

# **NO VAGRANCY:**

## **An examination of the impact of the criminal justice system on people living in poverty in Queensland**

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**This research was commissioned by:**

**UnitingCare Queensland Centre for Social Justice, Sisters Inside,  
Centacare Pastoral Ministries, Brisbane Catholic Education, Queensland  
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Programs**

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# THE OUTCAST

By Nuuna

Empty as my heart aches,  
Torn in shreds,  
bleeding,  
Looking out through darkened corridors of eyes,  
I see glimpses of light,  
Motions,  
Beyond the barrier,  
Moving fast,  
Too quick to grasp,  
Too cold to touch.  
Quickly fades, as shadows press around me.  
Isolation, loneliness  
Descends upon me.  
It feels safe,  
It's me.  
The only world I know,  
My world of darkness.

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# FOREWORD

What does poverty mean to you? Who among us is experiencing poverty? What sorts of experiences do people living in poverty have with the three arms of the criminal justice system: the police, the courts, and corrections?

It is important to acknowledge that we frequently overlook the needs and circumstances of those who are poor and marginalised. We give insufficient attention to what is required to be truly inclusive; to ensure that all members of our society get a fair and decent go. In this report, entitled *No Vagrancy*, we seek to move forward by giving those people affected by poverty a voice and focusing on an all too common aspect of their lives.

The report investigates the extent to which people living in poverty<sup>1</sup> interact with, and are affected by, the workings of the criminal justice system in Queensland. The investigation has engaged directly with the poor and with a range of professionals within this system. The focus on interactions with the police, the courts and corrective services is shown to be important given the excessive and negative experiences of those living in poverty with all elements of the criminal justice system, and particularly with the police. These experiences may encourage people to believe that they are of little worth, unwanted or beyond redemption. When the impact of the criminal justice system is disproportionately centred on a low socio-economic group then human rights are likely to be transgressed, community safety compromised, and democracy threatened.

The aims of the project were to document the interface between poverty and the criminal justice system; to provide a nuanced understanding of why these interactions occur; and to make recommendations that will be constructive and helpful. We expect that the report will be of significant value to elected and non-elected public officials, and members of the community, who are concerned about the manner in which the criminal justice system is operating as opposed to how it might be operating. It will be important to gain support and understanding at Cabinet level if we are to prevent the generation of an underclass which is distressingly familiar with the police, the courts and corrective services.

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<sup>1</sup> This report uses the word 'poverty' throughout since the research was commissioned on this basis. We thank the many participants who told us they do not accept that word and we acknowledge that new ways of understanding people's lived experiences must be sought.

Among its 20 recommendations the report argues that:

- The Queensland Police Service undertake to reduce the rate of ‘good order’ offending in Queensland as a performance indicator, in the same way that crime reduction across other offences is considered a performance indicator.
- There be a legislative requirement that police officers only interfere with individuals’ use and enjoyment of public space if there is a reasonable risk that harm to another person will result if they fail to intervene.
- A ‘Charter of Rights’ be inserted into the *Police Powers and Responsibilities Act 2000* (Qld) which explicitly recognises, and legally protects, the rights of all users of public space to access and enjoy Queensland’s public spaces without fear of intimidation or harassment by police officers.
- The Crime and Misconduct Commission establish a police service complaints mechanism that is accessible to all community members. A best practice model that could be applied is the establishment of an ‘incidents register’ so that all persons who wish to lodge a complaint against a police officer may do so by completing a basic form.
- To recognise the success of the Special Circumstances Court, the Queensland Government provide targeted funding to the Queensland Magistrates’ Courts to enable:
  - (a) a substantial increase in the presence of court liaison officers, particularly Indigenous Liaison Officers, Disability Liaison Officers and Homelessness Liaison Officers; and
  - (b) either:
    - a special circumstances list to operate out of all Queensland Magistrates’ Courts; or
    - an amendment to the *Penalties and Sentences Act 1992* (Qld) to create clear sentencing alternatives allowing for the referral of defendants to community services and informal supervision by the court of defendants’ progress; and
  - (c) continuing education for magistrates regarding alternative sentencing options and their appropriateness for certain offender groups.

- Anti-discrimination statutes around Australia be amended to include:
  - homelessness or social status as a protected attribute; and
  - operations of the criminal justice system, including policing, as a protected area of activity.

This report has been commissioned by the State Incorrections Network. The Network is a coalition of individual citizens, service providers, peak bodies, think tanks, churches and organisations supporting prisoners and former prisoners who work on issues relating to incarceration and release for the benefit and safety of the whole community

While the Queensland Police Service and Queensland Corrective Services did not allow police or corrections staff to participate in the research, a wide range of professionals from within the criminal justice system did participate along with many individuals experiencing poverty. Given the high degree of correlation among responses offered across the sample - and the significant number of unsolicited complaints (particularly related to police) - we are confident that the research paints a very real and disturbing picture of a relationship between poverty and criminalisation which is to the detriment of those who are poor and to society as a whole.

The financial resources which enabled this research to proceed were provided by the UnitingCare Centre for Social Justice, Sisters Inside, Centacare Pastoral Services, Brisbane Catholic Education, Queensland Shelter, Queensland Council for Social Services, Red Cross, Prisoners' Legal Service, Youth Affairs Network of Queensland, Deception Bay Community Youth Programs, and Queensland Alliance.

We wish to note our sincere appreciation for the thorough, scholarly and committed work of the report's author Dr Tamara Walsh. Dr Walsh is from the TC Beirne School of Law at the University of Queensland.

The following individuals and organisations contributed significant in-kind support over the course of the Project and served on the project's reference group:

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- Debbie Kilroy - Sisters Inside
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Marg O'Donnell

Co-Chair and Special adviser to the project

Bob Weatherall

Co-Chair and Special adviser to the project

Greg Mackay

Director, UnitingCare Queensland Centre for Social Justice

# EXECUTIVE SUMMARY

## Project overview

The aim of this project was to investigate the extent to which people living in poverty interact with, and are impacted by, the workings of the criminal justice system in Queensland. ‘Criminal justice system’ was defined in terms of its three arms: the Queensland Police Service, the Queensland Courts and Queensland Corrective Services.

Input was sought from a range of target groups including:

- people experiencing poverty in Queensland;
- community service workers and advocates who work closely with people experiencing poverty in Queensland;
- lawyers who represent and advise people experiencing poverty in Queensland, particularly community lawyers and Legal Aid lawyers;
- judges and magistrates;
- prosecutors;
- police officers; and
- corrective services officers.

Unfortunately, the views of police officers and corrective services officers were not well-represented, as approval to conduct the project could not be obtained from the Queensland Police Service or Queensland Corrective Services. However, all other target groups were represented to a greater or lesser extent in the data ultimately collected.

The project was overseen by a reference group comprising representatives from a wide range of community organisations in Queensland including UnitingCare Centre for Social Justice, Sisters Inside, the State Incorrections Network, Centacare Pastoral Services, Catholic Prison Ministry, the Far-North Queensland Family and Prisoner Support Service, Red Cross, Queensland Shelter, Queensland Council for Social Services, Brisbane Catholic Education, Prisoners’ Legal Service, Youth Affairs Network of Queensland, Queensland Alliance, YWCA, Deception Bay Community Youth Programs, the Queensland Public Interest Law Clearing House Inc. Homeless Persons’ Legal Clinic,

the Aboriginal and Torres Strait Islander Legal Service, The Brisbane Institute, the Australian Community Safety and Research Organisation Inc., the Hepatitis Council of Queensland, BoysTown, Family Planning and Lifeline Community Care Queensland Prison Ministry.

The steering committee was led by two eminent chairpersons, Uncle Bob Weatherall and Marg O'Donnell.

## **Research methods and participants**

Two different methodologies were utilised in this project:

1. Individual interviews and focus groups were conducted with people experiencing poverty in Brisbane, Townsville and Cairns; and
2. Criminal justice and related professionals were invited to complete an online survey instrument.

Qualitative data was obtained from the interviews and focus groups, and a mix of qualitative and quantitative data was obtained from the online survey. The use of two different methodologies allowed for the triangulation of findings, and guarded against researcher bias.

A total of 59 people experiencing poverty participated in individual interviews in Brisbane and a further 56 people participated in one of 11 focus groups. In addition, 16 people were interviewed in Cairns and Townsville. **Thus, data was obtained from a total of 131 people experiencing poverty in Queensland.** A representative spread in terms of gender, Indigenous status and age was achieved: 71 (54%) participants were male and 60 (46%) were female; 34% identified as Indigenous; 17% were aged 17 years or under; 18% were aged 18 to 24 years; 13% were aged 25 to 29 years; 24% were aged 30 to 39 years; 10% were aged 40 to 49 years and 14% were aged 50 years or above (age was unknown in around 5% of cases).

**A total of 54 criminal justice and related professionals responded to the online survey,** the majority of whom were women (63%). Respondents included 12 community

service providers, 10 private lawyers, nine members of the judiciary/magistracy, nine lawyers employed by Legal Aid (either as Legal Aid lawyers or duty lawyers), nine community legal service providers, two employees of the Office of the Public Prosecutor, one corrective services officer, and two ‘others’ (a youth worker and a ‘project coordinator’). While this breakdown indicates that a reasonably representative spread across various professions was obtained, unfortunately the discrete professional groups were too small to enable reliable comparisons to be made between them.

## Results

### Interviews and focus groups with people experiencing poverty

The key findings from the interviews and focus groups were:

- **People experiencing poverty and homelessness endure extraordinarily high levels of police harassment and interference in their lives** – allegations of police harassment were made in 83% of the Brisbane interviews, all but one of the Brisbane focus groups and 75% of the interviews in Townsville and Cairns.
- **People experiencing poverty and homelessness report being frequently searched, often unnecessarily and sometimes unlawfully** – in 15 of the Brisbane interviews and five of the Brisbane focus groups, participants stated that they were frequently searched for no reason; some reported that they had been strip searched in a public place and/or by a police officer of the opposite sex.
- **Many people experiencing poverty and homelessness report suffering physical brutality at the hands of police officers** – allegations of police brutality were made in 18 of the Brisbane interviews, five of the Brisbane focus groups and eight of the interviews in Townsville and Cairns.
- **Indigenous people living on the streets are particularly vulnerable to police interference and harassment** – one non-Indigenous respondent said: ‘They think that anyone that’s dark is Aboriginal, so they immediately think you’re a crim or a drunk.’

