



Sentencing contradictions -

**Difficulties faced by people living with mental illness
in contact with the criminal justice system**

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from Trade and Investment, Regional Infrastructure and Services NSW for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

PIAC's work in the criminal justice system

PIAC has significant experience with the criminal justice system through its work with the Homeless Persons' Legal Service (HPLS), a joint initiative between PIAC and the Public Interest Law Clearing House (PILCH) NSW. The HPLS Solicitor Advocate provides representation for people who are homeless and charged with minor criminal offences. The role was established in 2008 to overcome some of the barriers homeless people face accessing legal services, including: a lack of knowledge of how to navigate the legal system; the need for longer appointment times to obtain instructions; and, the need for greater capacity to address multiple and complex interrelated legal and non-legal problems.

Since commencing in 2008, the HPLS Solicitor Advocate has provided court representation to 362 individual clients in 554 matters. From January 2010 to December 2012, the HPLS Solicitor Advocate provided court representation to 241 individual clients facing criminal charges. Of these:

- 48 per cent disclosed that they had a mental illness;
- 63 per cent disclosed that they had drug or alcohol dependency;

- 41 per cent disclosed that they had both a mental illness and drug/alcohol dependency;
- 72 per cent had either a mental illness or drug/alcohol dependency;
- 46 per cent disclosed that they have previously been in prison.

Homeless people, mental illness and the criminal justice system

Previous research has consistently identified a strong relationship between homelessness and mental illness. In their study of 4,291 homeless people in Melbourne, released in 2011, Johnson and Chamberlain found that 31 per cent of their sample had a mental illness (not including any form of alcohol or drug disorder).¹ Current research exploring the pathways of people with mental and cognitive impairment into prison indicates that those people with disability, in particular those with complex needs, are significantly more likely to have experienced homelessness than those without disability.²

In 2004, Teesson et al conducted interviews with 210 homeless people in Sydney, comprising 160 men and 50 women.³ The study found that 73% of men and 81% of women met the criteria for at least one mental disorder in the year preceding the survey and that 40% of men and 50% of women surveyed had two or more disorders. Of particular interest was their comparison of the rate of mental illness in the homeless population to that of the general population, which found that the prevalence of mental disorders amongst homeless people in Sydney is approximately four times that of Australia in general.

A 2003 study involving 403 homeless young people in Melbourne aged 12-20 found that 26 per cent of those surveyed reported a level of psychological distress indicative of a psychiatric disorder.⁴ In its 2003 study into the legal needs of homeless people in NSW, the Law and Justice Foundation of NSW reported that mental health, alcohol and drug issues, dual diagnosis and other complex needs are prevalent among the homeless population, particularly those who are entrenched in homelessness.⁵

Several studies in Australia over the last ten years have found a strong correlation between homelessness, criminal offending, and experience of imprisonment. A 2003 study of people released from prison found that being homeless and not having effective accommodation support were strongly linked to returning to prison. Sixty one per cent of those homeless on release returned to prison, compared to 35 per cent of those with accommodation.⁶

¹ Johnson, G. and Chamberlain, C. (2011), 'Are the Homeless Mentally Ill?', *Australian Journal of Social Issues*, Autumn 2011, 35.

² Baldry, Eileen, Dowse, Leanne and Clarence, Melissa (2012), *People with mental and cognitive disabilities: pathways into prison*, Background Paper for Outlaws to Inclusion Conference, February 2012, available online at <<http://www.mhdc.d.unsw.edu.au/publications.html>> at 15 March 2013.

³ Teesson, M., Hodder, T. and Buhrich, N. (2004), "Psychiatric Disorders in Homeless Men and Women in Inner Sydney" (2004) 38(162) *Aust NZ J Psychiatry*.

⁴ Rossiter, B, Mallett, S, Myers, P and Rosenthal, D (2003) *Living Well? Homeless Young People in Melbourne*, Melbourne, Australian Research Centre in Sex, Health and Society, 17.

⁵ Forell, Suzie, McCarron, Emily and Schetzer, Louis (2005), *No Home, No Justice? The Legal Needs of Homeless People in NSW*, Law and Justice Foundation of NSW, Sydney, 124.

⁶ Baldry, E, McDonnell, D, Maplestone, P, Peeters, M (2003), *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?* Australian Housing and Urban Research Institute (AHURI), as quoted in Australian Housing and Urban Research Institute (AHURI) 2004, 'The role of housing in preventing and re-offending' *Research and Policy Bulletin*, Issue 36.

According to the Australian Institute of Health and Welfare, in 2005/06, 12 per cent of clients of specialist homelessness services reported that they had spent time in the criminal justice system, and 11 per cent reported they had more than one experience of being incarcerated in a correctional facility.⁷

In 2008, the Australian Institute of Criminology reported on a 7 year survey of 24,936 police detainees, which found that 7 per cent of detainees reported primary homelessness or living in crisis accommodation at the time of arrest.⁸ Most recently, a 2009 NSW Inmate Health Survey reported that 11 per cent of survey participants were homeless prior to their current incarceration, and of those who had previous experience of prison, 30 per cent reported that they had experienced difficulties accessing stable accommodation within six months of their last release into the community.⁹

The fact that people with a mental illness are over-represented in the criminal justice system is generally accepted, and confirmed by a number of studies:

- A 2001 Australian Institute of Criminology study found that of the approximately 15,000 people in Australian institutions for a major mental illness, one-third were in prisons.¹⁰
- According to NSW Correctional Health Services, in 2003, 74 per cent of NSW inmates had at least one psychiatric disorder¹¹ compared to the 22 per cent in the general population.¹²
- In 2003, in the twelve months prior to being arrested, 1 in 20 NSW prisoners will have attempted suicide,¹³ and every day, approximately 4 people with schizophrenia are received into NSW prisons.¹⁴
- In 2008, following a study of 2700 people in the Australian prison system, it was found that 28 per cent of the prisoners experienced a mental health disorder in the preceding 12 months, 34 per cent had a cognitive impairment and 38 per cent had a borderline cognitive impairment.¹⁵
- A 2011 report found that 87 per cent of young people in custody in NSW had a psychological disorder, with over 20 per cent of Indigenous young people and 7 per cent of non-Indigenous young people in custody being assessed as having a possible intellectual disability.¹⁶

⁷ Australian Institute of Health and Welfare (AIHW) (2007), *Homeless people in SAAP*, SAAP National Data Collection Annual Report 2005-06, Canberra.

⁸ Australian Institute of Criminology (AIC) (2008), 'Homelessness, Drug Use and Offending', *Crime Facts Info*. No 168, 15 April 2008.

⁹ Corben, S and Eyalnd, S (2011), *NSW Inmate Census 2011*, Corrective Services NSW.

¹⁰ Australian Institute of Criminology (2009), 'Mental disorders and incarceration history', No 184, January 2009, Canberra. Available at <<http://www.aic.gov.au/publications/current%20series/cfi/181-200/cfi184.aspx>> (8 March 2013).

¹¹ "Psychiatric disorder" has been given the broad definition of "any psychosis, anxiety disorder, affective disorder, substance use disorder, personality disorder or neurasthenia" – Tony Butler & Stephen Alnutt (2003), 'Mental Illness Among New South Wales Prisoners', NSW Corrections Health Service, (2003), 15.

¹² Tony Butler & Stephen Alnutt (2003), 'Mental Illness Among New South Wales Prisoners', NSW Corrections Health Service, 2.

¹³ Ibid, 3.

¹⁴ Ibid, 21.

¹⁵ Baldry, Eileen (2008), *A critical perspective on Mental Health Disorders and Cognitive Disability in the Criminal Justice System*, (2008).

¹⁶ Indig, Devon, Vecchiato Claudia, Haysom Leigh (2009), *2009 NSW Young People in Custody Health Survey: Full report*, Justice Health and Juvenile Justice, (2011).

The casework data of the HPLS Solicitor Advocate supports this research. From January 2010 to December 2012, the HPLS Solicitor Advocate provided court representation to 241 individual clients facing criminal charges. Of these, 48 per cent disclosed that they had a mental illness. Further, HPLS clients that come into contact with the criminal justice system often have complex needs, such as dual diagnoses and cognitive disabilities as well as mental health issues.

According to the Australian Institute of Criminology, there are several factors that may explain why the number of people in NSW with mental illnesses who engage with the criminal justice system is disproportionately high. Some are social: the prevalence of homelessness and economic desperation among people with mentally illness; the deinstitutionalisation and isolation of people with mental illness; and increased use of drugs and alcohol among the general population and among people with mental illness.¹⁷ Others point to the paucity of services available to people with a mental illness: the inadequate rehabilitation of patients in mental health facilities, and the disconnection between mental health services and the courts.¹⁸

Value of a justice reinvestment approach to criminal justice

This discussion paper focuses on the need to ensure the diversion of people who are homeless and those with a mental illness out of the criminal justice system. Where such diversion does not occur, sentencing options should be focused on addressing the underlying causes of criminal activity.

There is a public interest in reducing recidivism and supporting ‘justice reinvestment’ approaches that move funds away from more expensive, end-of-process crime control options, such as incarceration, towards programs that target the factors that cause offenders to commit crime. This reinvestment should take place both internally and external to the criminal justice system. However, it is imperative that community service organisations—generally the core service providers of such programs—are adequately resourced.

