9) *Parity* 6; Eileen Baldry et al, 'Ex-prisoners and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration for Ex-Prisoners?' (Positioning Paper No 27, Australian Housing and Urban Research Institute, March 2002).

<sup>22</sup> Willis and Makkai, above n 21.

<sup>23</sup> Victorian Ombudsman, above n 18.

<sup>24</sup> Eileen Baldry et al, 'Ex-prisoners and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration for Ex-Prisoners?' (Final Report No 46, Australian Housing and Urban Research Institute, August 2003), 4.

### 3.3 Prisoners and legal need

Research shows that prisoners in particular have a high number of civil law issues, especially debt, fines and housing matters.<sup>25</sup> It has also been shown that the prevalence of such legal issues may contribute to higher rates of recidivism and re-incarceration.<sup>26</sup> However, the availability of legal assistance to prisoners for civil law issues is extremely limited.<sup>27</sup>

Given this connection and the important role that legal services can play in sustaining tenancies and reducing debt, increasing legal assistance to prisoners and ex-offenders, particularly in relation to housing and debts, may lead to greater housing stability, reduced homelessness and therefore decrease the likelihood of returning to prison. Failure to resolve these legal issues pre-release can create difficulties for people leaving prison with reintegrating in the general community, finding housing and obtaining employment and government benefits. Successful reintegration for prisoners requires intervention, both within prison and after release.<sup>28</sup>

### 3.4 Costs of homelessness and of keeping people in prison

According to a 2013 Australian Housing and Urban Research Institute (AHURI) study, an individual experiencing homelessness represents an annual cost to government services that is \$29,450 higher than for the rest of the Australian population. Of this increased cost, \$14,507 related to health services, \$5,906 related to justice services and \$6,620 related to receipt of welfare payments.<sup>29</sup> As such, providing legal assistance that may prevent a prisoner exiting into homelessness represents a significant cost saving to taxpayers.

Further, if recidivism rates of prisoners can be reduced through the provision of legal assistance for housing and debt issues, this represents a cost saving of \$98,389.40 per prisoner per year.<sup>30</sup>

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<sup>25</sup> Anne Grunseit, Suzie Forell and Emily McCarron, 'Taking Justice into Custody: The Legal Needs of Prisoners – Summary Report' (Justice Issues Paper No 2, Law and Justice Foundation of NSW, 2 June 2008).

<sup>26</sup> Ibid.

<sup>27</sup> Justice Connect Homeless Law, 'Prisoners Scoping Study: Investigating the Feasibility of a PILCH Civil Law Program for Prisoners' (Report, Justice Connect Homeless Law, 20 July 2012).

<sup>28</sup> Victorian Ombudsman, above n 18.

<sup>29</sup> Zaretsky et al, above n 4.

<sup>30</sup> The Council of Australian Governments reports that net operating expenditure per prisoner per day in Victoria in 2013–14 was \$269.56. See Corrections Victoria, *Corrections Statistics: Quick Reference* (30 June 2015) Victoria State Government <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>>.

## 4. Project design – increasing legal capacity in Victorian prisons

The Debt and Tenancy Legal Help for Prisoners Project was designed to leverage pro bono lawyer support to meet the legal needs of Victorian prisoners.

In 2010–11 Justice Connect (then known as the Public Interest Law Clearing House) conducted a research project which considered access and barriers to legal assistance for prisoners. The report identified significant unmet need in civil law assistance for prisoners, particularly in relation to debt, fines and housing.<sup>31</sup>

In 2012, with the generous assistance of the Reichstein Foundation, Justice Connect undertook a scoping study investigating the feasibility of establishing a targeted program at Justice Connect to provide civil law assistance to prisoners, using pro bono legal resources.<sup>32</sup> The 2012 report found that Justice Connect was well-placed to expand its existing services to prisoners by establishing a more targeted program. The Project aligns with Justice Connect's work in assisting marginalised and disadvantaged clients. It also builds on Homeless Law's long history of working with people who are homeless or at risk of homelessness.

In the context described above of an increasing prisoner population, a recognition of the links between homelessness and incarceration, and the importance of appropriate interventions such as legal assistance prior to release, it was a natural fit for Homeless Law to take on this project.