- **The court system is often experienced as intimidating and confusing by people experiencing poverty and homelessness**, although the Special Circumstances Court was cited as an exception to this.
- **Many people experiencing homelessness and poverty have been supervised by community corrections, and/or have been housed in a correctional facility** – 34 of the Brisbane interview participants and 13 of the Townsville/Cairns interview participants stated that they had been supervised by corrective services, and many had spent time in a correctional facility.
- **Some people experiencing poverty in Queensland report having insufficient income to provide themselves with the necessities of life, including food, shelter, clothing and access to amenities** – 37% of the Brisbane interview participants were sleeping on the streets, and many participants stated that they often did not have enough money to buy food for the week. **For some, engaging in criminal activity, such as welfare fraud, shoplifting or participating in the drug trade, was the only way they could make ends meet.**
- **Many of those experiencing homelessness and poverty report feeling looked down upon, discriminated against, and excluded by mainstream society** – participants commented that they felt like they were ‘a bit of dust’, ‘a fringe dweller’ or ‘on the outskirts’ of society.
- **People experiencing homelessness and poverty are generally of the belief that they have no human rights, and/or that they are not capable of ensuring that the rights they do have are respected.**

## **Online survey of criminal justice and related professionals**

The key findings from the online survey were:

- **Those working within the criminal justice system alongside people experiencing poverty believe that the high visibility of homeless and poor**

- people in public space results in increased police attention** – 17 respondents stated that poorer persons' increased presence in public space made them vulnerable to police harassment and interference in their lives.
- **Many of those working within the criminal justice system alongside people experiencing poverty believe that police discriminate against people experiencing homelessness and poverty, particularly Indigenous people** – 65% of respondents agreed that police officers discriminate against people on the basis of their socio-economic status.
  - **Lack of access to legal advice and advocacy assistance is perceived by criminal justice and related professionals to result in adverse outcomes for people experiencing poverty in criminal trials** – 29 respondents stated that how one fares in court is dictated by the quality of legal advice and assistance they are able to secure.
  - **Many criminal justice and related professionals believe that the court system is inordinately intimidating and complex, and that people experiencing poverty are more likely to be adversely impacted by this than others.**
  - **Criminal justice and related professionals agree that people experiencing poverty are more likely to have convictions recorded against them, and are more likely to end up in prison** – 85% of respondents said that they agreed that people experiencing poverty are more likely to end up in prison.
  - **Many of those who work with people experiencing poverty observe the extraordinary strength and resilience that their clients demonstrate, despite the multiple layers of disadvantage they are faced with.**

## List of recommendations

**Recommendation 1** - That an independent inquiry into policing amongst poor, Indigenous and other vulnerable groups be undertaken, with serious attention being given to the wide-spread allegations of excessive police harassment and brutality.

**Recommendation 2** - That the Queensland Police Service undertake to reduce the rate of 'good order' offending in Queensland as a performance indicator, in the same way that crime reduction across other offences is considered a performance indicator.

**Recommendation 3** - That the Queensland Police Service establish formal partnerships with community services and develop protocols for service delivery to homeless and other marginalised public space users.

**Recommendation 4** - That the Department of Police and Corrective Services commit to ensuring that their workforce receive tertiary education in either Justice Studies or related disciplines such as Sociology, Psychology and Social Work. This is consistent with Queensland's Smart State initiative, and is consistent with the recommendations of the Fitzgerald Report.

**Recommendation 5** - That police officers, particularly junior officers, receive adequate, continuing training on issues related to cultural awareness and sensitivity, and best practice in responding to vulnerable people, including those experiencing homelessness.

**Recommendation 6** - That police officers be instructed that they should only interfere with individuals' use and enjoyment of public space if there is a reasonable risk that harm to another person will result if they fail to intervene. (This requirement should appear in legislation rather than just being added to the Operations and Procedures Manual.)

This could be achieved by:

- inserting a provision to this effect in the *Police Powers and Responsibilities Act 2000* (Qld);
- carefully rewording the offence of public nuisance (in section 6 of the *Summary Offences Act 2005* (Qld)); and/or

- repealing section 47 of the *Police Powers and Responsibilities Act 2000* (Qld) which allows a police officer to move a person on in circumstances where their mere presence could cause anxiety to a member of the public.

**Recommendation 7** - That a ‘Charter of Rights’ be inserted into the *Police Powers and Responsibilities Act 2000* (Qld), based on the model established in the *Child Protection Act 1999* (Qld), that explicitly recognises and legally protects the rights of all public space users to use and enjoy Queensland’s public spaces without fear of intimidation or harassment by police officers.

The Charter should be developed in consultation with marginalised public space users, and should (at least) recognise the following rights of public space users, as enshrined in the *International Covenant on Civil and Political Rights*:

- the right to freedom from discrimination on the basis of race, colour, national or social origin, or other status;
- the right to freedom from cruel, inhuman or degrading treatment or punishment;
- the right to be treated with humanity and respect for human dignity;
- the right to liberty of movement; and
- the right of peaceful assembly.

**Recommendation 8** - That the Crime and Misconduct Commission undertake an investigation into police powers related to search and seizure, with a particular focus on:

- the frequency of police searches conducted in public places;
- the frequency of strip searches conducted in the course of police investigations;
- the level of knowledge amongst members of the public regarding when a search or seizure conducted by police is lawful; and
- the extent to which the use of police powers related to search and seizure is conducted in accordance with the legislation.

**Recommendation 9** - That an independent inquiry into police practices be conducted, with particular attention being paid to the extent to which police productivity is measured by arrest quotas.

**Recommendation 10** - That the Crime and Misconduct Commission establish a police service complaints mechanism that is accessible to all community members. A best practice model that could be applied is the establishment of an ‘incidents register’ so that

all persons who wish to lodge a complaint against a police officer may do so simply by completing a basic form.

**Recommendation 11** - That, in recognition of the success of the Special Circumstances Court, the Queensland Government provide targeted funding to Queensland Magistrates' Courts to enable:

- (a) a substantial increase in the presence of court liaison officers, particularly Indigenous Liaison Officers, Disability Liaison Officers and Homelessness Liaison Officers; and
- (b) either:
  - a special circumstances list to operate out of all Queensland Magistrates' Courts; or
  - an amendment to the *Penalties and Sentences Act 1992* (Qld) to create clear sentencing alternatives allowing for the referral of defendants to community services and informal supervision by the court of defendants' progress; and
- (c) continuing education for magistrates regarding alternative sentencing options and their appropriateness for certain offender groups.

**Recommendation 12** - That the Queensland Department of Justice and the Attorney-General commit targeted funds to Legal Aid Queensland, and community legal services, for the sponsoring of summary trials, to allow those charged with minor offences to defend their charges with adequate legal assistance.

**Recommendation 13** - That a review of the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) be undertaken with a view to determining its impact on perpetuating the cycle of poverty. Special attention should be given to whether the disclosure periods are too long for certain offences, and indeed whether certain offences (particularly those that are status-related) should form part of an individual's criminal record at all.

**Recommendation 14** - That community corrections officers be encouraged to take a case management, rather than a merely supervisory, approach to their work, and that community corrections officers receive adequate training and continuing education aimed at the development of case management skills.

**Recommendation 15** - That the policies and practices regarding family visits in Queensland prisons be reviewed to ensure that contact between prisoners and their family members, particularly parents and children, is enhanced and maximised.

**Recommendation 16** - That prisoners be sufficiently resourced whilst in prison to enable them to achieve an adequate standard of living upon their release; this would include:

- making prisoner education a priority in all Queensland prisoners by allowing all prisoners to engage in full-time study if desired, and by recruiting additional education officers;
- making prison work available to all prisoners and providing reasonable wages in exchange for such work to enable prisoners to save money to assist them to re-establish their lives after their release;
- funding aftercare services at a sufficient level to ensure the provision of case management services to all prisoners upon their release, including housing, job search and general welfare assistance.

**Recommendation 17** - That the Queensland Government commit to taking a whole of government approach to addressing the social problems associated with poverty, in recognition of the fact that it is a multifaceted, and particularly corrosive, phenomenon. Such a commitment might include:

- investigating how the various State Government Departments might contribute to tackling the causes of poverty in Queensland;
- coordinating resources and services between Departments to ensure adequate and appropriate service delivery to people experiencing poverty in Queensland; and
- commissioning and funding an independent inquiry into discrimination on the basis of homelessness or social status in Queensland – the Anti-Discrimination Commissioner could be resourced to undertake this investigation under *Anti-Discrimination Act 1991* (Qld) s236.

**Recommendation 18** - That government fund a wide-scale public education campaign aimed at humanising people experiencing poverty. The campaign should aim to inform the public of the:

- extent and causes of poverty and homelessness in Australia;
- resilience demonstrated by people experiencing poverty and homelessness in Australia; and

- inappropriateness (both socially and economically) of applying a law and order response to poverty and homelessness in Australia.

**Recommendation 19** - That anti-discrimination statutes around Australia be amended to include:

- homelessness or social status as a protected attribute; and
- operations of the criminal justice system, including policing, as a protected area of activity.

**Recommendation 20** - That formal consultation with people experiencing 'poverty' be conducted by government when devising policy or law reform strategies that impact upon this population group.

# CHAPTER 1: INTRODUCTION

## Poverty in Australia

There is no dearth of research on poverty in Australia. Several academic researchers, and researchers within non-government organisations, have devoted themselves to assessing what poverty is, who is most likely to experience poverty and the extent of poverty across Australia.<sup>1</sup> Further, poverty has been the subject of a recent Federal Senate Committee inquiry which released a comprehensive report on ‘Poverty and Financial Hardship’ in 2004.

‘Poverty’ is broadly spoken of as being either absolute or relative. ‘Absolute’ poverty denotes lack of life’s basic necessities, including food, shelter and clothing. Many have concluded that, owing to our comparatively high standard of living, absolute poverty lacks relevance in an Australian context.<sup>2</sup> (In fact, the results of the research reported on here may suggest that absolute poverty is more widespread in Queensland than generally thought.)

Most researchers prefer to speak of ‘relative’ poverty as existing in Australia, that is, lacking the resources required to adequately participate in a given society. In Australia, this might include lack of income, jobs, education, health services, transport and recreation.<sup>3</sup>

Even the most conservative estimates of the incidence of poverty indicate that it is a widespread social problem in Australia. Estimated poverty rates range from 5% to 23%

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<sup>1</sup> The most recent, and perhaps most comprehensive, of these studies is Tony Vinson (for Jesuit Social Services and Catholic Social Services), *Dropping off the Edge: The Distribution of Disadvantage in Australia*, 2007.

<sup>2</sup> See for example Senate Community Affairs References Committee, *A Hand Up Not a Hand Out: Renewing the Fight Against Poverty – Report on Poverty and Financial Hardship*, Commonwealth Parliament, 2004 at 3; Bruce Headey, Diana Warren and Glenys Harding, *Families, Incomes and Jobs: A Statistical Report of the HILDA Survey*, Melbourne Institute of Applied Economic and Social Research, 2006 at 43.