There is also a need for specially tailored services to meet the complex needs of people with mental illness. For this reason, it is important that treatment and care under diversionary programs take a multi-disciplinary and multi-stranded approach.

Justice reinvestment and problem-solving justice

The term ‘justice reinvestment’ originated in the United States about 15 years ago, and refers to a variety of approaches to criminal justice policy reforms.¹⁹ In the US, several justice reinvestment initiatives have resulted in reductions in rates of imprisonment amongst disadvantaged groups, particularly in African-American communities.²⁰ Justice reinvestment involves the development of an evidence-based, data-driven strategy to reduce the burden of imprisonment on society by

¹⁷ James RP Ogloff, Michael R Davis, George Rivers and Stuart Ross (2007), Australian Institute of Criminology, ‘The identification of mental disorders in the criminal justice system’, No 334, March 2007, Canberra. Available at <<http://www.aic.gov.au/publications/current%20series/tandi/321-340/tandi334.html>> (8 March 2013).

¹⁸ Tony Butler & Stephen Alnutt (2003), ‘Mental Illness Among New South Wales Prisoners’, NSW Corrections Health Service, (2003), 15, 49.

¹⁹ UK Parliament, Justice Committee (2009), Cutting crime: the case for justice reinvestment, Justice Committee First Report, House of Commons Select Committees, 2009, paragraph 9<<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9405.htm>> at 8 March 2013.

²⁰ Australian Human Rights Commission (AHRC) (2009), ‘Justice reinvestment – A new solution to the problem of Indigenous over-representation in the criminal justice system’ in *Social Justice Report* (2009).

reducing the number of people entering the criminal justice system in the first place, as well as lowering the numbers returning to custody via breaches of parole or reoffending.²¹ It seeks to reverse what many have argued to be a failure of social policy: prisons becoming a stand-in health and welfare system for people with problems that society in general, and their local services in particular, have failed to deal with.²²

Justice reinvestment essentially involves diverting funds away from the criminal justice system and towards measures that prevent people from offending in the first place. While the term can refer to redirection of public resources away from the criminal justice and corrections system towards areas such as education, housing and welfare, it has also come to embrace notions of therapeutic jurisprudence and 'problem-solving justice', which use court initiatives to divert certain vulnerable groups of people away from the criminal justice system, and to link them with appropriate services and supports when they do come in contact with the criminal system.

'Problem-solving justice' similarly requires redirection of public resources away from custodial responses towards criminal offending, and directing such resources to effective services and support options, including housing, job training, education, treatment, etc. They have the potential to address underlying factors that may be contributing to offending and re-offending. The informal, flexible and interventionist features of these programs mean that they are better able to involve and support people with complex needs in the legal process. The overall aim is to reduce recidivism through early intervention and the provision of targeted support. The key feature of 'problem-solving justice' is that it operates predominantly within the framework of the criminal justice system.

Problem solving courts are examples of such approaches. These courts:

[focus] on defendants ... whose underlying medical and social problems (e.g. homelessness, mental illness, substance abuse) have contributed to recurring contacts with the criminal justice system. The approach seeks to reduce recidivism and improve outcomes for individuals, families, and communities using methods that involve ongoing judicial leadership; the integration of treatment and/or social services with judicial case processing; close monitoring of and immediate response to behaviour; multidisciplinary involvement, and collaboration with community-based and government organizations.²³

A key factor in the success of such approaches is their use of multidisciplinary teams who provide defendants with assessment, treatment (including for drug/alcohol-related problems), referral to services such as drug treatment, mental health counselling and housing support. In order to effectively implement a multidisciplinary approach, community services, which inevitably form the core of the service providers, must be adequately resourced to meet any additional casework referred by the courts.

²¹ Allen, R. 'Justice Reinvestment: A new approach to crime and justice?', *Prison Service Journal*, Issue 176, pp 2-9.

²² Sara Hudson (2013), *Panacea to Prison? Justice Reinvestment in Indigenous Communities* (The Centre for Independent Studies, 2013) <<http://www.cis.org.au/images/stories/policy-monographs/pm-134.pdf>> at 8 March 2013
<[http://parliament.nsw.gov.au/prod/parlament/publications.nsf/0/25246662BD3F6E20CA25721F00126E2D/\\$File/FINAL%20&%20INDEX.pdf](http://parliament.nsw.gov.au/prod/parlament/publications.nsf/0/25246662BD3F6E20CA25721F00126E2D/$File/FINAL%20&%20INDEX.pdf)>.

²³ Casey, P.M, Rottman, D.B and Bromage, C.G (2007) *Problem-solving justice toolkit*. National Centre for State Courts <http://www.ncsconline.org/D_Research/Documents/ProbSolvJustTool.pdf>.

Problem-solving justice for homeless people and people with mental illness

Current initiatives in New South Wales

Section 32 orders under the *Mental Health (Forensic Provisions) Act 1990 (NSW)*

In NSW, where there is no mental health court, the only diversionary measures available to the courts arise under the *Mental Health (Forensic Provisions) Act 1990* (NSW) (MHFPA). A section 32 order is an application made to the court to have charges against a client dismissed without conviction on the basis of their mental illness or cognitive disability, and in some cases to have the client diverted into community mental health treatment.²⁴ It is available in all criminal proceedings in the local court. It can be made at any time during the proceedings by any party to the proceedings or by the magistrate.²⁵

In order to determine whether to make an order, the magistrate must first decide whether the party is eligible to be dealt with under section 32. To be eligible, they must have a developmental disability, suffer from a mental illness or suffer from a mental condition for which treatment is available in a mental health facility, or have suffered from such a condition at the time of the offence.²⁶

The magistrate must determine whether it is more appropriate in the circumstances for the matter to be dealt with by a section 32 order rather than under the general criminal law. Once these jurisdictional questions have been determined, the magistrate must decide what orders should be made.²⁷ In doing so, the magistrate exercises broad discretion and must have regard to the seriousness of the offence.²⁸

The HPLS Solicitor Advocate regularly makes section 32 applications in relation to HPLS clients with mental illness. Currently, 40 per cent of the Solicitor Advocate's files involve section 32 applications. As such, HPLS data and case studies provide an insight into how such provisions operate in practice. Often the use of section 32 applications can produce successful outcomes for clients with the dismissal of charges against them:

HPLS Case Study 1

P is a 39 year old female with an intellectual disability receiving a Centrelink disability support pension. At the time of her arrest, P and her husband were undergoing grief counselling following the death of their child. P was suffering from depression and post-traumatic stress

²⁴ Intellectual Disability Rights Service, "Step By Step Guide to Making a s32 Application for a Person with Intellectual Disability", (2011) <https://docs.google.com/viewer?a=v&q=cache:WJ1SQT4rDucJ:www.idrs.org.au/education/s32-guide/IDRS_Section_32_Guide_online.pdf+s32+nsw+mental+health+forensic+act&hl=en&gl=au&pid=bl&srcid=ADGEEsG3jLbs7-ENgIRhVJXXmwQlpbEZx0bVqEOQkPd2F7RAZpwC76efRseWxpb7FiwtlD2qUAyf9Ow-ou9IBI_ORebQxCOfQiDo-p5G2i89gg3oRAqytdVbnmzGpMZSnM0DnA4DTXv4&sig=AHIEtbT8uQ2KLiD1kSCHifyhh9yofn8_dQ>.

²⁵ *Mental Health (Forensic Provisions) Act 1990* section 32(1).

²⁶ *Ibid*, section 32(1)(a).

²⁷ *DPP v Mawas* [2006] NSWCA 154.

²⁸ *Ibid*. at 75, citing *Howie J in Confos v DPP* [2004] NSWSC 1159 at 17.

disorder. P and her husband were charged with behaving in an offensive manner in a public place, after an altercation in a shop in the same street as their counselling service.

The HPLS Solicitor Advocate made an application pursuant to s 32 Mental Health (Forensic Provisions) Act to have the charge against P dismissed on the basis of her mental health conditions. The charge against her was dismissed.

However, despite a high proportion of people with mental illness in the criminal justice system, the evidence suggests that the section 32 process is underused. The NSW Law Reform Commission, as part of its reference *People with cognitive and mental health impairments in the criminal justice system*, concluded that only a small percentage of matters before the Local Court are dealt with under ss 32 and 33 of the MHFPA, and that the rate of discharge under these provisions is less than 2 per cent of all defendants appearing in the Local Court.²⁹ In 2007, 341,896 charges were finalised in the Local Court, with only 3,941 being dealt with under these powers.³⁰ The low level of use of these diversionary procedures can also be seen in the disproportionate number of people with a mental illness or cognitive impairment in the criminal justice system.

A number of reasons have been suggested for the underuse of these provisions, demonstrating some of the limitations of the current provisions.