### 4.1 Training and supporting pro bono lawyers

Homeless Law partnered with Corrs Chambers Westgarth, an existing Homeless Law partner, to deliver the onsite legal clinic at Port Phillip Prison. In August 2014, two training sessions on common legal issues for prisoners were delivered to pro bono lawyers by Homeless Law's Senior Lawyer, Samantha Sowerwine. The 17 pro bono lawyers participating in the Project have also completed Homeless Law's general training, which includes modules on tenancy law, credit and debt, infringements, and training from Homeless Law's social worker, the Homeless Persons' Liaison Officer. A dedicated Project handbook containing relevant procedures and legal information was produced for pro bono lawyers. In addition, the Homeless Law Senior Lawyer attends the monthly clinics at Port Phillip Prison to provide support and supervision to the pro bono lawyers.

One of the pro bono graduate lawyers participating in the Project told us:

*'My ability to interview clients and progress their various matters was very much assisted by the initial training provided by Samantha Sowerwine, of Justice Connect... This session prepared me for the particular challenges of, and relaxed the concerns I had about, [these initial interviews].'*

G4S has delivered induction training to pro bono lawyers who visit the prison and Homeless Law staff involved in the delivery of the Project.

### 4.2 Promoting the Project and building relationships

The Project has been primarily promoted within the prison through meetings with prison peer support workers and more broadly through G4S staff, program providers at Port Phillip Prison and housing workers within the Victorian prison network. Regular meetings with stakeholders at Port Phillip Prison and more broadly within the Victorian prison network ensure that the Project is promoted in order for appropriate referrals to be made.

With a view to promoting better understanding within the homelessness sector and the pro bono sector of the legal issues impacting prisoners, the Project was featured in the October 2014 edition of *Parity*, the national homeless sector journal published by the Council to Homeless Persons. It has also been widely profiled in

<sup>31</sup> Jade Winterburn and Gregor Husper, *Law Behind Bars: PILCH Report on Prisoner Legal Assistance*, (PILCH, 4 September 2011, updated 26 October 2011).

<sup>32</sup> Justice Connect, above n 27.

Justice Connect's publications, including the Homeless Law newsletter and the biannual Members Report. In September 2014 a presentation on the Project was made to the Victorian Pro Bono Secretariat meeting, a meeting of pro bono partners and practitioners from Justice Connect's member law firms. Pro bono law firms have generally been very responsive and expressed ongoing interest in the Project.

More broadly, Justice Connect's Director of Legal Services is the chair of the Victoria Legal Assistance Forum (VLAF) Prisoners Working Group, which enables Justice Connect to engage with a number of relevant legal stakeholders providing legal assistance in Victorian prisons, contribute to mapping the existing legal services in prisons and share systemic issues that arise.

As part of a VLAF Prisoners Working Group delegation, Justice Connect also has quarterly meetings with Corrections Victoria's Assistant Commissioner of Sentencing Management and Deputy Commissioner of Offender Management in order to provide feedback and raise any issues that arise through the Project.

Homeless Law published a [detailed six-month report](#) on the Project, which was promoted on social media, and Senior Lawyer, Anna Lyons, was featured on 3RRR radio discussing the Project and the legal and non-legal needs of Victorian prisoners.<sup>33</sup>

### 4.3 Referrals to the Project

Prisoners at Port Phillip Prison are referred for appointments through the Programs staff and via self-referral. The majority of referrals have been made by Port Phillip Prison's Assessment and Transition Coordinators, Orientation Coordinator and the Salvation Army housing pathways worker. Referral forms have been distributed throughout the prison units so that prisoners can self-refer to the service. The availability of the service is promoted by posters (example below) which have been placed in the prison units.

For other Victorian prisoners, referrals are made through Programs staff, support workers and prisoners themselves by contacting Homeless Law directly, and a subsequent telephone appointment is made with a Homeless Law lawyer.

### 4.4 Face-to-face appointments at Port Phillip Prison

The Project's model was developed with the clients as the primary focus to ensure that the service is accessible and appropriate to their legal needs. For clients at Port Phillip Prison, the initial face-to-face appointment is extremely valuable in terms of client engagement and building rapport.

The clinic runs one Wednesday each month from 9.30 am to 11.30 am. Each clinic is attended by four pro bono lawyers and a supervising Homeless Law Senior Lawyer. There are six appointments per clinic, with the pro bono lawyers seeing clients in pairs.