<sup>3</sup> See for example Senate Community Affairs References Committee, *ibid* at 3.

of the population, with most agreeing that at least 2,000,000 Australians live in poverty.<sup>4</sup> A recent study undertaken by the University of Queensland's Social Research Centre concluded, based on data obtained from the Australian Bureau of Statistics, that around 400,000 Queenslanders (21%) were living in poverty in 2003/04.<sup>5</sup> Further to this, a recent UnitingCare Queensland Centre for Social Justice study found that poverty in Queensland is concentrated in a small number of geographical areas, particularly certain Indigenous communities and areas within the south west of Brisbane and Logan City.<sup>6</sup>

Of concern is the fact that, on current estimates, the poverty line in Australia lies above the amount provided to those who rely on social security benefits as their sole source of income. The Melbourne Institute of Applied Economic and Social Research estimates that the 'poverty line' (based on the benchmark established by the Henderson Poverty Inquiry in 1975) lies at around \$341.31 per week for a single person. Yet, the most a single person is entitled per week to under Newstart (including Rent Assistance) is \$262.05.<sup>7</sup>

Not only do Australian government benefits lie below the 'Henderson' poverty line, but they lie below the poverty line according to other widely accepted definitions. For example, in Europe, 'poverty' is commonly operationalised as 60% of average or median weekly earnings, and it has been found that Australian government benefits do not meet this threshold either.<sup>8</sup>

Clearly, there is an extremely large pool of Australians who experience, or are at least at risk of experiencing, poverty. Of course, research has consistently shown that certain groups are more likely to experience poverty than others. In particular, Indigenous people, single parent households, people with a disability or long-term illness and older people are most likely to experience poverty in Australia.<sup>9</sup> Indicators of poverty are self-

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<sup>4</sup> For a neat summary of incidence of poverty studies, see Senate Community Affairs References Committee, *ibid* at 35.

<sup>5</sup> University of Queensland Social Research Centre (for QCOSS), *Poverty in Queensland*, University of Queensland, 2006 at 6.

<sup>6</sup> Liz Upham and Sally Cowling, *A Scan of Disadvantage in Queensland*, UnitingCare Queensland Centre for Social Justice, 2006.

<sup>7</sup> Benefit amounts sourced from the Centrelink website; [www.centrelink.gov.au](http://www.centrelink.gov.au).

<sup>8</sup> Headey, Warren and Harding, above n2 at 44.

<sup>9</sup> *Ibid* at 45, 49.

evident, including such things as unemployment, lack of education, reliance on social security benefits and homelessness.<sup>10</sup>

The starting question for this study was ‘where does the criminal law fit in all of this?’ Lack of access to justice could certainly be characterised as another indicator of poverty; it has commonly been observed, both anecdotally and formally, that those coming into contact with police, the courts and the corrections system seem overwhelmingly to be poor. The criminal justice system is complex and difficult to navigate without professional assistance – where does this leave a person who lacks educational opportunities, and the financial resources required to obtain specialist assistance?

## **Poverty and the criminal law in Australia**

### **Foundation reports**

The impact of the criminal law’s operations on those experiencing poverty has received relatively little attention in the literature. Aside from the Commission of Inquiry into Poverty conducted in 1975, there have been no large-scale investigations into the differential effects of the law on those experiencing poverty in Australia. And aside from the Fitzgerald Inquiry of 1989, there have been no large-scale investigations into the impact of the criminal justice system on vulnerable people in Queensland.

Yet, both these reports uncovered disturbing evidence that people living in poverty are likely to be unjustly targeted under the criminal law by agents of the criminal justice system. As Justice Sackville, the author of the 1975 Commission’s second main report, the *Report on Law and Poverty in Australia*, stated:

‘Not all would acknowledge that the law plays a significant part in this pattern of deprivation... Lawyers and laymen alike consider it unthinkable that the legal system should discriminate against a person simply because he is poor. Yet even on these uncontentious criteria the law has failed to accord equal treatment to all people and has therefore contributed to the perpetuation of poverty in Australia.’<sup>11</sup>

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<sup>10</sup> Senate Community Affairs References Committee, above n2 at 3.

<sup>11</sup> Ronald Sackville, *Commission of Inquiry into Poverty – Second Main Report: Law and Poverty in Australia*, Commonwealth Parliament, 1976 at 1.

The report noted unequivocally that people experiencing poverty were disproportionately represented within the criminal justice system, but concluded that this was not because they committed the most crime. Rather, it was observed that the system seemed to be ‘geared towards catching some offenders rather than others’.<sup>12</sup> It was said that their high levels of visibility, lack of access to legal advice and representation, and lack of knowledge of, or confidence to ensure the enforcement of, their rights, meant that people living in poverty were more vulnerable to the operations of the criminal justice system.<sup>13</sup> High levels of police discretion were also implicated; a focus on geographical areas characterised by economic and social disadvantage and the more frequent enforcement of public order laws against street dwellers meant that those experiencing poverty were more likely to be ‘fed into’ the criminal justice system.<sup>14</sup> Sackville concluded:

‘The point is not that the use of police discretion can or should be avoided or that its exercise usually produces undesirable results, but that the importance of the discretion, and the opportunity it provides for discriminatory treatment of poor people, should be recognised and studied closely.’<sup>15</sup>

In Queensland, ‘closer study’ of this phenomenon came in the form of the Fitzgerald Inquiry in 1989. Prompted by media reports of police corruption and excessive political interference in the operations of the police force, the inquiry investigated police practices and made a number of recommendations aimed at insulating the police force from any future criticism.

In the final report, the importance of the police force to the workings of the entire criminal justice system was explicitly acknowledged:

‘The institutional culture of a police force is of vital importance to a community. A police force is numerically strong, politically influential, physically powerful and armed. It stands at the threshold of the criminal justice system and is in effective control of the enforcement of the criminal law. Each police officer has extensive authority over all other citizens, however powerful, coupled with wide discretions concerning its exercise. Subsequent stages in the criminal justice

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<sup>12</sup> Ibid at 196.

<sup>13</sup> Ibid at 196-200.

<sup>14</sup> Ibid at 199.

<sup>15</sup> Ibid at 201.

process, including courts and prisons, are largely dependent on the activities of the police force and will inevitably be affected by its deficiencies, especially any which are cultural and therefore widespread.’<sup>16</sup>

The report recommended that a ‘community policing’ approach be taken by the Queensland police force, whereby the needs of particular communities, and strategies to deal with their policing problems, would be identified and developed in consultation with those communities.<sup>17</sup>

It was recognised, however, that this approach must be coupled with clear and accurate educational initiatives, as ‘There is a risk that ordinary law abiding people will over-react to the threat of crime and demand excessive measures, instead of the reasoned and limited moves which are necessary.’<sup>18</sup> Indeed, the report explicitly stated that it did not endorse the expansion of police powers as the ‘complete answer to proper law enforcement.’<sup>19</sup> Rather, it concluded that clear instructions regarding the ambit and extent of the existing powers of police, higher levels of training and supervision, and tighter procedural controls over the exercise of their powers would ‘tend to remove bases for criticism of them and of the quality of the evidence they present to the courts.’<sup>20</sup>

Moreover, the Royal Commission into Aboriginal Deaths in Custody (1987-1991) also recognised the fact that police officers represent the first point of contact between Aboriginal people and the criminal justice system, and noted that excessive police interference in the lives of Aboriginal people, based on discriminatory assumptions, justifiably results in high levels of distrust and hostility towards the police service, and is ultimately reflected in high rates of Indigenous incarceration.<sup>21</sup> The Final Report recommended that both physical and verbal harassment by police towards Aboriginal people be addressed.<sup>22</sup>

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<sup>16</sup> G.E. Fitzgerald, *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Queensland Parliamentary Library, Brisbane, 1989 at 200.

<sup>17</sup> *Ibid* at 231.

<sup>18</sup> *Ibid* at 177.

<sup>19</sup> *Ibid* at 179.

<sup>20</sup> *Ibid* at 180, 280.

<sup>21</sup> See particularly Chapter 13 of the *Royal Commission into Aboriginal Deaths in Custody, Final Report*, 1991.

<sup>22</sup> See recommendation 60 of the *Royal Commission into Aboriginal Deaths in Custody, Final Report*, 1991.

## Recent research

Recent empirical research projects and theoretical analyses regarding interactions between people experiencing poverty and the criminal justice system have been conducted in a largely ad hoc manner by independent researchers. Goldie reports that while research in Australia regarding the impact of the law on homeless people has increased substantially in recent years, it is largely being conducted by discrete academics, advocates and community legal organisations, rather than in a strongly collaborative or strategic manner.<sup>23</sup>

In Queensland, recent research on homelessness and the law has been conducted by the author,<sup>24</sup> the Homeless Persons' Legal Clinic (a project of the Queensland Public Law Clearing House Inc.),<sup>25</sup> and other advocacy groups and community organisations.<sup>26</sup> Also, in 2004, Legal Aid Queensland commissioned a research project on homelessness and street offences aimed at identifying the level of need for legal assistance and representation amongst those experiencing homeless and mental illness who had been charged with petty offences such as creating a 'public nuisance'. The report, released in August 2005, recommended that police, fine enforcement agencies and the courts develop strategies and protocols to deal with this vulnerable group in a specialised and appropriate manner.<sup>27</sup>

In New South Wales, the Law and Justice Foundation recently undertook a study investigating the legal needs of homeless people in that state. The report, also released in 2005, concluded that people experiencing homelessness face a range of legal difficulties that in many instances have the effect of perpetuating or prolonging their state of

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<sup>23</sup> Cassandra Goldie, 'Using the law and human rights to challenge injustice for people who are homeless: An Australian lawyer's story', in Amy Horton-Newell, *Lawyers Working to End Homelessness*, American Bar Association, 2006.

<sup>24</sup> See particularly Tamara Walsh, *From Park Bench to Court Bench: Developing a Response to Breaches of Public Space Law by Marginalised People*, Queensland University of Technology, Brisbane, 2004; Tamara Walsh, 'The overruled underclass: The impact of the law on Queensland's homeless people' (2005) 28(1) *University of New South Wales Law Journal* 122; Tamara Walsh, *No Offence: The Enforcement of Offensive Language and Offensive Behaviour Offences in Queensland*, University of Queensland, 2006.

<sup>25</sup> HPLC authored pieces include Monica Taylor and Tamara Walsh (eds), *Nowhere to Go: The Impact of Police Move-On Powers on Homeless People in Queensland*, University of Queensland, 2006; Monica Taylor, 'Moving-on homelessness: The impact of police move-on powers in public space' (2006) 19(1). *Parity* 61; Michelle Bradfield, 'Nowhere to hide: when home is not a haven' (2004) 17(1) *Parity* 48.