1. Reliance on Magistrates' discretion

The Magistrate of a Local Court has complete discretion to determine what is the most appropriate means of dealing with an offender who comes within the meaning of sections 32 and 33³¹ (ie, whether to proceed under the provisions of the MHFPA or under general sentencing provisions). In exercising his or her discretion, the Magistrate is to balance the public interest in requiring such an offender to face the full weight of the criminal law against the public interest in treating the particular conduct and mental health of the individual. Other relevant considerations are the seriousness of the offence, the defendant's criminal history and available sentencing options.³²

A more stringent list of considerations that a Magistrate should and should not take into account may provide greater guidance to Magistrates in exercising their discretion. A helpful example is section 334(3) of the *Crimes Act 1900* (ACT), which provides a list of factors that a Magistrate must consider when deciding whether to make a diversionary order against an offender with a mental illness. The list includes the period for which the mental illness is likely to continue, the antecedents of the accused, and the effectiveness of any previous diversionary orders against the accused.³³

²⁹ NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion*, Report No 135 (2012).

³⁰ NSW Department of Attorney General and Justice, *NSW Criminal Court Statistics 2007*, Bureau of Crime Statistics and Research, (10 January 2012) <http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_crime_stat> at 28 May 2012>.

³¹ *Mental Health (Forensic Provisions) Act 1990* (NSW) section 36.

³² *DPP v El Mawas; Mantell v Molyneux* (2006) 68 NSWLR 46.

³³ *Crimes Act 1900* (ACT), s 334(3).

2. The language of the provision

Lawyers and magistrates often have difficulty determining the category of the clients' mental illness and obtaining evidence of it. The 2008 Judicial Commission Survey of Magistrates found that many magistrates struggled to distinguish the definitions of mental health disorders set out in section 32(1)(a), especially where multiple diagnoses are in evidence.³⁴ In *Perry v Forbes Anor*, Smart J noted that 'Cases involving an element of mental disorder or mental illness sometimes occasion difficulties for courts and the accused's legal representatives ... Explaining and making applications to have section 32 applied may be difficult.'³⁵ Consequently, the Law Reform Commission has recommended the amendment of section 32 for clarification purposes.³⁶

The phrase 'treatment ... available at a mental health facility' presents two problems. Firstly, the emphasis on 'treatment' may imply that only those mental health services that result in a definitive cure or solution for a mental health problem can be considered. This is problematic for people with a cognitive disability or, to use the language of section 32, the 'developmentally disabled'. Such conditions remain constant throughout a person's life and cannot be cured by treatment, as opposed to some episodic mental illnesses, but rather require ongoing support and behaviour intervention.³⁷ Moreover, when the legislation was drafted, the then Minister for Justice referred to the possibility of a defendant 'recovering' after committing an offence but prior to appearing before a Magistrate.³⁸ He thus suggested that the use of the word 'treatment' was intended to connote a cure or long-term solution, and thereby exclude the application of section 32 to those defendants whose engagement with health services would be unlikely to result in any such cure or solution.

Secondly, 'mental health facility' is a narrow category that does not include broader community-based services that may aid in the rehabilitation of people with mental health problems, and excludes services that support people with a cognitive disability. The inappropriateness of referring people with a cognitive disability to a mental health facility has the potential to seriously reduce the number of section 32 orders that may be made for such people. Broadening the term to 'health facility' may address this.

It is important to acknowledge, however, that without appropriate services and adequate resourcing for appropriate services, the purpose of referring people with a cognitive disability to health facilities is undermined. The impact of any potential changes to this part of the legislation therefore requires a thorough examination of the services available to people with a cognitive disability, how they can be improved, and how they can be incorporated into the section 32 scheme.

³⁴ Judicial Commission of NSW, "Annual Report 2008-2009" (2009), NSW.

³⁵ *Perry v Forbes Anor*, Smart J, Supreme Court of NSW, unreported, 21 May 1993 5, as quoted in Weeks, K. "To Section 32 or Not?" (2010) *Law Society Journal* (May).

³⁶ NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion*, Report No 135 (2012).

³⁷ Intellectual Disability Rights Service (2008), 'Enabling Justice: A Report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System', Intellectual Disability Rights Service, 31 & 34.

³⁸ Second Reading Speech, Mental Health (Criminal Procedure) Amendment Bill 2005 (NSW) *NSW Legislative Council Hansard* (29 November 2005) at 20087.

The term 'developmentally disabled' has not been defined in the legislation. The NSW Law Reform Commission has stated that it is a broad term that encompasses cognitive disability and conditions such as cerebral palsy.³⁹

HPLS Case Study 2

H was charged with a serious assault. He had sustained brain damage in a car accident aged 11. As a consequence, the client had a low IQ, with low stress thresholds, which made him prone to violence. As the cognitive deficit was not developmental H did not come within s 32(1)(a).

3. Comorbidity and section 32 orders

Comorbidity is the presence of more than one disease or disorder in a person. A 2003 study by the Australian Institute of Health and Welfare found that 57 per cent of surveyed people with an intellectual disability had a comorbid mental impairment. Where the intellectual disability manifested in a severe or profound limitation, the rate of comorbidity was 62 per cent.⁴⁰ Given its prevalence in the general population, it is unsurprising to find high rates of comorbidity among people who come into contact with the criminal justice system.

The HPLS Solicitor Advocate has many clients with mental illness that also have comorbid intellectual disabilities or alcohol and drug addictions. Due to the presence of two or more of these conditions, the section 32 regime will sometimes not be applied by Magistrates. For example, often clients will have both an alcohol and mental health problem at the time of offending, and some Magistrates appear to be looking at the issue of whether the client's mental health or alcohol status is causative of the offending.

HPLS Case Study 3

AD was charged with assault. At his hearing, the Magistrate refused s 32 application on the grounds that AD had been drinking at the time of the offence and that this was the cause of the assault rather than mental health. This was despite the fact that AD had a mental illness at the time of the offending.

4. Adequacy of section 32 orders

There are questions regarding the efficacy of the conditions attached to section 32 orders, particularly in relation to monitoring periods. The sole study yet to be conducted regarding the effectiveness of section 32 orders in the prevention of reoffending could only conclude that the use of section 32 orders did not increase the likelihood of reoffending.⁴¹ Section 32(3A) gives the magistrate power to call up a defendant on a breach of conditions, but only within six months of the order being made.⁴² Such a short period of time is, in most cases, insufficient to facilitate therapeutic or clinical change in the subjects' wellbeing and is not long enough a monitoring

³⁹ NSW Law Reform Commission (1994), *People with an Intellectual Disability and the Criminal Justice System: Courts and Sentencing Issues*, Discussion Paper 35 (1994) 16.

⁴⁰ X Wen (2008), *Disability in Australia: Intellectual Disability*, Bulletin 67 (Australian Institute of Health and Welfare, 2008) 11.

⁴¹ The study, by Douglas et al (2006), is as yet unpublished, but was discussed in Perry, T. "Court Mandated Outpatient Treatment in NSW" (2007) *Current Issues in Criminal Justice* 19(3).

⁴² *Mental Health (Forensic Provisions) Act 1990* section 32(3)(a).

period to ensure they are stable and unlikely to reoffend. As such, section 32 does not enable more long-term support and treatment plans.

HPLS Case Study 4

JK was homeless. He was initially found guilty of criminal offences, namely offensive language, offensive conduct and goods in custody. His consumption of alcohol and methylated spirits increased. He was charged with wielding a knife in a public place, the ninth such charge on his record since 2001. On many occasions he had received a short prison sentence and then was back on the street. In recent times, his matters had been diverted from the correctional system through the use of ss 32 and 33 of the *Mental Health (Forensic Provisions) Act*. However, none of his underlying issues had been addressed.

The HPLS Solicitor Advocate worked with a treatment provider to ensure that a treatment plan for JK was put together that would have an impact on his long-term situation, not just his short-term legal problem. This meant that when JK received a good behaviour bond, he was released straight into long-term accommodation with 24-hour support and medical care, and avoided going back to living rough on the streets.

Furthermore, section 32 applications are often refused by magistrates on the basis that the charges are too serious. This is often linked to the fact that the monitoring period under the Act of six months is not considered sufficient for serious charges:

HPLS Case Study 5

PB was charged with assault occasioning actual bodily harm and armed with intent to commit an indictable offence. The matter commenced as an application under section 32 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) because PB had a documented history of mental health issues. However, the Magistrate refused the application on the basis of the seriousness of the offences and the fact that the monitoring period of 6 months under the Act was not sufficient. Due to the client's mental health problems and drug use, he was not eligible for a community service order.

The Magistrate therefore placed him on a four-month s 12 bond (suspended sentence) for the armed with intent charge, and a two-year s 9 bond for the assault occasioning actual bodily harm.

HPLS Case Study 6

BP has a long-standing brain injury, as well as a recent brain injury incurred during an assault. As a result, he sometimes becomes confused. He also suffers from severe depression, a gender identity disorder, hearing problems and dyslexia. BP receives a disability support pension. He takes anti-depressants daily.

BP was the primary leaseholder for a Housing NSW unit, paying rent jointly and informally with a friend he allowed to stay with him. The Department of Housing was not aware that there was a second tenant and did not permit subletting. After a series of altercations, BP was arrested and charged with the assault of his friend, who took an apprehended violence order out against him on the basis of two separate incidents of assault. She claimed that BP had

attacked her after she took some of his beer without asking and then later punched her four times when she tried to smoke cannabis in the unit.

BP made admissions to both assaults during an interview with police and signed the record of the interview. He claimed that he had overreacted because his friend had been stealing from him and verbally abusing him.