Homeless Law pro bono lawyers have provided the following feedback:

*'Making contact with clients inside the prison gives both them and us an opportunity to try to assist despite the limitations encountered by their imprisonment. This is important not only in terms of addressing the issues quickly and efficiently, but can also put their minds at ease to some extent. It also can make their lives outside of prison much more manageable.'*

*I think the face-to-face interviews are a great feature of the program. It allows for clinic lawyers to engage in an open dialogue, build rapport and earn the clients' trust (in contrast to the stilted and slightly artificial dialogue that occurs over [teleconferencing]). I imagine this is particularly useful in interviewing clients who are in prison as they may not have previously had any positive interactions with lawyers, and perhaps may have developed a distrust of lawyers.'*

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<sup>33</sup> Justice Connect Homeless Law, 'Debt and Tenancy Legal Help for Prisoners Project – Six Month Project Report', (Report, Justice Connect Homeless Law, March 2015); 3RRR and Michelle Bennett, Interview with Anna Lyons, (Radio Interview, *Spoke*, 21 April 2015) <<http://www.rrr.org.au/whats-going-on/news/legal-help-for-prisoners-threatened-with-homelessness/>>.

*Most of my clinic interviews have been very candid, and clients did not seem to have any qualms about opening up about issues ...'*

Given the number of referrals for face-to-face appointments at Port Phillip Prison has far exceeded available appointments, priority is given to prisoners with an approaching release date and, all other factors being equal, in order of referrals. While our aim was to see around 50% sentenced and 50% remand prisoners, the large remand prisoner population at Port Phillip Prison, and the greater number of referrals from remand prisoners, has meant that the majority of clients have been on remand.



**debt & tenancy  
legal help**

Customer Number 9035624 3  
Bill Reference 3912-0382610  
Date of Issue 21-May-2014  
Enquiries 1300 85 66 88  
Fax 1300 85 66 4  
Email business\_enquiries@commande

**Total Payable  
\$2,195.82**

Payment Du

**Do you owe money?  
Are family or friends struggling to pay debts off for you?  
Think you might still have outstanding fines?  
Issues with previous housing?**

Free legal help with:  
housing & tenancy | debt & credit | fines

The **Debt and Tenancy Legal Help Project** can provide you with legal information, advice and representation.

Dealing with these issues now will mean you don't have them hanging over you when you're released.

To get an appointment with our lawyers, complete a referral form located in Programs and place in TAP Coordinators' pigeon hole, or talk to Julie Wasnig (Education coordinator) or Imogen Christou (Orientation coordinator).

We come out once a month on Wednesdays from 9.30am - 11.30am.



FREECALL 1800 606 313  
[justiceconnect.org.au/homelesslaw](http://justiceconnect.org.au/homelesslaw)

## 5. Legal issues impacting on prisoners

### 5.1 Unresolved debt

The most common legal issues for clients of the Project are credit and debt issues. In May 2014, Victoria's Sentencing Advisory Council reported, *'ongoing debts may lead directly to reoffending. In a study of 121 Queensland prisoners, 35% of participants with non-drug related debt had committed a crime in order to repay a debt.'*<sup>34</sup>

According to one of our pro bono lawyers:

*'The main issue facing the three clients I met was debt. The impression I formed was that debt issues – including minor, unquantified debts – are a pressing concern for prisoners who are soon to be released. As the training literature suggests, these issues ... can have real effects on their mental health.'*

Clients with debts have expressed concerns regarding the impact that these issues will have on their ability to re-establish themselves financially upon release, for example in applying for private rental or community housing, getting a new mobile phone, or applying for a bank loan or credit card. During their initial appointments, 69% of clients told us their financial situation will place stress on their relationships when they leave prison, while 72% of the clients reported feeling 'worried' or 'very worried' about the financial issues they will face when they leave prison. One client explained to his lawyers that he believed that unless his debts were sorted out, he was not confident he would be in a position to secure housing, which in turn would prevent him being able to care for his young son.

#### **Prisoners assisted to understand and deal with their debts**

Homeless Law has assisted 34 prisoners at Port Phillip Prison with advice and representation in relation to their debts. The total amount of debt owing was \$290,560 (not including infringements debt or housing debt). The debts ranged from as little as \$390 to as much as \$133,000. Of the 218 referrals received, 85% had debt issues.

Common creditors include: the Office of Housing, Centrelink, the Australian Taxation Office, utility providers, banks and phone companies.

Outcomes to date have included:

- Negotiating the waiver of a \$1700 utilities debt;
- Negotiating the waiver of a \$3196 phone bill;
- Negotiating the waiver of a \$1450 bank debt;
- Negotiating a deferred payment plan for a \$5000 credit card debt;
- Advising several clients on repayment of Centrelink debts via payment plan upon release from prison;
- Obtaining credit reports for clients which give the client assurance that they have no public record of outstanding debts; and
- Advising on debts that are too old to be enforceable.