<sup>26</sup> See for example Rose Best, *Out and About in Kurilpa: The Right to Public Space*, Queensland Shelter, Brisbane, 2005.

<sup>27</sup> Legal Aid Queensland, *Homelessness and Street Offences Project*, Legal Aid Queensland, Brisbane, 2005.

homelessness. With regard to the criminal justice system, it was observed that petty offending behaviour directly related to poverty, including evading public transport fares and ‘loitering’, was resulting in high levels of fining amongst people experiencing homelessness. It was also noted that legal service delivery that addressed all contributing aspects of disadvantage was not sufficiently available.<sup>28</sup>

## **This study**

This project expands on existing Queensland research by examining the views of people experiencing poverty themselves on whether they feel they are disproportionately and adversely impacted upon by the operations of the criminal justice system, and if so, why this is the case. It also analyses the views of those professionals that interact with them in the criminal justice system, including their advocates and community service providers, as well as magistrates, judges and prosecutors.

Much of the past research conducted on related topics in recent years has restricted its analysis to the plight of people experiencing homelessness. This project expands the investigation beyond homelessness to include those who experience poverty, but are in fact housed. The reality, however, is that most of those participants who were housed at the time this research was conducted were still at risk of homelessness, or had formerly experienced homelessness. Poverty amongst this group was most severe.

The results of this research are disturbing. In many ways, the findings confirm what we already knew: that poverty is widespread in Queensland; that those experiencing poverty report high levels of criminal justice intervention in their lives; and that the assistance available to those experiencing poverty who are forced to interact with the criminal justice system is in many ways inadequate. But further to this, the results of this study paint a distressing picture of extreme deprivation, harassment, brutality and social exclusion amongst these people.

This report seeks to give those affected a voice – it records their own statements, in their own words, with as little judgement or interference as possible. It is hoped that this report

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<sup>28</sup> Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice: The Legal Needs of Homeless People in NSW*, Law and Justice Foundation, Sydney, 2005.

will contribute to current discourse on poverty and the law, and serve as a launching pad for future consultative and collaborative research with people facing disadvantage in our community.

# CHAPTER 2: METHODOLOGY

## Aims and objectives

### Overview

This project sought to investigate the extent to which people living in poverty in Queensland interact with, and are impacted by the operations of, the criminal justice system. The effects of each of the three arms of the system were explored: police, the court system, and corrective services.

The project involved the undertaking of two separate pieces of empirical research. They were:

1. Interviews and focus groups with people experiencing poverty in Brisbane, Townsville, and Cairns;
2. An online survey of Queensland's criminal justice and related professionals, including community service providers, lawyers, judges, magistrates and prosecutors.

### Project aims

This research project primarily sought to answer the following research questions:

- To what extent are people experiencing poverty in Queensland adversely impacted upon by the criminal justice system?
- If people experiencing poverty in Queensland are adversely impacted upon by the criminal justice system, why might that be?

'Criminal justice system' was operationally defined in terms of its three main arms: the Queensland Police Service, the Queensland Courts and Queensland Corrective Services.

‘People experiencing poverty’ is a phrase used with some reservation. Obviously, many other words/phrases could be, and in the literature frequently are, substituted for it, including ‘people who are economically and/or socially disadvantaged’, ‘people who are marginalised’, ‘people who are poor’, ‘people living below the poverty line’, ‘people of low socio-economic status’, ‘low income people’ and ‘people experiencing social exclusion’. A sub-aim of the project, therefore, was to determine which ‘label’ the population group in question identified, and was most comfortable, with. Similarly, the target groups were asked for their views on the meaning of key terms such as ‘social exclusion’, ‘discrimination’ and ‘human rights’.

## **Methods**

### **Overview of the empirical research**

As noted above, two distinct empirical projects were conducted during the course of this research. The overall methodology involved individual interviews, focus groups and an online survey, each targeting different groups. Data was collected from both people experiencing poverty, and the criminal justice and community service professionals that work with them, including lawyers, support workers, magistrates and judges. Ethical clearance was obtained from the University of Queensland’s Behavioural and Social Sciences Ethical Review Committee.

It was intended that the perspectives of Queensland’s corrective services officers and police officers would also be incorporated into this project. Unfortunately, this was not able to be achieved on a broad scale as approval to conduct the project was denied by the Queensland Police Service on the basis that they were overrun with requests to conduct research,<sup>1</sup> and the meeting dates of the Queensland Corrective Services ethical review committee did not allow for ethical clearance to be obtained prior to the completion date of the project. Obtaining the perspectives of corrective services officers and police officers is acknowledged as an important avenue for future research.

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<sup>1</sup> The precise reason given for the rejection was the large ‘volume of requests to conduct research’ received by the Service as well as their own ‘internal needs to undertake research’.

The project was overseen by a reference group, comprised of representatives from key community services, community legal services and advocacy groups including UnitingCare Centre for Social Justice, Sisters Inside, the State Incorrections Network, Centacare Pastoral Services, Catholic Prison Ministry, the Far-North Queensland Family and Prisoner Support Service, Red Cross, Queensland Shelter, Queensland Council for Social Services, Brisbane Catholic Education, Prisoners' Legal Service, Youth Affairs Network of Queensland, Queensland Alliance, YWCA, Deception Bay Community Youth Programs, the Queensland Public Interest Law Clearing House Inc. Homeless Persons' Legal Clinic, the Aboriginal and Torres Strait Islander Legal Service, The Brisbane Institute, the Australian Community Safety and Research Organisation Inc., the Hepatitis Council of Queensland, Boystown, Family Planning and Lifeline Community Care Queensland Prison Ministry.

Further, the research steering committee was presided over by two eminent chairpersons, Marg O'Donnell and Uncle Bob Weatherall.

Marg O'Donnell is the former Director General of three Queensland Government Departments: Equity and Fair Trading, Aboriginal and Torres Strait Islander Policy and Development, and Arts Queensland. She was Victoria's first Legal Ombudsman and established and ran the Alternative Dispute Resolution Division in the Department of Attorney General and Justice in Queensland. She also runs a small consultancy business specialising in mentoring, arts reviews, mediation and conflict resolution, and change management. She has written numerous papers, articles and chapters in a range of publications and is currently Chair of the Board of Legal Aid Queensland, Chair of the Visiting Committee of Griffith Law School, Chair of the Board of the Australian Festival of Chamber Music and Board Member of the Breast Cancer Network of Australia.

Bob Weatherall is from the Aboriginal Nation of Gumilaroi and is heavily engaged in the repatriation of unprovenanced Indigenous human remains and cultural property. His prior leadership roles include policy development in the Queensland South Native Title Representation Body and the Goolburri Aboriginal Corporation Land Council. He was also a member of the National Federation of Land Councils' delegation to the United Nations Working Group on Indigenous Peoples. Bob has provided assistance and advocacy for the rights of Indigenous people, specifically rights to land and culture, and has established public awareness education programs to combat racism. Bob was named 1988 Aboriginal of the year (Southern Region) and received the Distinguished Service

Award (South-East Queensland) in 2003. He has contributed to various publications and has presented at many conferences and forums.

## **Research methodologies**

This research sought input from a range of target groups including:

- people experiencing poverty in Queensland;
- community service workers and advocates who work closely with people experiencing poverty in Queensland;
- lawyers who represent and advise people experiencing poverty in Queensland, particularly community lawyers and Legal Aid lawyers;
- judges and magistrates;
- prosecutors;
- police officers; and
- corrective services officers.

Two distinct methodologies were employed for this project: people experiencing poverty were invited to participate in individual interviews and focus groups, while the remainder of the target groups were invited to complete an online survey instrument. Qualitative data was obtained in the interviews and focus groups, while a mix of qualitative and quantitative data was obtained via the online survey.

### **1. Individual interviews and focus groups**

Qualitative research methodologies, namely individual interviews and focus groups, were utilised with respect to people experiencing poverty. Interviews and focus groups were conducted in Brisbane, Townsville and Cairns so that input could be obtained from both metropolitan areas and large regional centres. The interviews and focus groups took place between July 2006 and January 2007.

In each of the research locations, the sample of participants was obtained using an 'accidental sampling'<sup>2</sup> method whereby field researchers attended homelessness, welfare

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<sup>2</sup> Sotirios Sarantakos, *Social Research*, 3<sup>rd</sup> edition, Palgrave Macmillan, New York, 2005 at 163-164.

and related organisations and invited clients present at the service to participate in the research. Participants had an information sheet read out to them and were required to sign a consent form. Participants were paid \$25, in recognition of the value of their contribution and their time.

Participants were asked a series of questions related to their experiences with the criminal justice system, as well as their understanding of certain terms such as ‘poverty’, ‘exclusion’ and ‘human rights’. The same interview schedule was utilised by all field researchers in all research locations, and may be found at Appendix A.

## **2. Online survey**

A range of criminal justice and community service professionals were invited to participate in the online survey, which was comprised of both qualitative and quantitative questions.

A range of professional associations including the Queensland Courts, Legal Aid, the Office of the Department of Public Prosecutions, the Queensland Police Service and Queensland Corrective Services were approached and asked to distribute the information sheet and web address for the survey to their members. All agreed to do so, with the exception of the Queensland Police Service and Queensland Corrective Services. These organisations required that the researcher obtain ethical clearance from their internal ethics committees; as noted above, approval was either denied, or could not possibly be obtained within the time limits set.

In addition to this method of recruitment, members of the research steering committee advertised the project and distributed the survey’s web address to other organisations through their internal networks. Thus, a ‘systematic random sampling’<sup>3</sup> technique was employed, whereby members of certain organisations were targeted for possible participation, but the actual sample self-selected into the research.

Participants indicated their consent by checking a box on the first page of the survey, at the end of the information sheet. Participants were unable to progress to the actual survey instrument unless this box was checked.

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<sup>3</sup> Ibid at 157-158.

A qualitative and quantitative mix was employed in the online survey. First, participants were asked to indicate the extent to which they agreed with a series of statements regarding the extent to which people experiencing poverty were more likely to be adversely impacted upon by the workings of the criminal justice system; participants selected a response from a five-point likert scale ranging from 'strongly agree' to 'strongly disagree'. They were then provided with an opportunity to elaborate on their responses, if desired. The online survey instrument may be found at Appendix B.