BP began to receive counselling and responded well to the treatment. His solicitor made an application to dismiss the charges under section 32 of the *Mental Health (Forensic Provisions) Act*.

However, the court did not dismiss the charges under section 32 because the assaults were considered too serious. BP was placed on a section 10 behaviour bond for 12 months and a section 9 behaviour bond for 12 months.

The casework experience through Homeless Persons' Legal Service coupled with the available research evidence demonstrates the limitations of section 32 applications for people with mental illness and cognitive impairments. In particular, the underutilisation of section 32 indicates that the current scheme does not adequately serve as a diversionary measure for people with mental illness and cognitive impairment.

Section 33 and Community Treatment Orders

Section 33 provisions differ from section 32, firstly due to a narrower definition of mental illness. The Magistrate must be satisfied that a person is 'mentally ill' under section 4 of the *Mental Health Act 2007* (NSW).⁴³ This section allows a magistrate to send a person to a mental health facility for assessment under the *Mental Health Act 2007* (NSW), or to discharge a defendant into the care of a responsible person. Based on the HPLS casework experience and the available research, section 33 is used even less than section 32. According to the NSW Law Reform Commission, orders made under section 33 made up 0.1% of cases in NSW Local Courts in 2010 and 2011.⁴⁴ The HPLS Solicitor Advocate has only used section 33 in four matters over the last six months. This is in part due to the narrower definition of mental illness, and the fact that a person must appear to the magistrate to be mentally ill at the time they appear in court.

Section 33(1A) also allows a magistrate to make a Community Treatment Order (CTO) in accordance with the *Mental Health Act* for a person to undertake a compulsory care program authorised by a mental health facility. Governed by section 51 of the *Mental Health Act*, CTOs are similar to section 32 orders, except that breach of a CTO can result in mandatory admission to a mental health facility. A CTO can be made for up to 12 months, however for an order to be made

⁴³ "mental illness" means a condition that seriously impairs, either temporarily or permanently, the mental [functioning](#) of a person and is characterised by the presence in the person of any one or more of the following symptoms:
(a) delusions,
(b) hallucinations,
(c) serious disorder of thought form,
(d) a severe disturbance of mood,
(e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)-(d).

⁴⁴ NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion*, Report No 135 (2012), 68.

the magistrate must be satisfied that the CTO would be beneficial to the individual, that it is the least restrictive alternative which ensures safe and effective care, that the facility authorising the order has a treatment plan in place and that there is evidence or a history of the person refusing to accept appropriate treatment.⁴⁵

The provision that allows a magistrate to order a Community Treatment Order raises the issue of how effective CTOs are as diversionary measures. CTOs have been criticised for failing to reduce levels of hospitalisation in patients. However, it has been suggested that this is a natural consequence of the program, because closer monitoring of patients in regular contact with psychiatrists allows them to better judge their wellbeing and assess when hospitalisation is necessary.⁴⁶

Another issue raised regarding CTOs is that they rely heavily on medication to treat patients, rather than psychosocial therapy or counselling. A 1997 study found that 98 per cent of people on CTOs were receiving medication⁴⁷, while less than half were also undergoing counselling. According to Burns, CTOs are not a comprehensive program of rehabilitation and reintegration for mentally ill people. They are designed only to enforce the clinical treatment of those who resist it.⁴⁸ In order to combat the difficulties, faced by those with mental illness, including poverty, homelessness, lower levels of education and access to welfare, CTOs must be accompanied by community support and housing programs.⁴⁹

Furthermore, the difficulty of enforcing CTOs means that in some cases courts reinforce them with bail conditions to make them subject to the law. This raises serious issues for people placed on CTOs by a Magistrate where bail conditions are the same as CTO provisions, as the consequence then of breaching a CTO can result in further criminalisation of people with a mental illness.

HPLS Case Study 7

AH is a 31 year old male with a history of mental illness. AH was charged with an offence of demand money with menaces as a result of an incident at an inner-urban railway station (this charge was later withdrawn by police and dismissed). AH was also charged with assault police (for punching a police officer during his arrest), and pleaded guilty to this charge.

AH was placed on conditional bail, which included conditions that he comply with mental health orders, including that he maintain fortnightly appointments with his community mental health service (for mental assessment and injections); and that he be of good behaviour.

AH was later arrested and taken into custody for breaching his bail conditions by failing to attend three appointments with his community health mental health service. The HPLS Solicitor Advocate appeared in Court on AH's behalf and had the original bail terms reinstated.

⁴⁵ Mental Health Review Tribunal, "Community Treatment Orders" (2007) NSW Government.

⁴⁶ Rolfe, T. "Community Treatment Orders: A Review" (2001) Office of the Chief Psychiatrist, Department of Health, Western Australia.

⁴⁷ McDonnell, E. and Bartholomew, T. "CTOs in Victoria: Emergent Issues and Anomalies" (1997) *Psychiatry, Psychology and Law* 4(1).

⁴⁸ Burns, T. "Invited commentary: Community Treatment Orders" (1999) *Psychiatric Bulletin* 23.

⁴⁹ Ibid.

The assault police charge has been adjourned for sentence.

In the above case study, the defendant was taken into custody for breach of bail conditions, which were exactly the same as his concurrent CTO. His incarceration undermined the diversionary effect of the CTO and prevented him from receiving further treatment. This case study clearly demonstrates one of the limitations of section 33 as a diversionary measure for mentally ill defendant in circumstances where bail conditions mirror CTO conditions.

In the context of limited diversionary measures for mentally ill defendants, section 33 provisions technically provide an option for treatment and diversion. However, the evidence clearly suggests that in practice, this provision is underutilised. Furthermore, it is unclear how effective these provisions are in diverting people with mental illness out of the criminal justice system. In particular, the ability for a Magistrate to order a CTO raises issues around the usefulness of a CTO in the absence of effective community supports and proper resourcing to ensure that people are not further criminalised due to their mental illness.

Police Diversion

Section 22 of the *Mental Health Act* is an early diversionary provision which permits police to refer people who appear to be mentally ill or disturbed to a mental health facility rather than remanding them in custody. They are permitted to do so when the person has committed an offence, attempted to kill themselves or is a danger to others.⁵⁰

HPLS Case Study 8

BJ is a 34 year old male with a history of mental illness. In mid-May 2012, BJ was picked up by police for threatening to kill people at a bus stop and was hospitalised as an involuntary mental health patient under section 22 of the Mental Health Act 2007. He is awaiting a mental health forensic assessment.

HPLS Case Study 9

GD is homeless and unemployed and receives a disability support pension. He suffers from Obsessive Compulsive Disorder and is medicated for psychosis. GD has spent time in jail for a number of offences, including damage to property, and is currently on a one-year good behaviour bond.

GD contacted the police, threatening to commit suicide if they did not help him to receive psychiatric care. When they arrived, he became aggressive and threatened the officers, and had to be sedated by hospital staff. He was not admitted into hospital. One week later, GD again phoned the police, threatening to throw himself in front of a train if he did not get psychiatric treatment. Police escorted him to hospital.

However, before entering the hospital the client became extremely aggressive and head butted the back window of the police vehicle, smashing it. The police arrested GD and escorted him to the police station, where he was sedated by ambulance staff. He was scheduled by the psychiatric unit at the hospital and served with a court attendance notice, charged with intentionally or recklessly damaging property.

⁵⁰ *Mental Health Act* 2007 section 22(1)(a).

GD's solicitor made an application to dismiss the charge under section 32 of the *Mental Health (Forensic Provisions) Act* and sought psychiatric assessment of the client, along with their medical records. At the hearing the client pled guilty and was ordered to pay a fine, court costs and compensation to police.

HPLS case study 9 illustrates a shortcoming of the referral system, namely that mentally ill people who are too dangerous to be safely contained by hospitals are, for practical reasons, taken into custody by police. This is an inappropriate environment for people with mental illness where they have limited access to treatment and are more likely to be charged with an offence.

Importantly, section 22 diversions do not give police the capacity to monitor those who are referred in the long term. Ongoing supervision and the ultimate outcome of treatment are left to the discretion of the hospital, which often refuses to admit the patient altogether. In those cases, there are no avenues available to assist the offender and they may be released into the community, as in case study 9 above, or charged with an offence by police, who see no other option for the protection of the public.

HPLS Case Study 10

FM has substance abuse issues and underlying mental health issues. FM often has suicidal ideation, particularly when intoxicated. When she is unwell, she frequently contacts police and police transport her to a mental health facility under section 22. Often, she is not admitted by the mental health facility and is immediately released back into the community. FM does not receive ongoing mental health treatment. Subsequently, FM has been charged by police for nuisance due to contacting police so often when she is unwell and the charges are currently listed in court.

The NSW Law Reform Commission Report on Diversion for People with Mental Impairments found that section 22 referrals make up 23 per cent of all applications for admission to mental health facilities, but more than a quarter of them are unsuccessful. The Commission has recommended that such refusals be referable to the Mental Health Review Tribunal for review.⁵¹

Section 22 also fails to mention cognitive impairment specifically, so it is unclear whether it would fall into the definition of mental illness or disturbance.⁵² If so, such treatment would be inappropriate, as cognitive impairment can rarely be improved by medication or hospitalisation. If not, then the omission creates confusion and presents a gap in the services for those with cognitive impairment, which could be filled by the implementation of a section permitting the police to divert them to community support services or their caseworker.