For most clients with open matters, negotiations with debt collectors and other creditors are still ongoing. Most clients do not have paperwork or clear information about their debts so the pro bono lawyers typically start by making enquiries with credit reporting agencies, debt collectors, creditors and the client's family members to get a clearer picture of their debts. The length of time taken to run matters from start to completion is influenced by a number of factors, including:

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<sup>34</sup> Sentencing Advisory Council (SAC), *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria – Report* (30 May 2014) 449, citing Anne Stringer, *Prison and Debt: The Findings of the Prison and Debt Project* (Prisoners' Legal Service, 1999) 32, 40–41.

- time taken to obtain copies of identification documents (either from the prison or family members of the client);
- delays in obtaining documents from creditors (eg, a major phone company that has taken three months to provide the debt collector with documentation regarding the debt); and
- delays in obtaining instructions and supporting documentation — such as medical reports from clients — due to their incarceration.

Contact has been lost with approximately 14 clients whose matters were not yet finalised, due to their release from prison without forwarding addresses. Homeless Law has now revised our approach by obtaining alternative contacts at the first appointment, thereby making it more likely that contact with clients can be sustained after their release.

### **Debts to the Office of Housing cleared**

Debts to the Office of Housing for rental arrears, repairs or compensation are a significant barrier to prisoners being offered public housing upon their release from prison.

Homeless Law has assisted eight clients with debts to the Office of Housing for compensation for repairs regarding damage to their properties.

The total amount of the eight clients' debts was approximately \$58,125.

Of the five files that have been resolved with debts totalling \$31,118, Homeless Law was successful in clearing \$22,381 (ie, 72%) of this debt either through negotiation with the Office of Housing or through representation of the clients at VCAT hearings. The other three files are ongoing.

#### ***Michael — clearing significant debt to the Office of Housing***

Michael, a 39 year old man with acquired brain injuries and a history of drug abuse, was referred to Homeless Law whilst in prison. Prior to incarceration, Michael was reliant on Newstart payments and lived in an Office of Housing (OOH) property.

Some months after Michael's arrest and incarceration, the OOH inspected his vacated property and claimed that Michael was responsible for extensive property damage. The OOH applied to VCAT for an order for compensation for more than \$8500. Michael was adamant he wasn't responsible for the damage and suggested it may have been caused by squatters who moved into his property after he moved out.

Homeless Law lawyers contacted the OOH and arranged for the upcoming VCAT hearing to be adjourned. After further negotiations and providing evidence supportive of Michael's position to the OOH, the VCAT compensation application was withdrawn. As Michael is no longer subject to a compensation claim, he will be eligible to access OOH properties upon his release from prison.

#### ***Troy — reducing a debt to the Office of Housing***

Troy is a 41 year old man with schizophrenia, bipolar disorder and a history of drug and alcohol abuse.

Prior to his incarceration, Troy lived in an OOH property. After Troy was incarcerated, he received correspondence from the OOH claiming he was liable for repairs to damage of his OOH property. The majority of the damage occurred after he had vacated the OOH property and commenced serving his prison sentence.

The OOH applied to VCAT seeking an order for compensation of over \$15,000. Troy personally wrote to OOH explaining the situation and making an offer of compromise. The OOH rejected Troy's offer. Troy was then referred to Homeless Law. In the lead up to the VCAT compensation order hearing, Homeless Law lawyers advocated on behalf of Troy, emphasising his special circumstances and the fact that he wasn't responsible for the majority of the damage.



Through Homeless Law's advocacy, the matter was resolved by consent, with the OOH agreeing to reduce the amount of compensation payable to \$3000. Troy entered into a reasonable payment plan to pay off the remaining debt. Having now addressed the debt, Troy will be eligible for OOH housing upon his release from prison.

### **Dealing with debt – exiting with a clean slate**

Addressing debts in prison is integral to people exiting prison with a 'clean slate' and equipped to focus on establishing themselves financially post-release.<sup>35</sup> As discussed by the National Hardship Register (a project of the Australian Collectors and Debt Buyers Association and Financial Counselling Australia) in its 2014 update to stakeholders:

*'from a social perspective, debt collection activity targeting people who cannot pay clearly only adds to their problems ... The debt collection industry also recognises that it does not make commercial sense to expend resources on debts which cannot be collected. The industry also recognises that it has a moral and ethical obligation to act fairly.'*<sup>36</sup>

The stories of clients Ben and Paul – set out below – demonstrate that assisting clients to resolve their debts has a significant impact on their mental health, stress levels and ability to focus on other issues upon release from prison.