## **The research design**

Two separate and distinct types of empirical research were undertaken in this project for the following reasons:

### **1. To ensure that data from all target groups could be reliably and validly obtained**

Obviously certain research methods suit some population groups more than others. It was the desire of the researcher and the research reference group that appropriate research methodologies be employed as regards each population group. For example, it was recognised that disadvantaged and vulnerable persons should have the opportunity to speak either as individuals or in a group, depending on their preference. To avoid difficulties associated with literacy, it was resolved that such persons should be spoken with personally, rather than being asked to complete a written survey instrument. Further, it was acknowledged that many of the professional people from whom data would be sought led extremely hectic working lives. Thus, any data collection method employed with respect to these people needed to be capable of quick completion, and able to be completed in a time of their choosing. Thus, it was concluded that the same method of data collection should not be utilised across the board for all target groups.

### **2. To allow for the triangulation of findings**

It is well-established that more reliable conclusions may be drawn from research that employs corrective tactics, including sampling from a range of target groups in a range of

settings using different data collection methods.<sup>4</sup> Data collection using multiple sources, methods and researchers both protects against researcher bias and, where the results yield the same or similar result, acts as repeated verification of the findings.

In this project, triangulation by data source, method and researcher was employed:

- **Data source** – Input from a range of target groups was sought, including people experiencing poverty in Queensland, and those professionals who interact with them in and through the criminal justice system.
- **Method** – Two empirical research methodologies were employed to more appropriately target these different groups: individual interviews and focus groups were conducted with people experiencing poverty in Queensland, while the online survey sought input from criminal justice and community service professionals.
- **Researcher** – The field research was conducted by a team of researchers:

Name	Organisation	Field research contribution
Dr Tamara Walsh	T.C. Beirne School of Law, University of Queensland	Interviews and focus groups – Brisbane
Lindsay Nicholson	T.C. Beirne School of Law, University of Queensland	Interviews and focus groups – Brisbane
Meeta Iyer	YWCA Brisbane	Focus groups – Brisbane
Judy Andrews	Far North Queensland Families and Prisoners Support Service	Interviews and focus groups – Cairns
Joanne Solomon	Sisters Inside, Townsville	Interviews and focus groups – Townsville

<sup>4</sup> See for example H.S. Becker. ‘Problems of interference and proof in participant observation’ (1958) 23 *American Sociological Review* 652-660; N.K. Denzin, *Sociological Methods: A Sourcebook*, 2<sup>nd</sup> edition, 1978; Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis*, 2<sup>nd</sup> edition, 1994 at 266-267.

## **Data analysis**

The quantitative data collected during the course of the research was analysed using SPSS software, Version 13.0. Frequency and chi square analyses were conducted where appropriate.

The qualitative data was analysed using Miles and Huberman's methods.<sup>5</sup> Contact summary sheets were prepared for each individual interview and focus group conducted. Themes were then coded using both first-level and pattern codes,<sup>6</sup> and vignettes were extracted where helpful.<sup>7</sup>

## **This report**

The results of the empirical research are reported on in the following two chapters. Chapter 3 presents the results of the interviews and focus groups with people experiencing poverty, and Chapter 4 presents the results of the online survey of criminal justice and related professionals.

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<sup>5</sup> See Miles and Huberman, *ibid.*

<sup>6</sup> *Ibid* at 69.

<sup>7</sup> *Ibid* at 81.

# CHAPTER 3: VIEWS OF PEOPLE EXPERIENCING POVERTY ON POVERTY AND THE CRIMINAL JUSTICE SYSTEM

## Methods and participants

As explained in Chapter 2, in order to ascertain the views of those living in poverty regarding their experiences with the criminal justice system, a series of individual interviews and focus groups were held in Brisbane, Townsville and Cairns. This chapter reviews the results of these interviews and focus groups.

**Table 1 – Participant demographics (n=131)**

	<b>Brisbane (n=115)</b>	<b>Townsville (n=9)</b>	<b>Cairns (n=7)</b>
<b>Gender</b>			
<b>Male</b>	63 (55%)	2 (22%)	6 (86%)
<b>Female</b>	52 (45%)	7 (78%)	1 (14%)
<b>Indigenous</b>	35 (30%)	8 (89%)	1 (14%)
<b>Age</b>			
<b>≤17</b>	22 (19%)	0 (0%)	0 (0%)
<b>18-24</b>	22 (19%)	2 (22%)	0 (0%)
<b>25-29</b>	14 (12%)	1 (11%)	2 (29%)
<b>30-39</b>	24 (21%)	3 (33%)	4 (57%)
<b>40-49</b>	12 (10%)	1 (11%)	0 (0%)
<b>50+</b>	15 (13%)	2 (22%)	1 (14%)
<b>Unknown</b>	6 (5%)	0 (0%)	0 (0%)

## Brisbane

In Brisbane, interviews were undertaken in July/August 2006 at a selection of key homelessness and welfare services including the Brisbane Homelessness Service Centre, West End Community House, Mission Café and HART 4000. A total of 59 people participated in these individual interviews. In addition to this, a further 56 people

participated in one of 11 focus groups that were held throughout Brisbane between August and November 2006, both at the homelessness and welfare services listed above, as well as Sisters Inside, BoysTown and Southside Education.<sup>1</sup>

As shown in Table 1, of those that participated in the Brisbane interviews and focus groups, 55% were male and 45% were female. Thirty-five participants (30%) openly identified as Indigenous. A reasonably representative spread in age was obtained: 19% of respondents were aged 17 years or under; 19% were aged between 18 and 24 years; 12% were aged between 25 and 29 years; 21% were aged between 30 and 39 years; 10% were aged between 40 and 49 years; and 13% were aged 50 years or above. Age was unknown in 5% of cases.

Information on participants' housing was only available for Brisbane interview respondents. These participants were most likely to be sleeping rough (37%), living in a boarding house (25%) or staying in a hostel or shelter (19%). The remainder were residing either rent-free with family or friends, in private rental accommodation or in a squat.

## **Rural/regional Queensland**

In addition to the interviews and focus groups undertaken in Brisbane, 16 people were interviewed in regional Queensland, specifically Townsville and Cairns. These interviews were conducted by staff from the Sisters Inside office in Townsville and the Far-North Queensland Family and Prisoner Support Service in Cairns.

A total of nine people were interviewed in Townsville, and seven people were interviewed in Cairns. These participants were mostly interviewed individually, although two of the Townsville participants were interviewed together.

Of the Townsville participants, seven were female, two were male, and eight identified as Indigenous. A representative spread in terms of age was obtained: two were aged 18-24

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<sup>1</sup> Southside Education is a school that provides an integrated service model for marginalised young women designed to improve both their education and social outcomes.

years; one was aged 25-29 years; three were aged 30-39 years; one was aged 40-49 years; and two were aged 50 years or above.

Of the Cairns participants, six were male and one was female. One identified as Indigenous, and most (n=4) were aged 30-39 years; the other three were aged either 25-29 years (n=2) or 50 years or above (n=1).

It is acknowledged that the number of regional participants is low and that their comments cannot be generalised to those experiencing poverty either in those areas, or in regional Queensland generally. It should further be noted that the views expressed by the Townsville and Cairns participants cannot be considered representative of the views of those living in remote Indigenous communities. However the results provide a snap shot of the experiences of some people experiencing poverty in those areas, and it is hoped that they will be further explored in future research projects.

## **Poverty and policing**

By far the strongest theme to emerge from the interview and focus group data on the subject of policing was police harassment. **Allegations of police harassment were made in 49 of the 59 Brisbane interviews (83%), and in all but one of the Brisbane focus groups. In Townsville, allegations of harassment were made by eight participants, and in Cairns, such allegations were made by four participants.**

Participants reported being constantly harassed by police on the basis of their race, age, homeless (or 'streety') status, 'shabby' or 'dishevelled' appearance, criminal record or family member's criminal record. Police harassment generally took the form of constantly being 'pulled up', questioned, moved-on and searched 'for no reason', or in circumstances where no criminal wrongdoing had been committed or was in the process of being committed. The frequency of these interactions with police was reported to reach ridiculous levels, with participants saying:

‘About every third cop car will pull me up and search me’

‘As soon as you walk out of the house, you get pulled up.’

‘They hassle me all the time. Everyday I get searched for no reason.’

‘They won’t leave me alone.’

‘They come up to me and wanna talk to me, and I don’t wanna talk to them.’

The nature of these interactions was, in some cases, of questionable legitimacy. Two separate participants related the following stories:

‘When you’re walking down the street, they pull you up and ask you like, “What are you walking the streets for?”. Shit, man – there’s no law in Australia [that says] you can’t walk.’

‘Like this morning I was walking down from Roma Street coming down here and the police looked at the bandanna and said, “Excuse me? Can you take your bandanna off?” I said “Why, what’s wrong?” And he says, “I’ve got nothing wrong with the way you dress or anything, mate, but I just don’t like your bandanna. We don’t like people running around with bandannas.”’

An Indigenous participant in Townsville described being issued with a move-on direction just days before the interview:

‘The other day, they came to me with an attitude and said to me “Oh, guess what? You gotta get outta the mall for 24 hours.” I don’t like when coppers telling me where to go – especially when I’m in town. ‘Cos I’m on the street and I always say to them “This is a free country, you know – I’ll go where I wanna go.”’

One participant compared police officers to school bullies:

‘[Police are] like a bully in school. Like a year sevens who’s playground monitor or something. He goes out to the people he doesn’t like and he uses his authority and oversteps the mark. Because they’ve got a badge and a blue uniform, they think they are above the law.’

A young Indigenous participant stated that his aunty intervened on his, and other Indigenous young persons', behalf because they were being questioned by police so often ('every 20 minutes or so') that it took 'hours' merely to move from one place to another. While this was an extreme case, reports of being 'hassled' once a day by police were not infrequent. Many participants commented that the level of police interference in their lives amounted to 'stalking', and that they live in 'constant fear' of being harassed by police. One male participant said:

'Makes me paranoid to go out, I tell you that much. I hate leaving the house.'

Two participants, one in Brisbane and one in Cairns, said that their harassment by police extended to those who associate with them in public; they said:

'What happened is, you are walking down the street with friends and they come up and they question you and your friends who aren't even into crime or anything like that. They just turn off – because of police presence.'

'If someone's walking with me that the police don't know, the police will come and pick up that person and take that person and say "What are you doing talking to [M]? Do you know that she deals heroin? Do you know that she is a known prostitute?" I mean, that's not really fair. The police shouldn't tell your history to everybody that you talk to.'

Of particularly grave concern is the high level of intrusive searching that is being undertaken by police, particularly in inner-city Brisbane. **In 15 of the 59 Brisbane interviews and five of the Brisbane focus groups, participants stated that they were frequently searched in circumstances where the police officer had no basis (other than their criminal history or 'shabby' appearance) for forming a reasonable suspicion that they had been, or were planning to be, involved in criminal activity.** Participants made comments like:

'Every time they see you, it's like "come here, empty your pockets, blah, blah, blah." You don't have to be doing anything wrong or anything. You'll just be walking down the street, mate.'

