

**Submission  
No 33**

## **INQUIRY INTO THE PROTOCOL FOR HOMELESS PEOPLE IN PUBLIC PLACES**

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

**Date Received:** 10 March 2020



# ALS

Aboriginal Legal Service (NSW/ACT) Limited

ABN: 93 118 431 066

10<sup>th</sup> March 2020

Legislative Assembly Committee on Community Services  
NSW Legislative Assembly  
Parliament House, Macquarie Street  
Sydney NSW 2000  
via: [communityservices@parliament.nsw.gov.au](mailto:communityservices@parliament.nsw.gov.au)

Dear Committee,

***Re: Inquiry into the Protocol for Homeless People in Public Places***

The Aboriginal Legal Service (NSW/ACT) Limited ('ALS') welcomes the opportunity to provide comment to the Inquiry into the *Protocol for Homeless People in Public Places* ('the Protocol').

The ALS is a proud Aboriginal Community Controlled Organisation and the peak legal services provider to Aboriginal and Torres Strait Islander men, women and children in NSW and the ACT. The ALS currently undertakes legal work in criminal law, children's care and protection law and family law. We have 24 offices across NSW and the ACT, and we assist Aboriginal and Torres Strait Islander people through representation in court, advice and information, as well as providing broader support programs. We provide this brief submission based on our direct involvement with and representation of Aboriginal and Torres Strait Islander people who interact with the justice system, many of whom who have experienced homelessness.

**Background**

Data from the 2016 Census found that approximately 37,715 people experience homelessness in NSW, with Aboriginal and Torres Strait Islander people disproportionately represented within these figures.<sup>1</sup> Although the most visible, rough sleepers make up the smallest proportion of those experiencing homelessness nationally, with only 7% of people experiencing homelessness *sleeping rough*.<sup>2</sup>

The current regulation of visible homelessness within NSW is informed by the NSW Government's *Protocol for Homeless People in Public Spaces*. The stated intention of the Protocol is to:

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<sup>1</sup> Australian Bureau of Statistics, 2049.0 - Census of Population and Housing: Estimating homelessness, 2016, accessible at: <https://www.abs.gov.au/ausstats/abs@.nsf/lookup/2049.0Media%20Release12016>

<sup>2</sup> *Ibid.*

*[H]elp ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status. The Protocol also aims to assist homeless people to receive services if they need or request them. It is an important element in the Government's strategy for responding effectively to homelessness.<sup>3</sup>*

The Protocol was introduced to provide guidance to services and agencies who encounter people experiencing homelessness in public places, including the NSW Police Force, Department of Aboriginal Affairs, Department of Community Services, Department of Premier and Cabinet and others.<sup>4</sup>

The Protocol is currently based around the following core principles:

- All people have a right to be in public spaces, at the same time respecting the right of local communities to live in a safe and peaceful environment.
- All people have a right to participate in public activities or events.
- People will not be harassed or moved on from public places unless there is a general threat to general security, their personal safety or if they are causing a disturbance which constitutes a breach of the peace.
- People who work in areas where their responsibilities are likely to bring them into contact with homeless people will receive sufficient information to enable them to assist homeless people if required, or help homeless people make contact with appropriate services if needed.<sup>5</sup>

In addition, the Protocol also specifically recognises that "Aboriginal people's connection and sense of belonging to country is an integral part of their cultural identity" and that a culturally respectful approach is required to build more positive relationships between Government agencies and Aboriginal communities.<sup>6</sup>

### **Current operation of the Protocol**

When the Protocol was first established it was anticipated that it would be formally reviewed and renewed by participating agencies every two years.<sup>7</sup> However, there is currently no public information available as to whether this review process has been consistently undertaken. This means that it is currently very unclear as to whether the framework is operating effectively. In addition, the Protocol notes that individual "government organisations are responsible for monitoring the implementation of the Protocol within their organisation" which has resulted in there being little independent oversight of the Protocol's implementation.

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<sup>3</sup> Family & Community Services: Housing NSW (2013). Protocol for Homeless People in Public Spaces: Guidelines for Implementation, May 2013, p.11-12. Available via:

[https://www.housing.nsw.gov.au/data/assets/pdf\\_file/0003/326046/ImplementationGuidelines.pdf](https://www.housing.nsw.gov.au/data/assets/pdf_file/0003/326046/ImplementationGuidelines.pdf)

<sup>4</sup> When the Protocol was originally published in October 2012, the following government organisations endorsed the Protocol: Housing NSW, Community Services, Department of Premier and Cabinet, NSW Police Force, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs, Ambulance Service of NSW.