#### ***Ben – help with bank and phone debts***

Ben contacted Homeless Law shortly after commencing his prison sentence, seeking assistance with addressing a number of infringement notices and debts. Ben was unable to attend to his debts due to his imprisonment, the loss of his job, mental health issues and the breakdown of his marriage. Ben sought assistance to arrange for his debts to be put on hold during his time in prison.

Homeless Law wrote to the creditors, explained Ben's inability to service the debts and requested that the debts be waived. Following extensive correspondence, two of the debt providers agreed to waive the full balance owing, totalling approximately \$5000. The other creditor agreed to charge no interest while Ben was in prison.

Homeless Law also assisted with applying for Ben's outstanding infringement warrants to be 'called in', allowing for the amounts owing in relation to the infringement notices to be converted to a sentence of imprisonment to be served concurrently with Ben's current sentence.

Dealing with the debts and infringements has reduced Ben's stress and allowed him to concentrate on his outstanding criminal law matters and address his mental health concerns. Upon his release, Ben hopes to gain employment and pay off the remaining debt by way of an affordable payment plan.

#### ***Paul – assistance with electricity debt***

Paul, 36 years old, suffers from a physical disability, bipolar disorder, schizophrenia and is a long-term drug user.

Whilst incarcerated, Paul was referred to Homeless Law for assistance with a debt of approximately \$1800 owed to an electricity company. Paul advised the debt was accrued when his ex-partner used money intended for the electricity bill on drugs. Paul was very worried about how the debt would impact on him upon his release from prison and reported that it was causing him a lot of stress. Additionally, Paul sought assistance for the return of a bond of \$700, jointly held with his ex-partner with whom he had lost contact.

<sup>35</sup> See Brimbank Melton Community Legal Centre, *Clean Slate Pilot Project Report*, 2015 <<http://www.communitywest.org.au/resources/ID1431911107.pdf>>.

<sup>36</sup> National Hardship Register, *Information for Stakeholders* (September 2014) <<https://www.nhr.org.au/>>.

Homeless Law contacted the electricity company and the debt collector acting on its behalf. Through Homeless Law's strong advocacy, the electricity company agreed to waive Paul's debt in full on account of his special circumstances. Homeless Law also facilitated the return of Paul's bond by liaising with the Residential Tenancies Bond Authority. Having now received his bond and dealt with his debt, Paul is less stressed and can focus on his successful release from prison.

In a climate of growing recognition from debt collectors and creditors that pursuing disadvantaged and judgment proof individuals for debts is not an appropriate course of action, the resolution of prisoners' debts will continue to be an integral part of the Project.

## 5.2 Tenancy issues

As discussed throughout this report, the links between homelessness and imprisonment are increasingly well-known: research shows 35% of prisoners are homeless upon entry and 43% exit prison into homelessness;<sup>37</sup> a study of ex-prisoners in Victoria and NSW found that they were more than twice as likely to return to prison within nine months of release if they were homeless.<sup>38</sup>

Data gathered through the Project is consistent with these findings, with 60% of the clients that Homeless Law has assisted having previously experienced homelessness and 63% of clients indicating they were concerned about finding housing upon exiting prison.

The provision of pro bono legal representation that enables tenancies to be sustained and prisoners to exit prison into safe housing has a significant role to play in closing the revolving door between prison and homelessness.

Homeless Law lawyers have provided 40 clients with tenancy advice and assistance, including advice on goods left behind, compensation claims by landlords and outstanding bonds. However, the majority of tenancy work has involved preventing evictions and sustaining tenancies through negotiation and legal advocacy.

### Sustaining tenancies

The most common risks to our clients' housing are: falling behind in rent; being absent from an Office of Housing property for longer than the permitted six month 'temporary absence'; alleged abandonment of the property; or alleged 'illegal use' of the property.

Of the 31 prisoners facing eviction who we have assisted:

- 25 tenancies were sustained;
- 5 clients decided to voluntarily relinquish their properties where their prison sentence significantly exceeded the permitted six month temporary absence (which can only be extended in 'exceptional circumstances'). Relinquishing the tenancy ensures the prisoner is able to make an early housing application; and
- 1 tenancy was lost.