‘I’ve lived in Perth, I’ve lived in Adelaide for seven years, I’ve lived in Darwin. Nothing like this. You’re walking down the street, minding your bloody business, and bang – they want to search your pockets, backpack, take your shoes off. Absolutely shocking.’

‘It is a bit embarrassing when you can’t walk out in public – I mean, everyday you’re getting your pockets emptied.’

**In fact, some participants described situations in which they may have been unlawfully searched, or searched in an unlawful manner.** Some participants, for example, stated that they had been strip searched in public places for no apparent reason, sometimes in the presence of a police officer of the opposite sex. One young participant described being strip searched by a male and female officer at only 15 years of age. She said:

‘It was the first really bad thing that ever happened to me. I couldn’t stop crying.’

Another participant said:

‘Each time they pull me up the street there, they search me. You know, they do a lot of things to me and it’s just kind of horrible. It’s embarrassing – being strip searched for no reason.’

Participants’ answers revealed a lack of knowledge regarding when and how police could lawfully execute a personal search. One participant stated that he was regularly strip searched by police on the side of the road. He said ‘They’ve got the right to search you. They’ve got the right to do what they want to do.’ Another said ‘They can search you, body search you. All they need is a reasonable suspicion, and that’s a very broad definition.’

Other participants related stories of their homes being searched or ‘raided’ without a warrant. A few participants stated that when they were living in a boarding house, police would often come and ask to search the premises, assuming drugs were there. When the residents refused and asked to see a warrant, the police would reply ‘we can search the place now, or you can spend the night in the watchhouse and we can search it tomorrow.’

A few participants described the lengths they had gone to to avoid being interfered with by police: one said he now wears a beanie rather than a cap as a disguise when he leaves the house; another said he had left Fortitude Valley altogether to avoid the police there; and still others said they turn and walk the other way as soon as they see a police officer on the street.

Participants most often put this excessive attention from police down to their being 'known to police' and/or 'having a record', even if just for petty criminal behaviour. This was the cause of a great deal of distress for many participants, particularly those who stated that they were trying to make a 'fresh start'. Participants made comments like:

'They know your face, so every time they see you on the street, they pull you up and search you. There seems to be no probable cause laws anymore'

'He [a certain police officer] doesn't like me because of who I used to be and what I was. I've been clean seven years.'

'Once you've got a criminal record, they just keep picking on you. They won't give you a chance. Even when you're trying really hard to make a go of things, you still get dragged down and charged for the silliest things.'

'They don't realise that people can change. As soon as we've got something on our rap sheet, that's it.'

'Once you have a record, they think you're guilty of everything.'

'You are trying to live your life and they are just banging on the door.'

For many participants, being 'known by police' was not so much attributed by them to their 'criminal history' per se, but rather the fact that they had been living on the streets, and thus visible to police, for so long that the police knew who they were. Many participants stated that it was a person's 'shabby', 'dishevelled', 'dirty' or 'under-dressed' appearance that attracts police attention. Participants were strongly of the view that had they been 'dressed nicely', they would not have been interfered with in the first place. One 16 year old female participant said:

'It's always the ones that don't always dress up, or it's the streeties. It's always someone who hasn't got a well paid job that the coppers pick on. They should be picking on everyone, not just people who don't have much money. They shouldn't be picking on them because they don't dress in suits and shit.'

Another young female participant said:

'If you're in nice clothes, they don't touch you, but if you can't afford really expensive clothes...'

Indeed, she went on to say:

'The time they really stay on us is when a couple of us are wearing really nice clothes, because they reckon we steal them. Like, just because they see us around in daggy pants and ripped shorts and old shirts, and then you'll go out and have something that's nice, and they try and get you for stealing, saying "ok, whose washing line have you stolen that off?"'

Once a person has been labelled as 'that kind', it seems that the stigma is difficult to shake. One participant said:

'They stereotype us. They think we're all the same. Or not even – they think we're something we're not. They think we're just low lifes.'

Many participants stated that people who are homeless are most vulnerable to police harassment. Most often, participants related stories of people experiencing homelessness, either themselves or others, constantly being woken up (often by being kicked or slapped) and asked to move-on, or 'locked up' for begging or being a 'public nuisance'. One said that a police officer once referred to him as a 'parasite on society'. Other participants experiencing homelessness made the following comments:

'The police will walk past 10 other people and pretty much come straight to me... they pick on streeties.'

'They tend to harass you a lot more when you're homeless, and charge you with small charges until it builds up and builds up.'

‘They move you from here to there, and from there to there. It’s harassment of the poor.’

There were many allegations made by participants (Indigenous and non-Indigenous) that police were more likely to target Indigenous people than others. Indigenous participants made the following comments:

‘Black people get treated real bad by cops. Not just in the city – anywhere. We are always pulled up by coppers.’

‘Every Murri in Queensland gets categorised when it comes to the police. They all look at us as if we’re going to turn around and smash them up, or something. Not all of us are like that. Anywhere you go, you have brown skin, you have a Murri face or a Murri family who you hang around, you’re treated the same way, too. You’re categorised. It’s not nice.’

Indeed, one Indigenous young person related this experience:

‘The police were telling me to get a job and stuff. And I had a job. But it was just cos of the way I look.’

And one non-Indigenous, dark-skinned, participant said:

‘They think that anyone that’s dark is Aboriginal, so they immediately think you’re a crim or a drunk.’

However, not all respondents put excessive interference by police in their lives down to discrimination. Some demonstrated considerable empathy with police officers, and recognised that many of them were ‘just trying to do their job’. For example, some did not believe that it was necessarily unreasonable for police to move a person on who was sleeping in a public place. One participant said:

‘I mean, sleeping out – you know you’re going to get pulled up, so you deal with the situation or you pack up and move somewhere else... You know, they come

over and say “Look, you can’t sleep here” because of this and that, and you say “ok, I’ll move”.’

Other participants commented that, in their experience, police attention could be avoided by behaving (or not behaving) in a certain way. These participants made comments like:

‘If you do the right thing, the police won’t bother you.’

Still other participants felt that, even if it was concluded that police officers behaved in an unacceptable manner, this was not wholly surprising. One participant, a young woman, herself the subject of excessive police surveillance and even brutality, said:

‘I think they don’t start out being arseholes and going, “Hey, I’m going to wreck a bunch of people’s lives.” They start out wanting to save people’s lives like every other emergency worker. But I think it’s dealing with people that are just pricks, that are pissed off because they are getting busted. And then you come across people who get upset because they are getting busted for something they didn’t do, but you don’t have the power to change it. I don’t think they start out wanting to hurt people.’

Others acknowledged that not all police officers were ‘bad’ and that some did ‘go out of their way’ to help them ‘get their life back on track’. **Some participants (17 interview participants in Brisbane, participants in six of the Brisbane focus groups and one of the participants in Cairns) stated that generalisations of police officers should not be made, and that certain police officers are ‘alright’.** Along these lines, one participant said:

‘The majority of them are kind, considerate, respectful people. You do get the arrogant friggin’ cowboys that think because they got a gun and a badge they’re above everybody else, but they’re few and far between. But honestly, I don’t envy their job one bit.’

Some participants noted that it was mainly the young police officers, particularly those ‘fresh from the academy’ that were most at fault. Participants attributed this to the power ‘going to their heads’, or that there was something in-built in them that attracted them to

'stand-over' work. Yet, again, a few participants recognised that these young police officers are under pressures of their own. They made comments like:

'It's mostly rookies who cruise around, 'cos it makes them look good if they've got a whole lot of names on their book, 'cos they've gotta fill that book out and take it to the station and show the sergeant that they've been busy and stuff.'

'They've told me themselves, "We're not really harassing you. We've just got to get your name so it looks like we're working."'

Of grave concern is the fact that **allegations of police brutality were made in 18 of the Brisbane interviews, five of the Brisbane focus groups, and by six participants in Townsville and two in Cairns.** Many participants alleged that they had been assaulted by police officers, both in public places and in watchhouses. Some participants stated that these assaults had culminated in broken bones, and indeed, further criminal charges as many participants claimed that they had then been charged with assaulting police or resisting arrest. Allegations were made by some participants that they had been denied medical treatment in the watchhouse, and that their access to the toilet had been limited. One participant in Townsville described being given a blanket with faeces on it in the watchhouse. Two participants spoke of being 'phone booked' by police, the allegation being that being hit with a phone book did not result in visible injuries, such as cuts or bruises, and so could be hidden and denied.

Some participants said that they had reported incidents of police brutality to the Crime and Misconduct Commission, but all of these participants said that their complaint had been ignored, and indeed that by reporting the incident, they had in fact attracted increased police harassment. One participant said:

'I can't walk down the street and feel safe.'

Participants spoke honestly about the impact that police harassment has on their lives and on their attitudes towards authority. There was an overwhelming sense of hopelessness amongst many participants, who stated that they had 'no respect' for, and did not trust, police. They made comments like:

‘I don’t like police. I can’t stand them. They’re meant to be there to help you feel safe and they do the complete opposite, basically.’

‘They can have attitude with you, but once you start giving them attitude back, you get handcuffed and dragged off.’

## **Poverty and the courts**

**The majority of participants stated that, overall, they felt they had been treated fairly by the courts.** Most stated that the judges and magistrates they had come in contact with had treated them reasonably well, and had not discriminated against them in any way. Many agreed that some magistrates and judges are better than others, and that sometimes the outcome of a case depends on ‘what mood the judge is in’ or ‘how far down on the list you are’.

Some participants reported that they had been openly demeaned by a judge or magistrate. Two participants stated that a magistrate had referred to them as ‘it’ and ‘derelict’ in court. One participant related a story of a magistrate making a ‘protracted’ display of cutting up his license in front of a gallery full of people. Another participant said that, in similar incidents, the courts have made him feel like ‘an outcast, and shameful.’ But certainly, complaints about the courts were far less common than complaints regarding police.

Having said this, some participants, particularly young people, confessed that on some occasions, they had not been able to understand what was going on in court during their appearance. One young focus group participant said:

‘A lot of the time when you go to court, you sit there wondering what’s going on.’

Another said:

‘It’d be nice if they could speak in our language, you know? Straight out, instead of all this intellectual shit.’

A few participants even stated that, despite being present at the court on the date of their hearing, they had ultimately been issued with an arrest warrant, charged with failing to appear, or were unable to defend themselves against a charge, because they could not follow what was happening in court, did not hear their name called over the loudspeaker, or because they were unable to find the correct courtroom on the day.