Thus, although section 22 allows for early diversion of people with mental illness, the effectiveness of this provision is undermined by the lack of available mental health services and the lack of clarity in relation to people with cognitive impairment, leaving police under-resourced in assisting people to receive appropriate support and treatment. This leads to further criminalisation of people with mental illness and cognitive impairment.

⁵¹ NSW Law Reform Commission, *People with Cognitive and Mental Health Impairments in the Criminal Justice System: Diversion*, Report No 135 (2012).

⁵² Ibid.

As such, the current diversionary and therapeutic options for people with mental illness and cognitive impairment in NSW are limited and insufficient, particularly in addressing the specific vulnerabilities of homeless people. Due to the complex and interrelated needs of homeless people, in particular the presence of comorbid factors such as mental illness, cognitive impairment and substance abuse, many homeless people end up in the criminal justice system without appropriate diversionary and therapeutic options to address underlying and causal issues.

CREDIT program

Court Referral of Eligible Defendants into Treatment (CREDIT) is a court-based intervention program involving either voluntary or court-ordered participation by NSW adult defendants. The program was designed to contribute to the NSW Government's target of reducing "the proportion of offenders who re-offend within 24 months of being convicted by a court ... by 10 per cent by 2016."⁵³ In order to meet its overall aim of reducing re-offending, CREDIT seeks to encourage and assist defendants appearing in local courts to engage in education, treatment or rehabilitation programs.

An evaluation of the pilot program by BOCSAR has shown a high degree of satisfaction amongst both stakeholders and participants.⁵⁴

CREDIT links the defendant to a range of services (including accommodation, financial counselling, mental health support, domestic violence support, education, training, drug treatment, etc), thereby creating the capacity to address a broad range of issues that could be impacting on offending and re-offending. The program is also sufficiently flexible to vary the intensity of the services response in relation to the defendant's needs and risk of re-offending.

The following HPLS case studies illustrate the effectiveness of the CREDIT Program.

HPLS Case Study 11

DTX was referred to HPLS by Newtown Mission in May 2011, charged with assault.

When DTX was waiting at an ATM, an older man in front of him was taking an inordinately long time to obtain money. DTX was in a hurry and therefore told the man to hurry up. The man responded in a verbally aggressive manner. DTX realised that the man was simply playing with the keys on the ATM and again asked him to hurry up. When the man responded in an aggressive tone, DTX grabbed him and pushed him over.

DTX was charged with common assault. He had no criminal record; however, the assault was not minor. DTX disclosed that he had alcohol, mental illness and anger management problems. Due to the nature of the assault, the Magistrate required DTX to demonstrate to the Court that he was obtaining assistance to resolve his alcohol and anger management issues. He was referred to the CREDIT program and in four months successfully completed the program.

⁵³ NSW Government *A new direction for NSW: State plan* (2006).

⁵⁴ Trimboli, L (2012), "NSW Court Referral of Eligible Defendants into Treatment (CREDIT) pilot program: An evaluation" *Crime and Justice Bulletin*, Number 159.

On sentence, a s 10 bond was imposed, largely because the client had undertaken counselling and courses provided by CREDIT.

HPLS Case Study 12

KM was charged with theft and use of credit cards. She had a lengthy history of drug abuse, mental illness and a lengthy criminal record for theft and fraud, and had previously served terms of imprisonment.

Subsequent to the offence, KM had commenced a stable relationship and had made serious attempts to get off drugs. At the time of pleading guilty, it was clear that KM faced the real prospect of a further term of imprisonment. Given the change in her circumstances and her attitude, KM was referred to the CREDIT program. A program was developed for KM to obtain financial and drug counselling together with referral to self-development programs.

If KM successfully completes the program it is likely that an alternative to full-time custody may be imposed.

The big drawback of the CREDIT program is its limited availability. It currently operates at only two Local Courts in NSW – Burwood and Tamworth. BOCSAR has recommended that CREDIT be implemented on a state-wide basis.⁵⁵

The program is also currently restricted to adults (aged 18 years or more). PIAC would welcome its expansion to include young offenders (aged 16 years or more), particularly in light of the recent closure of the Youth Drug and Alcohol Court.

PIAC is also concerned that the CREDIT program is of relatively short duration (around six months). This could result in some clients, particularly those with substance abuse problems, exiting the program before they are ready. PIAC recommends that the program be modified or expanded to allow for ongoing case management for clients with multiple and complex needs following their exit from the program.

Another limitation of the program identified in the BOCSAR evaluation was its limited ability to secure housing for participants. According to the evaluation:

One of the greatest difficulties in each site was for accommodation-related services. This service type had one of the lowest referral success rates and gives some indication of the difficulties faced by CREDIT staff in securing appropriate accommodation for this client group.⁵⁶

Lack of suitable long-term or temporary accommodation is likely to limit a client's ability to engage with services and hence their ability to successfully complete the CREDIT program.

Life on Track Case management service

In June 2013, the NSW Attorney General announced a new case management service aimed at reducing adult reoffending by linking adult offenders assessed as being at risk of reoffending, with

⁵⁵ Ibid 21.

⁵⁶ Ibid 20.

support services that may assist in addressing the underlying causes of offending.⁵⁷ The “Life on Track” program will be based on the CREDIT program, and will seek to address issues that contribute to criminal behaviour such as drug and alcohol dependency, mental illness and financial problems. However, the focus of “Life on Track” will be early intervention, with the aim of making an assessment of risk as to reoffending, and then appropriate referral to relevant support services, as soon as possible after a person has been charged.

Initially the program will work with up to 600 defendants in the first 12 months, with participants being drawn from Bankstown, Sutherland, Kogarah local courts in Sydney, and Lismore, Ballina, Casino and Kyogle local courts in northern NSW. However, as at the date of publication, further details of the implementation of the Life on Track program are not available.

Other examples of problem-solving justice initiatives for homeless people with a mental illness

Community court initiatives

Community courts are neighbourhood focused problem-solving courts that evolved from the US.⁵⁸ These courts provide meaningful rehabilitation opportunities for offenders, whilst seeking to make these offenders more accountable to the communities they serve.

Community courts are able to make community-based treatment orders to deal with drug or alcohol dependency. Additionally, community courts are multijurisdictional, capable of dealing with several matters in the one hearing, which offers a swifter and more coordinated judicial response.⁵⁹

Midtown Community Court (Midtown, New York, US)

Midtown Community Court (**MCC**) was established in New York in 1993 as an innovative response to the area’s ongoing problems.⁶⁰ The traditional criminal justice system was largely ineffective: offenders would be arrested, processed, released, only to return to engage in the same disruptive behaviour. As such, a new approach was needed. Rather than take offenders elsewhere for processing by general courts, the MCC sought to have the offenders booked, arraigned and adjudicated by the local MCC. Instead of imposing traditional sanctions, Midtown judges had an array of sanctions and services at their disposal, which were not available in the general court system. These included community restitution projects, short-term educational groups, and longer-term community treatment orders for drug and mental health issues.

In 2009, 87 per cent of defendants at Midtown completed their community-treatment orders, compared to 50 per cent of defendants who were processed at the downtown criminal court.

⁵⁷ Greg Smith SC MP, Attorney General, Minister for Justice, *New Service to get Offenders’ Lives on Track*, Media Release 15 June 2013 (June 2013)
<[http://www.lawlink.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/vwFiles/15062013_Life_on_Track.pdf/\\$file/15062013_Life_on_Track.pdf](http://www.lawlink.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/vwFiles/15062013_Life_on_Track.pdf/$file/15062013_Life_on_Track.pdf)>

⁵⁸ Center for Court Innovation, *Community Court* (March 2013) <<http://www.courtinnovation.org/topic/community-court>>

⁵⁹ Center for Court Innovation, *Red Hook Community Justice Center* (March 2013)
<<http://www.courtinnovation.org/project/red-hook-community-justice-center>>.

⁶⁰ Center for Court Innovation, *Midtown Community Court* (March 2013)
<<http://www.courtinnovation.org/project/midtown-community-court>>.

Although Midtown is less likely to use jail as an initial sentence, in order to ensure accountability, Midtown is more likely to impose jail as a secondary sanction, on those offenders who fail to comply with initial court orders. The pilot was a complete success – for the defendants as well as for the community.⁶¹

Red Hook Justice Center (Brooklyn, New York, US)

The Red Hook Justice Centre (RHJC) was launched in June 2000 as the first US multi-jurisdictional community court.⁶² The RHJC handles criminal, family as well as civil court matters. In hearing these cases together, the RHJC recognises that neighbourhood problems do not conform to the arbitrary jurisdictional boundaries of the modern court system. By having a single judge handle matters that are ordinarily heard by different decision makers at different locations, Red Hook offers a swifter and more coordinated judicial response.