All 31 prisoners we assisted who were facing eviction had tenancies in social housing.

Where clients were being evicted for rental arrears, Homeless Law was successful in negotiating with the Office of Housing or through advocacy at the Victorian Civil and Administrative Tribunal (**VCAT**) for the arrears to be addressed via payment plans. In several cases, Justice Connect or other support services contributed

<sup>37</sup> Australian Institute of Health and Welfare, above n 1, 26–8.

<sup>38</sup> Baldry et al, above n 2.

lump sum payments towards the arrears through brokerage funds. For several clients, the lawyers negotiated the recalculation of the arrears and, in two cases, the arrears were reduced to nil.

Where clients faced eviction from their Office of Housing properties due to exceeding the six months allowed under the OOH Temporary Absence policy, Homeless Law was able to successfully advocate for an extension of the temporary absence due to exceptional circumstances.

#### ***Geoffrey – first time prisoner avoids eviction***

Geoffrey is a 28 year old man who had lived in an Office of Housing property for seven years before entering prison. Geoffrey underwent treatment in the psychiatric ward of the prison for most of his sentence.

Geoffrey had a six month temporary absence approved by the Office of Housing which enabled him to pay the reduced rate of \$15 per week for the first six months of his sentence. However, because his sentence was longer than six months, his rent returned to normal after his temporary absence expired. As a result, Geoffrey fell into arrears. He was issued with a notice to vacate and faced the immense stress of a hearing at VCAT. The stress was compounded by not being in a position to sort out his belongings if he was ultimately evicted. Geoffrey was referred to Homeless Law by a Housing Pathways worker.

Geoffrey's pro bono lawyer successfully negotiated with the Office of Housing to have the VCAT hearing withdrawn and negotiated a payment plan to enable Geoffrey's family to assist with payment of the rent and the arrears until his release. Upon his recent release, Geoffrey was able to return to his property.

#### ***Peter – keeping a vulnerable prisoner housed***

Peter, 40 years old, who suffers from paranoid schizophrenia, lived in an OOH property prior to his incarceration. Upon entering prison, the OOH approved a temporary absence of 6 months for Peter.

Peter's prison sentence then went beyond six months, and Homeless Law advocated with the OOH to extend Peter's temporary absence for a further six month period. However, the OOH refused to extend Peter's temporary absence period and issued a Notice to Vacate for rent arrears.

Rental arrears of over \$4000 had accrued, because while Peter was incarcerated, Peter's partner Sally started living at the OOH property. Sally was vulnerable due to her mental health and heavy pregnancy, and had no other place to stay. OOH became aware of Sally's unregistered presence at the property and raised the rent to the commercial rate of \$220 per week.

Homeless Law represented Peter at the VCAT possession order hearing. After obtaining an adjournment to enable Peter to use video-link facilities, Homeless Law successfully advocated for VCAT to exercise its discretion not to make a possession order and instead order a payment plan to commence upon Peter's release. Peter has now been released from prison, returned to his OOH property and is paying back rental arrears in accordance with the payment plan.

### **Cost savings**

Apart from the benefit to the individual clients, the Project model provides a significant return on the investment made by The Ian Potter Foundation. Using the AHURI figures cited above, sustaining 25 tenancies equates to a cost saving of approximately \$736,250 to the health, justice and welfare systems. Given that all of the prisoners were in public housing, the Victorian Government figures cited above indicate that the costs of support if evicted would have been approximately \$850,000.

Research regarding New South Wales and Victorian prisoners also found that ex-prisoners were more than twice as likely to return to prison within nine months of release if they are homeless.<sup>39</sup> As the tenancies have only been recently sustained, we cannot yet provide data on the long-term housing outcomes for these 25

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<sup>39</sup> Ibid.

clients and the cost saving to government as a result of them not being re-incarcerated. Based on the existing research however, we are confident that preventing this group of people's release into homelessness will give them a stronger ability to avoid the cycle of recidivism and re-incarceration; a cycle which has been identified as costing \$98,389.40 per prisoner per year.<sup>40</sup>

### 5.3 Outstanding fines and infringements

#### The impact of fines on prisoners

The importance of dealing with debt accrued through fines while in prison was recognised by the Sentencing Advisory Council in their 2014 report on fines reform:

*'Without conversion, an ongoing court fine or infringement penalty debt – combined with more general financial disadvantage among the prison population – may increase the risk of reoffending. Indebtedness and financial stress may lead to mental and physical health problems, unstable housing, and unemployment. In turn these factors make reintegration more difficult and increase the risk of reoffending.'*<sup>41</sup>

In addition to the benefits for the individual prisoner who has their fines addressed, dealing with fines while in prison saves public money spent on fines enforcement and reduces the burden on the Magistrates' Court of Victoria. It also reduces the time spent by publicly and philanthropically funded organisations, such as legal services and financial counsellors, that provide advice and support to post-release prisoners dealing with fines and infringements.