<sup>5</sup> Cripps, S. (2008). Homelessness and Human Rights. Australian Human Rights Commission; Family & Community Services: Housing NSW (2013). Protocol for Homeless People in Public Spaces: Guidelines for Implementation, May 2013, p.11-12. Available via:

[https://www.housing.nsw.gov.au/data/assets/pdf\\_file/0003/326046/ImplementationGuidelines.pdf](https://www.housing.nsw.gov.au/data/assets/pdf_file/0003/326046/ImplementationGuidelines.pdf)

<sup>6</sup> *Ibid.* p.8

<sup>7</sup> *Ibid.* p.12

It is also important to consider the Protocol within the broader legislative and policy context in which it operates. Within NSW, there is a range of public order legislation that police, and other government officials, draw upon to respond to people in public spaces. For example, in 2011, the NSW Parliament amended *the Law Enforcement (Powers and Responsibilities) Act 2002* to grant police additional powers to move people on, whilst the *Summary Offences Act 1988* (NSW) was amended to create a new offence of failing to comply with a police directive.<sup>8</sup> These powers grant police a very high degree of discretion in how they respond to people in public spaces, and the discretionary enforcement of public order provisions has been found to disproportionately impact upon Aboriginal and Torres Strait Islander communities and people experiencing homelessness.<sup>9</sup>

In recent years there has also been growing concerns around the over-use of police powers in NSW, including quotas for NSW Police in relation to the number of move-on orders, personal searches and strip-searches undertaken each year<sup>10</sup>. For instance, a recent report found that Aboriginal and Torres Strait Islander people accounted for 10% of all recorded strip-searches in the field.<sup>11</sup> And in 2017, the NSW Government passed the *Sydney Public Reserves (Public Safety) Act 2017* (NSW), to enable police to forcibly evict homeless people from Martin Place.<sup>12</sup> As a result, it has been noted that within NSW “there exists an extensive (and growing) array of legislative interventions allowing police and city officials to target homelessness and the perceived public disorder associated with it.”<sup>13</sup> This punitive policing of public space ultimately serves to undermine the intention of the Protocol.

The Protocol specifically notes that it only applies “to homeless people who are in public places and acting lawfully” suggesting that those who are deemed to be acting ‘unlawfully’ are not protected.<sup>14</sup> In addition, the guidelines note that the Protocol “does not reduce the powers of organisations or their authority to enforce specific laws and regulations.”<sup>15</sup> As a result, there is a need for legislative change to ensure that the rights and interests of those persons experiencing homelessness are adequately protected, particularly in relation to the lawful exercise of police powers.

### **Opportunity for renewal and revival of the Protocol**

The Protocol remains a useful framework for outlining the rights of people experiencing homelessness and providing guidance to government officials, including police, about how to relate to homeless people in public spaces. However, as noted above, its effectiveness is currently undermined by a range of contradictory

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<sup>8</sup> Young, A. & Petty, J. (2017). *Visible Homelessness: A Study in the Melbourne CBD and the City of Yarra* (report prepared for Justice Connect. University of Melbourne (November 2017), p.5.

<sup>9</sup> Young, A. & Petty, J. (2017). *Op. Cit.* p. 5; Adams, L. (2014) *In the Public Eye: Addressing the Negative Impact of Laws Regulating Public Space on People experiencing Homelessness*, Canberra: The Winston Churchill Memorial Trust of Australia; Walsh, T. (2008) ‘Policing Disadvantage: Giving Voice to Those Affected by the Politics of Law and Order’. *Alternative Law Journal*, vol. 33(3): 160-4.

<sup>10</sup> ABC News (2020). *NSW Police Set Quota for 241,000 personal searches and strip searches in 12 months, documents reveals* (13 February 2020). Accessed online via: <https://www.abc.net.au/news/2020-02-13/nsw-police-strip-search-quota-revealed-in-foi-documents/11960682>

<sup>11</sup> Greweck, M. & Sentas, V. (2019) *Rethinking Strip Searches by NSW Police* (Report, August 2019). Accessed via: [https://rlc.org.au/sites/default/files/attachments/Rethinking-strip-searches-by-NSW-Police-web\\_0.pdf](https://rlc.org.au/sites/default/files/attachments/Rethinking-strip-searches-by-NSW-Police-web_0.pdf)

<sup>12</sup> PIAC (2017), *Submission to The Law Council of Australia: ‘The Justice Project’* (October, 2017), p.8. Accessed online via: <https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.13-Law-Council-Justice-Project-PIAC-Submission.pdf>

<sup>13</sup> Young, A. & Petty, J. (2017). *Visible Homelessness: A Study in the Melbourne CBD and the City of Yarra* (report prepared for Justice Connect. University of Melbourne (November 2017).

<sup>14</sup> *Ibid.* p.6

<sup>15</sup> *Ibid.*

legislative interventions, as well as a lack of accountability mechanisms to monitor non-compliance by signatory agencies.

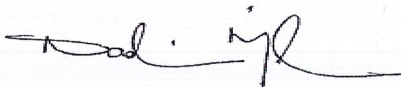
Currently, the Protocol is entirely reliant upon individual agencies voluntarily undertaking to ensure the Protocol is adhered to, and yet we have seen many organisations who support the Protocol in principle undertake punitive policing of public space.

In order to revive the protocol and ensure that are appropriate enforceability and accountability mechanisms available, the ALS recommends that:

- Mandatory reporting be undertaken by all agencies who are a signatory to the Protocol;
- Police should remain a signatory to the Protocol and adhere to the new mandatory reporting guidelines;
- All agencies who are a signatory to the Protocol should integrate regular and mandatory training for their staff that directly engage with people experiencing homelessness, including culturally appropriate and trauma-informed approaches; and
- The Protocol should be regularly reviewed to ensure that it is consistent with changes to legislation and other relevant policy and regulations.

The ALS would welcome the opportunity to discuss this matter with you in more detail.

Yours sincerely,



Nadine Miles  
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