RHJC has reduced the use of jail at arraignment in misdemeanour cases by 50 per cent. A door-to-door survey revealed that 94 per cent of local residents support the community court. Eighty-five per cent of defendants report that their cases were handled fairly by the Justice Center.⁶³

Neighbourhood Justice Centre (Victoria, Australia)

The Neighbourhood Justice Centre (NJC), established in Collingwood, Melbourne in January 2007, is Australia's only community court. Based on the Red Hook Justice Center model, the NJC brings together:

- a multi-jurisdictional court;
- support services such as mediation, counselling and mental health assessment, as well as victims assistance, housing, employment, alcohol and other drug support services; and
- community projects.

The Centre couples an explicit emphasis on restorative justice with a problem solving approach that addresses the causes of offending as well as the crime, aiming to lower the crime rate, increase accountability and keep people connected.⁶⁴

Results from the evaluation of the NJC from March 2007 to 30 June 2009 indicate that the program has been a success.⁶⁵ 11,000 people contacted the Centre in its first year. Recidivism rates reduced by 7 per cent. In comparison to offenders from other courts, NJC offenders were 14 per cent less likely to re-offend. At the NJC, the completion rate for Community Based Orders is 75 per cent compared with a statewide average of 65 per cent. NJC clients reported very high levels of satisfaction with their experience, and showed greater confidence in the justice system, compared to other courts.

⁶¹ Ibid.

⁶² Center for Court Innovation, *Red Hook Community Justice Center* (March 2013) <<http://www.courtinnovation.org/project/red-hook-community-justice-center>>.

⁶³ Ibid.

⁶⁴ Neighbourhood Justice Centre, *From Collingwood to the World* (6 February 2012) <<http://www.neighbourhoodjustice.vic.gov.au/>>.

⁶⁵ Victorian Government Department of Justice, *Evaluating the Neighbourhood Justice Centre in Yarra: 2007-2009* (February 2010).

According to the Victorian Auditor-General, the NJC has had a positive impact on its clients and the community, making a positive contribution to the City of Yarra by providing support and services to address underlying causes of crime and disadvantage. In particular, it was noted that:

- NJC has improved participants' confidence and involvement in the administration of justice. This has generated a higher level of meaningful involvement in justice processes;
- NJC participants are more likely than those in traditional court processes to be provided with treatment and support services;
- There is a high level of community engagement through community development activities—for example, hosting events for culturally and linguistically diverse groups—and participation in a wide range of advisory and consultative bodies on local social and justice issues;
- NJC has contributed to the identification and resolution of local justice issues through targeted crime prevention initiatives, such as the Park Smarter campaign which informs motorists on how to prevent thefts from cars;
- There was an increase in interaction by other City of Yarra agencies in justice processes, which led to better connections between the criminal justice system and the wider community.⁶⁶

Homeless specific courts in Australia

Homeless-specific court initiatives are specifically developed for the homeless, to ensure their particular needs are adequately taken into consideration when they come in contact with the criminal justice system. The overarching aim is to administer a range of more suitable diversionary strategies and alternative sentencing options. Two such Australian initiatives are detailed below.

Homeless Persons Court (Queensland)

Established in May 2006, the Homeless Persons Court Diversion Program enables homeless people who have been charged with relatively minor public order offences to be diverted away from the mainstream criminal justice system, and into the Homeless Persons Court (**HPC**). Its aim is to end the cycle of homeless offending, by referring people to appropriate service providers that can address their accommodation, health and other needs. It is common for these service providers to attend court at each sitting, allowing homeless defendants to be linked immediately with the support that they need.

The operation of the HPC has been predominantly hampered by a lack of resources.⁶⁷ The Court is unable to provide ongoing support to homeless defendants, as it does not have sufficient funds to operate a case management model. Instead, it relies heavily on existing external government and community service providers. Without their involvement and support, the Court could not operate. These services do not receive any funding for their involvement. As such, critics are of the view that such a solution is unsustainable in the long term.

In spite of such difficulties, the overwhelming consensus is that the court has achieved its aims in providing more appropriate sentencing outcomes that take into consideration the particular

⁶⁶ Victorian Auditor-General (2011), *Problem-Solving Approaches to Justice*, Victorian Auditor-General's Report, April 2011, Victorian Government, 35.

⁶⁷ Creative Sparks, *Homeless Persons Court: Diversion program pilot – Evaluation* (2007).

difficulties faced by homeless people.⁶⁸ For example, fines and imprisonment are less likely in the HPC, compared to the general arrest court. From August to October 2006, 15 per cent of defendants were fined in the HPC, compared to 28 per cent fined in the general court. Of 108 matters finalised between May 2008 and September 2007, only 5 people were imprisoned.

Additionally, there were a higher number of referrals to treatment programs and other social services in the Homeless Persons Court (31 per cent), compared to 20 per cent in the general arrest court.⁶⁹

Although the court has been criticised for imposing ‘softer’ sentencing practices that do not reflect community expectations, Walsh suggests that the severity of sentencing should not be a key issue: the idea is for sentencing to be more appropriate for the cohort of people appearing in this court, being mindful of the fact that the HPC only deals with minor offenders – not serious and violent criminals. As such, the court has been viewed as largely successful in achieving its aims.⁷⁰

Enforcement Review Program (Victoria)

The second homeless-specific court initiative in Australia is the Victorian Enforcement Review Program (**ERP**).⁷¹ Developed by the Magistrates’ Court of Victoria, it enables homeless people to have their infringement matters and enforcement of accompanying fine to be handled at the same time. Sentencing orders are tailored to meet the needs of the offender. For example, in lieu of a fine, a magistrate may require the offender to comply with a good behaviour order, or to attend a residential rehabilitation unit for a period of time. The fines can also be dismissed by the magistrate.

Like the Homeless Persons Court in Brisbane, the Victorian ERP has been effective in changing sentencing practices in a way that is appropriate to defendants’ needs, and more likely to address the underlying causes of their offending behaviour.⁷²

Although there has been no formal evaluation of the ERP, there is anecdotal evidence that ‘the court process has a significant impact on participants’ by empowering them to take a role in their case.⁷³ Defendants were also found to be more likely to attend court, and more likely to continue with court ordered treatment programs, as defendants were aware that they would receive an appropriate type of hearing, and an appropriate disposition.⁷⁴

⁶⁸ Tamara Walsh, ‘The Queensland Special Circumstances Court’ (2007) 16 *Journal of Judicial Administration* 223, 229-230, 233.

⁶⁹ *Ibid*, 223.

⁷⁰ *Ibid*, 223.

⁷¹ Magistrates’ Court of Victoria, *Enforcement Review Program (ERP)* (13 December 2012) <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/enforcement-review-program-erp>>.

⁷² Tamara Walsh, n 68 above.

⁷³ Jelena Popovic, ‘Meaningless Versus Meaningful Sentences: Sentencing the Unsentenceable’ (2006) 15 *Journal of Judicial Administration* 199.

⁷⁴ *Ibid*.

Homeless specific courts in United States

The Homeless Court Program

Unlike Australia, the US has a long history of homeless-specific initiatives in the form of Homeless Court Programs (**HCP**).⁷⁵ The first was established in San Diego in 1989, and has since expanded into various states including California, Michigan, Texas, Arizona, New Mexico, Colorado, Utah and Washington.

Under the HCP initiative, homeless 'courts' are held at local shelters and community sites, and it is a voluntary process. One of the major benefits of the program is accessibility: the court comes to the homeless people. These courts encourage defendants to take a proactive role in addressing their ongoing problems. Generally, traditional sanctions (such as fines and custody) are replaced with community-based treatment or services. Defendants who complete treatment or services prior to sentencing tend to have minor charges dismissed and, where appropriate, may have more serious charges reduced or dismissed.⁷⁶

The US HCP has a high success rate – 90 per cent of cases are ultimately dismissed.⁷⁷ An evaluation of the San Diego HCP conducted between August 1999 and February 2001 found that it 'exceeded its expected benefits to participants'.⁷⁸ Forty-six per cent of graduates had secured permanent housing, 39 per cent had applied for a driver's license and 38 per cent were able to find stable employment.⁷⁹ Participants have commented: 'I feel better about myself' and 'I feel more positive about the future'.⁸⁰

An evaluation of the Santa Monica HCP found that from February 2007 to December 2012, 241 homeless people had participated in the program, with a 65 per cent graduation rate. Of those graduates, 65 per cent were placed in permanent housing.⁸¹

HCP participants in the US are more likely to attend court, which saves law enforcement agencies the cost of arresting and jailing defendants who do not appear in court on their hearing dates. Additionally, the program has reduced recidivism. HCP participants are less likely to be arrested within 3 months following their hearing (14 per cent, compared to 20 per cent of non-participants).⁸²

Mental health courts

Mental health courts are a type of problem-solving court that emerged in the US in the 1980s and in Australia in the 1990s. The aim of these courts is to address the personal, psychological and

⁷⁵ American Bar Association, *Commission on Homelessness & Poverty* <http://www.americanbar.org/groups/public_services/homelessness_poverty.html>.

⁷⁶ Ibid.

⁷⁷ Steven R Binder (2002), *The Homeless Court Program: Taking the Court to the Streets* (American Bar Association Commission on Homelessness and Poverty, 2002) 6.

⁷⁸ Nancy Kerry and Susan Pennell (2001), *San Diego Homeless Court Program: A Process and Impact Evaluation* (San Diego Association of Governments, 2001) 3.