#### Assisting prisoners to resolve their outstanding fines

Homeless Law provided advice to 19 prisoners with outstanding fines and infringements. The amount of outstanding fines ranged from \$600 – \$30,000. This is consistent with research that found that prisoners have a median fine debt of \$7425.<sup>42</sup>

For clients on remand, the lawyers gave advice about 'calling in' or 'converting' fines and serving prison time concurrently with their existing sentence; a process that can only be undertaken after a prisoner is sentenced (a mechanism enabled by s 161A of the *Infringements Act 2006 (Vic)*). Homeless Law lawyers also provided advice on the options for dealing with fines for remandees, including applying for revocation of the fines on the basis of the client's special circumstances (including their experience of homelessness, mental illness or substance abuse), seeking a payment plan or extension of time to pay, or waiting until they are sentenced to call in their fines.

Homeless Law assisted two clients with the 'calling in' process in relation to a total of \$8688 in outstanding infringement warrants. It is important to note that the small number of prisoners with infringements issues referred to the Project does not reflect the amount of infringements debt overall in the prison population, as most prisoners are able to call in their fines relatively easily due to the Sheriff's office automatically sending out application forms to sentenced prisoners to have their outstanding warrants converted to run concurrently with their sentence. They can then sign the application form and send it back to the Sheriff's office for it to be listed in court and decided on the papers. As such, many prisoners do not seek legal assistance in relation to their infringements unless there are issues with the application being sent out, or they want advice on how the conversion may impact their sentence (ie, whether it will have the effect of lengthening their sentence).

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<sup>40</sup> Council of Australian Governments, above n 30.

<sup>41</sup> SAC, above n 34.

<sup>42</sup> Kristy Martire et al, 'Financial Sanctions and the Justice System: Fine Debts among New South Wales Prisoners with a History of Problematic Substance Use' (2011) 44(2) *Australian & New Zealand Journal of Criminology* 258, 266 cited in, SAC, above n 34.

## 6. Developing expertise in the legal and systemic issues commonly facing prisoners

Through the work conducted to date, our lawyers are recognising a number of systemic issues that inform our advocacy and policy work.

### 6.1 Inability to repay outstanding debts

#### **Infringements debt**

Homeless Law pro bono lawyers have seen numerous clients with infringements debt. Currently all sentenced prisoners have the option to 'call in' outstanding infringement warrants under s 161A of the *Infringements Act 2006* (Vic) (**Infringements Act**). This enables them to convert their fines to run concurrently with their term of imprisonment. Based on our discussions with prisoners, there is a good understanding of this mechanism among prisoners, and most prisoners we have seen have opted to deal with their outstanding infringements in this way.

However, the new *Fines Reform Act 2014* (Vic), which made some significant reforms in relation to the infringements system, repealed s 161A of the Infringements Act, leaving prisoners with no option to convert their fines to run concurrently with their term of imprisonment. Homeless Law is concerned that the repeal of this section will result in more prisoners being released with substantial debt. Releasing prisoners into the community with a fine debt is likely to exacerbate the significant difficulties faced by prisoners reintegrating into the community. As discussed throughout this report, debts upon release can have a direct impact on prisoners' ability to secure housing and can contribute to higher rates of recidivism and re-incarceration.

We continue to advocate for the reinstatement of this important mechanism through direct advocacy, as well as our participation in the Infringements Standing Advisory Committee and our membership of the Infringements Working Group through the Federation of Community Legal Centres.

#### **Working with other agencies to identify and address debt issues for prisoners**

Of the outstanding referrals to the Project, the largest single issue for prisoners is clearly debt, with 85% of the 218 referrals citing debt issues. Justice Connect Homeless Law currently runs the only program at Port Phillip Prison that provides assistance in relation to debt matters. There are no financial counselling or other programs available for dealing with debt. As such, Homeless Law recognises that the need for legal assistance in relation to debt far exceeds the ability for the Project to meet demand.