Some Indigenous participants explained that the language barriers facing them were exacerbated in the courtroom as a result of the legal jargon used. One Indigenous participant suggested that Indigenous Liaison Officers be employed at court houses to ensure that Indigenous defendants are able to understand what is happening to them in court. Another participant said that courts needed more Disability Liaison Officers to assist defendants with cognitive, mental and/or intellectual disabilities.

Some participants stated that their lawyer fulfilled this role well, and adequately explained what was going on both prior to and during court proceedings. Special mention was made of both the Aboriginal and Torres Strait Islander Legal Service and Legal Aid.

Other participants, however, stated that they felt their lawyer dealt with their case in a rushed, and sometimes incompetent, manner. They made comments like:

‘They [lawyers] don’t even know what’s going on in your case half the time.’

‘They rush into court and then fuck up.’

Some participants felt that they were not given an opportunity to explain themselves to the court because they had a ‘mouthpiece’ speaking for them. Further, some participants felt that their lawyer was part of the ‘system’ that was attempting to put them away. They commented that they had seen lawyers socialising with police, ‘making deals’ with regard to their clients. One participant summed it up this way:

‘We have to play by their rules. Not society’s rules, but the coppers’ and the lawyers’.’

In particular, many participants voiced concern at having been convinced to plead guilty simply to get the matter ‘out of the way’, even in situations where they did not commit the crime alleged, or may have had a defence available to them. Participants noted that

since duty lawyers are available for advice and representation only if a person pleads guilty, there is considerable pressure not to contest a charge. One Indigenous young person said:

‘All the solicitors there [at the courthouse] tell the young black fellas to plead guilty. They shouldn’t be doing that for a lot of blackfellas. Especially the young fellas when they’ve gotta try to keep their records clean. But they don’t think of that. They just think “get it out of the way”, and move on.’

Many of those who alleged that they had received sub-standard representation recognised that these lawyers, most often duty lawyers, were overworked and had too many cases to deal with in the time allocated to them prior to court. A focus group participant concluded:

‘We are all supposed to be equal in the eyes of the law, but it’s quite obvious to any thinking person that’s just not the case. If you’ve got money, you’ll get off better than if you haven’t got money. It’s as simple as that.’

Participants also commented on the intimidating nature of courtroom proceedings. Some participants, particularly young people, stated that they didn’t know ‘what to say for themselves’ when asked by magistrates, and that they felt embarrassed because so many people were watching them. One participant said:

‘I find it really hard to explain myself to the courts. I just had not a chance to speak to explain to the court what my reasons were, and that. It [the system] doesn’t give me a chance to speak up for myself or to explain to the judge how I feel his decision is against me. Sometimes the judge does ask me for certain reasons – if I know my right from wrong, which I do – but then again, I know in my right mind that I was right but they were wrong.’

However, a few participants noted that a court appearance, as intimidating as it can be, can ultimately have a positive effect; these participants said that an appearance in court can ‘make you want to stay out of trouble’. Special mention was made by one participant of the new ‘Special Circumstances Court’ currently operating as a pilot project in Brisbane. This participant stated that he had had the ‘pleasure’ of appearing before the Special Circumstances Court on the week of the interview. Of it, he said:

‘For those that are going to use it the right way and want to better their lives, I don’t think they could find a better court.’

## **Poverty, prison and having a criminal record**

A significant proportion of participants had also had contact with the corrective services system. **Thirty-four interview participants in Brisbane (58%) reported that they had been supervised by Queensland Corrective Services in the past; of these, 25 (46% of all Brisbane interview participants) said that they had spent time in a Queensland correctional centre or detention centre. Further, experiences with corrective services were discussed in eight of the 11 Brisbane focus groups.** The actual number of participants that had dealt with corrective services in some way may be higher, since it must be expected that some participants would not have wanted to discuss this with the researcher. **Of the 16 regional participants, 12 had been in prison in the past,** however this high proportion may be attributed to the fact that the interviews were conducted by organisations that have prisoners as at least one of their target client groups.

Overall, participants’ reflections on community corrections were reasonably neutral. Some respondents said that being subject to community corrections was difficult: demeaning and time-consuming. One focus group participant stated that a community corrections officer that had been assigned to her spoke to her like she was ‘dumb’; she said ‘she’d break it down into baby talk and shit – that pissed me off.’ Others stated that the interactions they had had with community corrections officials had been ‘very helpful’ particularly with regard to finding employment, and that the very fact of having to report in provided them with the incentive to ‘think about things’ and ‘get my life on track’.

Participants’ views on the prison system in Queensland were generally less positive. A number of participants alleged that medical treatment is regularly denied to sick prisoners and that a ‘couple of panadol’ is prescribed for any and all illnesses. Some participants mentioned the lack of gradual release options available to prisoners, and the fact that many prisoners are released straight from maximum security facilities into the

community with no supervision.<sup>2</sup> One participant said he had been incarcerated in Queensland five times and had never been subject to a post-prison community-based release order.

Other participants questioned the amount of rehabilitation that was undertaken in Queensland prisons. Correctional centres were generally described by participants as brutal, unfeeling places, where prisoners are ‘treated like animals’. Many described the ‘screws’ as violent, with some referring to the constant strip searches as a serious violation of their human rights and dignity. One interview participant observed:

‘The judge sends you to prison – that is your punishment. But they [corrective services officers] think that it’s their God-given right to bloody punish you. They hate us.’

Another participant said:

‘They call you a dog and all the rest of the shit that they call you while you’re in prison, and you come out thinking that way. And you don’t get anywhere once you get out.’

One young focus group participant noted, when discussing being in a youth detention centre, that being placed in an institution with so many other ‘offenders’ can alter one’s sense of reality:

‘When you’re one in a thousand exactly like you, you are going to get used to that and think that is normal.’

Many participants noted that prisoners are not sufficiently prepared for life on the outside. One young focus group participant, the child of an ex-prisoner, stated that when

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<sup>2</sup> The new *Corrective Services Act 2006* (Qld) goes some way towards addressing this by mandating that all prisoners sentenced to a term of imprisonment of more than three years receive a period of parole. However, those serving three years or less will seemingly only be eligible for parole if a parole period has explicitly been set by the court. The vast majority of prisoners are serving short sentences; according to the Department of Corrective Services, in 2003/04, 72% of prisoner admissions in Queensland were for total sentences of less than 12 months. Thus, it must be assumed that the vast majority of prisoners will continue to be released without supervision.

his mother was released from prison, she was required to find her way home on public transport on her own, with no money, yet she was not even able to use an ATM.

A young Aboriginal woman in a Brisbane focus group said:

‘When you’re in the correctional centre, they turn around and they teach you how to lie so you can get out of gaol. You tell the truth and they basically turn around and shove you into secure or put you in the DU [detention unit] or something like that and tell you you’ve got an attitude problem. Then, when you’re outside, they set you up to fucking fail.’

Many participants noted that time spent in prison, and immediately after release, could be much better utilised. They suggested that improved education and employment opportunities would go some way towards ‘stopping the revolving door by doing something about the poor people.’ One participant said:

‘Instead of building a brand new prison, the money should be spent on training women who leave prison so that we can get jobs.’

Another said:

‘They’ve got to look at the grass roots. Then they can come to understand that person as an individual and respect that person as an individual as well, and be able to help them deal with their problems.’

It should be noted, however, that some participants expressed the view that the accommodation in Queensland prisons is reasonably good, and a few even stated that their experience of the corrective services system was, in some ways, positive because it provided them with an incentive to get their lives ‘back on track’, both through making them fearful of having to return, and by allowing for progression through the system to ‘residential’ (that is, low or open security accommodation) if you ‘behave yourself’. One interview participant in Townsville said:

‘It’s actually affected me a lot. Most people would say in a bad way and whatever else. But I’m not the person I am today without it. I’m not the person I am. I

wouldn't know what I know and I wouldn't be able to empathise. I wouldn't be able to feel for people.'

Of course, any trauma experienced by participants within the corrective services system did not necessarily cease upon their release from prison. Participants invariably mentioned that having a criminal record made it almost impossible to find employment, and also presented additional obstacles in their lives, such as restricting their capacity to travel and increasing their insurance premiums. Other participants related experiences of being discriminated against on the basis of their criminal record when accessing accommodation and other social services. Further, many participants stated that their criminal record had prejudiced them in terms of access to their children. Some male participants stated that their criminal record went against them in family law proceedings, while some female participants stated that they had lost their children as a result of their imprisonment, and that regaining parental responsibility upon their release was extremely difficult.

Further, in one of the focus groups, children of prisoners related their experiences regarding the impact of the corrective services system on them. These children described how some corrective services officers (one individual in particular) were extremely supportive and sympathetic to their needs. These officers were more flexible with visits, and less hostile towards visitors. Participants spoke of these officers permitting them ten minutes of 'hug time' with their mothers, or allowing them to kiss their mothers, rather than just kissing the glass. Other officers, however, were described as cruel and inflexible. These young participants related stories of officers yelling at small children to be quiet, prohibiting visits to the toilet for both prisoners and visitors, and disallowing visits if the visitor arrived only minutes late. **These children noted that in many ways they were being punished, in addition to their mothers.** As one of them said:

'For us, it's a tragedy to lose our mother and you go in there hoping that you are going to get to see her, and you have to see her and watch her through the glass.'

## Poverty and exclusion

One interesting, and unexpected, observation made throughout the research by the field researchers was the distaste participants, and potential participants, felt for the word 'poverty'. Many participants refused to consider themselves in this way, and indeed, were offended by the suggestion that they lived 'in poverty'. Others refused to be involved in the research because they felt offended at the use of that word in the project title.

This finding led the researchers to invite participants to offer their reflections on the word 'poverty', including whether they would identify as being 'poor', and if not, what word or phrase they would use to describe their situation.

**Twelve of the homeless interview participants in Brisbane and six of the regional participants said they did not consider themselves to be poor.** Indeed, eight Brisbane interview participants said that they felt that there was no such thing as poverty in Australia, and that poverty was something only experienced in 'Africa' and other third world countries. Some agreed that they were 'struggling', 'broke' or 'not well off' but they would not go so far as to say they were in poverty; one even said, 'I'm not poor, I just have no housing'.

Many participants preferred to define themselves in terms of what they were not; many stated they were not 'yuppies', 'snobs' or 'stuck up'. Others agreed that they were poor in terms of their finances, but qualified this by adding that they were not poor in 'spirit', 'culture' or 'pride'. One participant said:

'I think that poverty is a state of depression... It's not because they haven't got enough money... they need to be able to balance their minds and that too. They are poor in their minds as a result of all this depression. They are poor in their spirit and they are poor in their house... I am rich in spirit. I don't care whether I got a lot of money or not, you know, as long as I get by from day to day.'