⁷⁹ Steven R Binder, *The Homeless Court Program: Taking the Court to the Streets* (American Bar Association Commission on Homelessness and Poverty, 2002) 6.

⁸⁰ Ibid.

⁸¹ City of Santa Monica, *Addressing Homelessness* (2013) Homeless Community Court <<http://www.smgov.net/Portals/Homelessness/content3Column.aspx?id=25145>>.

⁸² Nancy Kerry and Susan Pannell (2001), *San Diego Homeless Court Program: A Process and Impact Evaluation* (San Diego Association of Governments, 2001) 59-60.

medical factors and broader social factors that have led to the commission of a crime by a person with a mental illness.⁸³ The courts seek to stop the cycle of isolation, crime and incarceration by personally empowering people with mental illnesses and promoting education and social integration.

Mental health courts divert defendants with mental illnesses away from traditional criminal legal processes. Following voluntary screening and assessments, defendants participate in a judicially supervised treatment plan developed by mental health professionals and court staff.⁸⁴ In diverting offenders to treatment and rehabilitation rather than the prison system, mental health courts seek to reduce recidivism and therefore the representation of people with a mental illness in prisons.⁸⁵

The effectiveness of mental health courts in the USA

The majority of studies of the effectiveness of mental health courts have taken place in the US, where such courts are widespread and relatively long-standing. Evaluations have concluded that mental health courts have had a significantly positive economic impact. For instance, the Pennsylvania mental health court in the US saves taxpayers approximately \$3.5 million every two years.⁸⁶ In Oklahoma, the average annual cost of housing an inmate with mental health needs is \$23,000, which is much higher than the \$5,400 for putting the same person through the mental health court process.⁸⁷

One study has found that participants had high levels of satisfaction with the mental health court procedure, reporting feelings of fairness and perceptions of low levels of coercion.⁸⁸ Two studies found that participation in the mental health court system led to improvements in broader social outcomes such as homelessness, hospitalisation and alcohol abuse.⁸⁹

There have also been reports of reduction in recidivism as a result of the programs conducted by mental health courts in the US.⁹⁰ For example, individuals who complete the North Carolina rural

⁸³ A. Freiberg (2011), 'Problem-oriented courts: Innovative solutions to intractable problems?' (2011) 11 *Journal of Judicial Administration* 8.

⁸⁴ Council of State Governments Justice Center (2008) *Mental health courts — A primer for policymakers and practitioners*, New York, NY, 4.

⁸⁵ D. Ryder, K. Kraszlan, D. Lien, E. Allen, T. Chiplin & S. Petsos (2001), 'The Western Australian court diversion service: Client profile and predictors of program completion, sentencing and re-offending' (2001) 8(1) *Psychiatry* 65.

⁸⁶ A. Kaplan (2007), 'Mental health courts reduce incarceration, save money', *Psychiatric News* 24. Available at <<http://www.psychiatrytimes.com/display/article/10168/54266?verify=0>> (8 March 2013).

⁸⁷ Oklahoma District Attorneys Council (2012), '2012-2016 Oklahoma State Strategy for the Edward Byrne Justice Assistance Grant', Planning Document. Available at <<http://www.ok.gov/dac/documents/2012-2016%20State%20Strategy.pdf>> (8 March 2013).

⁸⁸ N.G. Poythress, J. Petrila, A. McGaha & R.A. Boothroyd (2002), 'Perceived Coercion and Procedural Justice in the Broward Mental Health Court' (2002) 25 *International Journal of Law and Psychiatry* 517.

⁸⁹ K. O'Keefe (2006), 'The Brooklyn mental health court evaluation — Planning, implementation, courtroom dynamics, and participant outcomes. New York: Center for Court Innovation; M. Cosden, J. Ellens, J. Schnell & Y. Yamini-Diouf (2005), 'Efficacy of a Mental Health Treatment Court with Assertive Community Treatment' (2005) 23 *Behavioral Sciences and the Law* 199.

⁹⁰ E. Trupin & H. Richards, 'Seattle's Mental Health Courts: Early Indicators of Effectiveness' (2003) 26 *International Journal of Law and Psychiatry* 33; A. Christy, N.G. Poythress, R.A. Boothroyd, J. Petrila, S. Mehra, 'Evaluating the Efficiency and Community Safety Goals of the Broward County Mental Health Court' (2005) 23 *Behavioral Sciences and the Law* 227; M.E. Moore & V.A. Hiday, 'Mental Health Court Outcomes: A Comparison of Re-arrest and Re-arrest Severity Between Mental Health Court and Traditional Court Participants' (2006) 30 *Law and Human Behavior* 659; D.E. McNeil & R.L. Binder, 'Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence' (2007) 164(9) *The American Journal of Psychiatry* 1395; J.L.S. Teller, C. Ritter, M.S. Rodriguez, M.R. Menetz & K.M. Gil (2004), *Akron mental health court: comparisons of incarcerations and hospitalisations for successful and unsuccessful participants in the first*

mental health court program are 88 per cent less likely to reoffend than people who do not complete the program.⁹¹ The rate of re-arrest of mental health court participants in the US generally is 47 per cent less than traditional court defendants.⁹²

A reason for such dramatic change may be that the authority of the court system better encourages defendants to adhere to a treatment plan than would leaving such defendants to their own devices.⁹³ Another reason is that the collaboration between the courts and mental health services ensures that the latter are made accountable to the justice system, and treatment plans are thereby made more effective.⁹⁴

Mental health courts in Australia

There are several mental health courts and comparable systems in Australia:

- South Australia's Magistrates Court Diversion Program
- Hobart Mental Health Diversion List
- Queensland Mental Health Court
- Victoria's Assessment and Referral Court (ARC) List, in collaboration with the Court Integrated Services Program (CISP)
- Magistrates' Court of Victoria Mental Health Court Liaison Service.

These systems operate very similarly to one another. To illustrate, the South Australian Magistrates Court Diversion Program operates by prescribing a twelve-month treatment plan for defendants who participate voluntarily if they have been charged with a minor indictable or summary offence and have impaired intellectual or mental functioning arising from mental illness, intellectual disability, personality disorder, acquired brain injury or a neurological disorder including dementia. The plan is devised and supervised by a team of clinical advisors, clinical liaison officers and magistrates. Depending on the nature of the offences and whether the program is completed successfully, the magistrate may dismiss the matter, convict without penalty, or impose a fine or a bond, though failure to perform satisfactorily in the program is not relevant to sentencing.⁹⁵ If a defendant appears to be unresponsive to the treatment, he/she may be referred back to the traditional court system.

Victoria's Assessment and Referral Court List operates similarly to the South Australian system.⁹⁶ It has the added advantage of collaboration with the Court Integrated Services Program, which provides case management for defendants, including psychological assessment and referral to

cohort (The Stormer Report). Available at <<http://www.consensusproject.org/mhcp/akron-mhc.pdf>> (8 March 2013).

⁹¹ V.A. Hiday & B. Ray (2010), 'Arrests two years after a well-established mental health court' (2010) 61 *Psychiatric Services* 263.

⁹² Moore & Hiday, n 9089 above.

⁹³ H. Blagg (2008), *Problem-oriented courts: A research paper prepared for the Law Reform Commission of Western Australia Project 96*, Western Australia: Government of Western Australia; M.S. King (2006), *Problem-solving court programs in Western Australia*, Paper presented at the Sentencing Principles, Perspectives and Possibilities Conference, Canberra, Australian Capital Territory.

⁹⁴ Blagg, n 93 above, 2.

⁹⁵ *Criminal Law (Sentencing) Act 1988* (SA), s 10(6).

⁹⁶ Magistrates' Court of Victoria, *Assessment and Referral Court List* (26 June 2012). Available at <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/assessment-and-referral-court-list-arc>> (8 March 2013).

treatment as well as general health, welfare, housing and disability services if required.⁹⁷ People with a mental illness often face concurrent issues regarding housing, employment, and physical health, and addressing these issues holistically as different aspects of a larger problem is crucial to achieving long-term improvement.

Evaluating mental health courts in Australia: recidivism

In Australia, 66 per cent of participants in the South Australian Magistrates Court Diversion Program have not reoffended in the twelve-month post-program period.⁹⁸ There has similarly been a 78.8 per cent reduction in reoffending following participation in the Hobart Mental Health Diversion List program.⁹⁹

The biggest problem facing the installation of mental health courts throughout Australia is the absence of long-term evaluation of procedures and outcomes. Many evaluations only run for one or two years after a program.¹⁰⁰ In order to accurately assess the long-term impacts of mental health courts in terms of cost-benefit, reduction in offending and reduced recidivism, long-term, intensive reviews of the various mental health court models are required.¹⁰¹

Evaluating mental health courts in Australia: substantive criticism

The Hobart Mental Health Diversion List operates in much the same way as the South Australian system, but only people suffering ‘from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent’ are eligible to participate – that is, people with cognitive disabilities are not included unless they have a concurrent diagnosis of mental illness.¹⁰² This means that they have no court-based diversion option, and are treated in the same way as people without a cognitive disability in being punished for criminal wrongdoing, though their capacity, understanding and motive may be quite different.