Homeless Law is working closely with other legal services and agencies through the Victorian Legal Assistance Forum Prisoners Working Group and the Federation of Community Legal Centres to discuss referral options and partnerships in order to address these outstanding legal needs. In particular, Homeless Law has been working closely with Brimbank Melton Community Legal Service's Clean Slate program, which seeks to address prisoner debts through a bulk debt negotiation model. This model has been effective at the Dame Phyllis Frost Centre, and Homeless Law remains in close discussion regarding the expansion of this service and ensuring that the projects work in tandem to address prisoner debt.

We are also ensuring that the information gathered throughout the Project regarding the high level of debt is passed on to Corrections Victoria through regular updates.

### 6.2 Sustaining social housing tenancies whilst incarcerated

Policies such as 'temporary absence' policies, which allow public (and sometimes community) housing tenants to pay a reduced rate of rent (\$15 per week) while they are temporarily absent from their property (including due to imprisonment) are an essential component of strategies designed to avoid

prisoners unnecessarily exiting prison into homelessness. The temporary absence policy is particularly vital in the current correctional context, which has seen a significant increase in remand prisoners (one-quarter of the current prison population) and prisoners serving short sentences (26% of Victorian prisoners are serving sentences of less than 12 months).<sup>43</sup>

As it stands, the current policy allows for a 6 month temporary absence, with the possibility of an extension of up to 6 months in 'exceptional circumstances'.<sup>44</sup> However, it is no longer exceptional for an extension to be required because, although given a short sentence, together with their time on remand, a prisoner's period away from their home frequently exceeds 6 months. In addition, a stricter approach to parole means that people who may previously have been released into the community within 6 months are spending longer in prison, which then jeopardises their housing.

Homeless Law has consistently advocated for extensions to temporary absences where possible. We also recommend that the temporary absence policy is amended to allow greater flexibility to extend the period of permitted absence to ensure that prisoners remain housed where possible. This could be achieved by removing the 'exceptional circumstances' requirement and ensuring that the criteria for determining extensions are flexible and the process is streamlined.

Another issue facing prisoners is that while incarcerated, without access to Centrelink, they are often unable to pay the \$15 per week required to secure their housing. As a result, Homeless Law has worked with the Salvation Army Housing Pathways Program to assist prisoners in accessing Corrections Victoria brokerage to pay subsidised public housing rent while in prison.

### 6.3 Restricted access to Tribunal hearings

For people in prison who are facing eviction, the only way to attend their hearing at the Victorian Civil and Administrative Tribunal (VCAT) is by video link. This needs to be organised in advance of the hearing by way of an application to the Tribunal, which includes a fee of \$82.50 for the booking plus an hourly phone line charge.

In January 2015, a Homeless Law pro bono lawyer applied for a video link for a client in prison. An application for a fee waiver was also made. The application for a fee waiver was refused on the basis that a video link fee is not a fee that the principal registrar can waive under either the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**) or the Regulations, and that only fees listed in the VCAT Fee Waiver Guidelines can be waived.

In Homeless Law's view, the refusal to waive a video link fee for a person in prison restricts the ability of the imprisoned person to fully participate in their VCAT hearing. As a result of identifying this barrier preventing prisoners from accessing their VCAT hearings, Homeless Law recommended that the Greens introduce an amendment to s 132(1) of the VCAT Act through the Justice Legislation Amendment Bill 2015 (Vic) (s 18(2)) and assisted with drafting a new provision (s 18(2)(1A)). The amendment gives VCAT the discretion to reduce or waive any fee payable to the Tribunal if the principal registrar considers the payment of the fee or charge would cause the person responsible for its payment financial hardship or on any other prescribed ground in the Regulations. The Bill was successfully passed with the Homeless Law drafted amendment on 16 June 2015, and represents an important step in ensuring access to justice and a fair hearing for Victorian prisoners.

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Informed by the evidence and insights from the Project, parts 1 and 2 of this report set out Homeless Law's 12 observations and five recommendations aimed at improving access to justice, preventing homelessness and reducing disadvantage for Victorian prisoners to increase their chances of successful reintegration into the community.

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<sup>43</sup> See Victorian Ombudsman, above n 14; Corrections Victoria, above n 14, 12.

<sup>44</sup> See Department of Health and Human Services, *Temporary Absence Operational Guidelines* (21 September 2015) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/tenancy-management-manual/temporary-absence>>.

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