However, of crucial importance are the quality and variety of treatment services available through the mental health court system – there is no sense in including people with cognitive disabilities if there are no appropriate services for them and/or they have already tried (with little or no success) the services that the court recommends. Evaluation of the South Australian Diversion Program found that 95.1 per cent of participants had already been involved with health and welfare services in the community prior to joining the program.¹⁰³ The mental health court system is entirely reliant upon the services that already exist in the community, and care must be taken to

⁹⁷ Magistrates’ Court of Victoria, *Court Integrated Services Program (CISP)* (28 June 2012). Available at <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp>> (8 March 2013).

⁹⁸ G. Skrzypiec, J. Wundersitz, H. McRostie (2004), ‘Magistrates Court diversion program — an analysis of post-program offending’, Office of Crime Statistics and Research South Australia. Available at <http://www.ocsar.sa.gov.au/docs/evaluation_reports/MCDP2.pdf> (8 March 2013).

⁹⁹ Esther Newitt & Victor Stojcevski (2009), *Mental Health Diversion List Evaluation Report*, May 2009, Tasmania, 6.

¹⁰⁰ N. Wolff & W. Pogorzelski (2005), ‘Measuring the Effectiveness of Mental Health Courts: Challenges and Recommendations’ (2005) 11(4) *Psychology, Public Policy and Law*, 539; L. Roberts & D. Indermaur, ‘Key Challenges in Evaluating Therapeutic Jurisprudence Initiatives’ (2007) 17(1) *Journal of Judicial Administration* 60.

¹⁰¹ Blagg, n 93 above, 28.

¹⁰² Magistrates Court of Tasmania (2010), *Hobart Mental Health Diversion List Procedural Manual*, Version 1.2, 6.

¹⁰³ N. Hunter & H. McRostie (2001), *Magistrates Court Diversion Program: Overview of key data findings*, South Australia: Office of Crime Statistics and Research, 10.

ensure that offenders are not sent to services that are ineffective.¹⁰⁴ Conversely, this aspect of the mental health court system may hold providers of such services accountable for the delivery of better quality treatment.¹⁰⁵

A general disadvantage of the mental health court concept is that it is reactionary in nature: it only becomes available as a rehabilitative tool *after* a person has been charged with an offence, rather than working to prevent the commission of offences.¹⁰⁶ In addition, there is no requirement that an offender's mental illness or cognitive disability be the cause, or even one of the causes, of their offending. Putting a person through a treatment program may give them the required support for their condition but unless the condition led to the offending, the treatment may not prevent them from reoffending in future.

There are also concerns that people who participate in these 'voluntary' programs do not in fact do so voluntarily. A 2010 study found that between 58 and 82 per cent of participants did not understand the program to be voluntary and felt that they were obligated to participate.¹⁰⁷ Similarly, a majority only understood 'the basics' of court procedure rather than the nuances.¹⁰⁸ The two trends are likely to be linked: a lack of education regarding the criminal legal system and alternatives to it render the 'voluntary' participation of offenders a mere construct. In reality, participation cannot truly be voluntary unless the participants are fully informed as to the procedures and consequences that they face. This requires greater communication from the officers of the court, clinical advisors and lawyers with participants.

That participants face conviction of a minor indictable or summary offence only, is the sole requirement for selection into a mental health court program. There exists no list of requirements that increase or decrease a participant's likelihood of being selected. One study has found that the selection of participants from the general court list falls to magistrates.¹⁰⁹ Another study has found that magistrates make these selection decisions based on their personal knowledge of a defendant's history.¹¹⁰ This raises the concern that defendants who are perceived to be 'difficult to treat' may be sidelined, and offenders with less serious mental health issues or a cleaner history perceived to be more suited to the rehabilitative model of the mental health court.

There is also the concern that singling out people with mental illnesses and cognitive disabilities for participation in mental health courts is discriminatory and has a net-widening effect, bringing such people into contact with more diverse forms of assessment, supervision, regulation and correction than they would otherwise face.¹¹¹ It could also cause increased stigmatisation and marginalisation of such groups of people.¹¹² It has been suggested that such impacts could be

¹⁰⁴ E. Richardson & B. McSherry, 'Diversion Down Under – Programs for Offenders with Mental Illnesses in Australia' (2010) 33 *International Journal of Law and Psychiatry* 249, 255.

¹⁰⁵ Blagg, n 93 above, 7.

¹⁰⁶ Christine M. Sarteschi, Michael G. Vaughn & Kevin Kim (2011), 'Assessing the Effectiveness of Mental Health Courts: A Quantitative Review' (2011) 39 *Journal of Criminal Justice* 12, 13.

¹⁰⁷ A.D. Redlich, S. Hoover, A. Summer & H.J. Steadman (2010), 'Enrolment in Mental Health Courts: Voluntariness, Knowingness, and Adjudicative Competence' (2010) 34 *Law and Human Behavior* 91, 97.

¹⁰⁸ *Ibid.*

¹⁰⁹ R. Boothroyd, N.G. Poythress, A. McGaha & J. Petrila (2003), 'The Broward Mental Health Court: Process, Outcomes and Service Utilization' (2003) 26 *International Journal of Law and Psychiatry* 55.

¹¹⁰ Moore & Hiday, n 90 above.

¹¹¹ Roberts & Indermaur (2006). n 100 above.

¹¹² R.D. Schneider, H. Bloom & M. Heerema (2007), *Mental health courts: Decriminalizing the mentally ill*, Toronto: Irwin Law, 95.

reduced by providing employment programs as part of the twelve-month treatment, to foster the personal empowerment of participants.¹¹³

Evaluation of the South Australian Diversion Program also found that only 3.5 per cent of participants in the first year of the program were of Indigenous background, a very low figure when compared to the proportion of Aboriginal and Torres Strait Islander people represented in the criminal justice system.¹¹⁴ Although this may be partly because a large number of Indigenous offenders may wish to participate in the Nunga court system instead,¹¹⁵ this points to a crucial need to address whether mental health court systems are sufficiently inclusive of Indigenous people, and whether the treatment services on which these systems rely, take into account the needs of people of Indigenous cultural backgrounds.

Generalist court-based problem-solving justice initiatives

Court Integrated Services Program (Victoria, Australia)

The Court Integrated Services Program (**CISP**) began in November 2006 and operates at three Victorian Magistrates' Court venues. CISP provides short-term assistance with health and social needs with the aim of reducing the likelihood of reoffending. Defendants who have been charged but have not yet been sentenced can be referred to CISP, regardless of whether a plea has been entered. Through CISP, defendants can be linked to a range of community support providers. CISP offers a multi-disciplinary team to link clients with community support services, including drug and alcohol treatment, crisis accommodation and mental health services.

CISP employs five case managers, each specialising in one of the following areas: drug and alcohol; mental health; disabilities; Indigeneity; and other. A defendant may be managed by one or more of the five case managers depending on their needs. Case management finishes when the defendant is sentenced or discharged (generally within four months).

CISP is an example of a generalist court problem-solving justice initiative. CISP targets a wide group of offenders, including those who have physical or mental disabilities or illnesses, drug and alcohol dependency issues, or lack social or family support systems – all of which contribute to their offending.¹¹⁶

According to the Victorian Auditor-General, CISP has significantly improved participants' physical and mental health during their period on the program by providing short-term assistance and access to treatment and community services. In addition, the Auditor-General found that CISP had an effect on reducing reoffending, improved bail compliance and court order completion rates.¹¹⁷

¹¹³ K.A. Rasinski, P. Woll & A. Cooke (2005), 'Stigma and substance use disorders', *On the Stigma of Mental Illness: Practical Strategies for Research and Social Change*, P.W. Corrigan (Ed.), Washington, DC: American Psychological Association.

¹¹⁴ M. Burvill, S. Dusmohamed, N. Hunter & H. McRostie, 'The Management of Mentally Impaired Offenders Within the South Australian Criminal Justice System' (2003) 26 *International Journal of Law and Psychiatry* 13, at 21.

¹¹⁵ *Ibid* 22.

¹¹⁶ Magistrates' Court of Victoria, *Court Integrated Services Program (CISP)* (28 June 2012) <<http://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp>>.

¹¹⁷ Victorian Auditor-General, n 66 above, 32-33, 37.

Conclusion

The current interest in addressing the relationship between homelessness and mental illness presents as a timely opportunity to consider alternative strategies in responding to the needs of homeless people with mental illness who disproportionately have contact with the criminal justice system.

This discussion paper has detailed some of the Australian and international examples of justice reinvestment and problem-solving justice initiatives that have had significant positive effects on the communities in which they have been implemented. The examples illustrate the cost-benefit advantages of pursuing justice reinvestment and problem solving justice strategies, in place of more stringent, correctional service-based strategies in responding criminal offending in marginalised and disadvantaged groups.

Problem-solving justice initiatives can have significant value for responding to criminal offending for people who are homeless and people with mental illness. The strategies can make a significant contribution to making our communities safer, and encouraging people who would be otherwise at high risk of reoffending, becoming positive actors in the social and economic life of our society.

At the heart of successful implementation of justice reinvestment and problem-solving justice initiatives is the need to adequately resource the community services needed to support the relevant therapeutic programs, including housing services, drug and alcohol services, welfare services, education and training, and employment services. Justice reinvestment calls for public funding for resourcing such services to be prioritised over funding more traditional criminal justice correctional responses.