Another said:

'Yeah, I consider myself to be poor because I haven't got a car. But if I had my kids, I'd be rich.'

Despite being homeless, some participants said that there were many people ‘worse off’ than them, and that they tried to help them out when they could.

It seemed, from the comments made when discussing poverty, that many participants were anxious to demonstrate that they did not engage in self-pity. For example, when asked ‘do you consider yourself to be poor?’ one participant said:

‘If you’ve been on the streets for ages, you don’t feel sorry for yourself or nothing. But you learn a lot – you learn how to survive.’

More poignantly, another said, in response to the same question:

‘So, what are you trying to tell me? That we shouldn’t feel sorry for ourselves and all that?’

In a remarkable demonstration of strength and resilience, many participants commented that they did not blame anyone, including the government or the ‘system’, for their plight, and indeed, a few made a point of saying that they were ‘happy’ despite their circumstances.

For those who did consider themselves to be poor, poverty meant different things. Many said that they considered themselves to be poor because they couldn’t engage in recreational shopping activities, or celebrate important events such as birthdays ‘properly’. One participant framed it this way:

‘I’ve got no money, even for one beer. I’m not an alcoholic, but one beer is nice. That’s poverty to me.’

Another said:

‘To have social status, you’ve got to at least be able to go out, you know? Go down to the pub with a couple of mates or go ten-pin bowling or go to a movie. You can’t do that... You’ve got nowhere to turn. You try your heart out – you just can’t make it. You just can’t make ends meet. That’s poverty to me.’

Many participants made sobering comments regarding their experience of poverty; they included:

‘We can’t support ourselves. Where I live, it’s \$250 a fortnight. I only get \$420 on the dole. How am I supposed to support myself and my kids in a house with that amount of money? I struggle to eat.’

‘We had no blankets, we had no pillows, we had nothing like that. It was winter and we were sleeping in the cold.’

‘Usually I make sure my rent and my methadone’s paid, but sometimes I might not have enough to get enough food to get me through the week.’

‘It gets near impossible to buy food. I’m very sick and I am supposed to have a balanced diet, but I can’t have a balanced diet because I can’t afford it.’

**Many participants said that engaging in crime, particularly shoplifting, welfare fraud and drug offences, is sometimes necessary in order to survive.** Participants’ reflections included:

‘When you don’t have a stable relationship, like you don’t have enough money to get out of it, you fraud Centrelink, you go to gaol, because that’s the only way you can live.’

‘If you are begging to the charities, you are flat out being able to feed your children and keep a roof over your head, juggling from week to week on charity. You go in there and the people in there tell you to get lost, so what do you do? You have your bills come in. You have no choice but to do crime.’

‘Before I come out on the streets, like I hadn’t actually had a criminal record and I hadn’t used drugs, and I wasn’t an alcoholic, and I wasn’t sniffing paint. And I think after about a year and a half of being out here and dealing with police and the incidents that I’ve been through – like, that’s not an excuse, like to me, paint and alcohol is not a real escape, like you can’t get away from stuff full on – but like, it really does help, do you know what I mean?’

‘If you get distressed about your children [in gaol], they tell you “You should’ve fucking thought about this before you committed the crime.” Well, I did. I committed the crime because they were starving.’

‘People think crime causes poverty, but poverty causes crime.’

**The experiences related by two participants in a Brisbane focus group demonstrated how poverty and homelessness can sometimes be an unexpected happenstance for ‘middle class’ people.** A husband and wife described how they had just recently become homeless due to the husband’s employment being terminated and their subsequent eviction from their house. Previously a ‘respectable’ middle class couple, living comfortably with four children, they explained what their experience of coming to a homelessness service for food, for the first time, was like:

‘We walked up and a boy said to me, held the magazine up, and goes “You want the newest issue of..?” – whatever it is – “Can you help the homeless? It’s four bucks.” And I had to swallow because I just looked at him and said “sorry, matey” and I thought one, I don’t have four dollars in my pocket, and two, I felt like saying to him “Mate, we’re homeless as well. We don’t look like it, but we are.” We are good people in society, we try hard, we try hard to look after others, and we, in a few short months, have turned into utter white trash that is homeless.’

In addition to being asked about poverty, participants were also invited to comment on the extent to which they felt they were excluded from society. They were asked questions like ‘do you feel included in society?’, ‘do you feel valued by society?’ and ‘do you feel that society excludes you?’

The responses varied markedly, yet **the majority of participants did acknowledge that they felt excluded from mainstream social life. Many made sobering comments regarding their sense of isolation from, and debasement by, society** including:

‘[When you are homeless], you become a bit of dust. I feel completely rejected by society. I can’t afford to dress well, and I can’t afford to do my washing everyday. I look grubby. I feel belittled. I’ve lost my sense of pride, and I’ve lost my sense of self-esteem.’

‘I feel devalued everyday. Like whenever I walk in a shop, or just the Queen Street Mall, you know, people look at me like I’m a drug addict, I’m a paint sniffer, I’m a thief, I’m a fucking blah, blah, blah, you know? That’s the stuff I see in my head, all day, everyday.’

‘I remember a few times sitting in the city and across the road from The Victory and I used to watch people, you know, with their mates drinking and playing pool and sort of realising that I’ll never have that. [Once I became homeless], even my [social] group had trouble talking to me. And that’s where it all started; like no one knew how to talk to me or what to say anymore. Like, I’m the same person, but no one understands you or that you’re still the same person you were.’

‘There are a few upper – you know, sort of uptown – places where they’ll look at you different. Like you go in to eat in their restaurant or something and they make you feel really uncomfortable just by the way they look at you.

‘I’m sort of on the outskirts of society; the peripheral.’

‘People always look at you a bit differently, I suppose, when you’re homeless. They always look at you as though you’re not a contributing member of society.’

‘When you don’t have a job and you’re on the dole, people turn their nose up at you and assume you can’t get a job because you don’t want to get a job. No one has any time for you, and they barely see you sometimes.’

‘They think, they’re going home to a nice warm bed, and you’re just a bit of stuff that drip off their shoes.’

Many felt judged by other members of society, based on their appearance. They said:

‘When you’re on the bottom, everybody looks down on you. Like places you go, the way you dress, because you can’t afford to dress properly anymore. You do the best you can but, like my shoes were given to me and stuff like that. And jeans – everything I wear is second hand.’

‘When you’re at the bottom of the pile, you can’t expect people to be looking up at you. Obviously you’re going to get dirty looks from people out there. You know, you’re walking around, you haven’t had a shower for four days, you’ve got the same dirty clothes on, you’re unshaven. You can’t expect other people to come up to you and give you a pat on the back.’

‘They [people in society] sort of think your problem’s too big; they don’t want to deal with it on a person-to-person level. They’ve already made an opinion of me, based on the clothes that I wear, how I’m looking. Like I might look a bit dishevelled, whatever, ‘cos I can’t afford a razor. You feel hard done by, like you haven’t had a chance to show the person who you are before you’re already judged. It makes it difficult to have the confidence to go out and do what you need to do, like even going for a job interview. You sort of have this paranoia that you’re just not going to be accepted because you haven’t got the dollars in your pocket.’

‘People yell “get a fucking job” on the streets. They don’t know me. They don’t know that I’m still trying. And they don’t care that you can see them staring because you know that you’re not up on their level. And they can look down on you all they want.’

‘Society turns their nose up and looks down on you. They look down on you because you’re a streety and you don’t dress as nice as them.’

‘People look at your body and they say, “Oh, he’s probably filthy. You don’t want to touch him.”’

‘I try to keep myself dressed as clean as possible but with poverty you just can’t do it, and people look at you and know you are poor and it goes against you again. Unless the person has got a big heart. But the general population looks down on you.’

‘We’re like fringe dwellers – the unwanted part of society. You’re the last person invited anywhere, put it that way. I don’t know how they think they can catch this disease or whatever they think it is we’ve got. But that’s what it feels like: “don’t go near him.”’

Indigenous participants noted the added impact of race on their level of acceptance by others. One Indigenous participant in Townsville said:

‘I don’t feel valued. I don’t feel we ever have. Society is indirectly linked to the system. People in the system don’t forget. They are still members of society. Negative perceptions are deliberately disseminated in order to create racism on the ground level. We’ve been rejected, us Aborigines. We might have the same problems that non-Indigenous prisoners and criminals will have, but we have that additional problem of being black that makes it harder for us.’

A few older participants stated that they did not wish to be included in mainstream social life, and that any exclusion they experienced was by choice. They made the following observations regarding our society’s obsession with money:

‘We have a capitalist society here, and a capitalist society is driven by greed. The more you have, the better off you are, which can be a very selfish notion. It can be pretty corrupting and oppressive.’

‘Those that are in the world, they only care about money – that’s all they care about.’

‘I don’t want to be here, because I just don’t believe in everything that you do, which is fair enough, right?’

‘Society puts too much emphasis on the classic questions: How old? Do you use drugs? Do you work? What’s that got to do with anything? Does that make me a better person, technically?’

However, some participants, particularly young people, responded emphatically that they did not feel socially excluded because they had, in essence, created their own sub-culture to which they wholeheartedly felt they belonged. They made comments like:

‘You get a lot more friends on the street, and they stick by each other; more than what they would do back home.’

‘Having money’s not everything – you don’t need money to have fun.’

‘I see myself as being part of an entirely different culture.’

‘The street kids – they’re the only ones I feel comfortable with.’

‘The streets, that’s my family. You never get a better bond.’

‘Generally the riff-raff have got an ear to listen, but people who think they are pillars of society, they wouldn’t listen to a word you are saying.’

## **Poverty and rights**

Participants were also asked to make comments on the subject of ‘rights’. They were asked questions such as ‘how would you define “human rights”?’’, ‘do you feel you have rights?’ and ‘do you feel your rights are respected?’

A wide range of responses was obtained. **More often than not, participants stated that they felt they did not have any rights.** They made comments like:

‘I don’t really know what it [human rights] means because I don’t get treated right, so I don’t know what to look for in human rights.’

‘Is there? Is there any human rights? We got no rights. I mean, all our parents, ANZACs and that, fought and died for this country, for what? For this shit.’

‘I believe I don’t have many rights. I feel I have just got enough rights to breathe. They are the only rights I’ve got.’

‘I feel that most other people have more human rights than some people, like crims. They are not humiliated like us.’

‘I don’t think we’ve got many rights at all, once you get a criminal conviction.’

Unequivocal comments to this effect were most common amongst ex-prisoners, some of whom were of the view that this was not necessarily inappropriate or unexpected. They said:

‘When you are inside, you have no rights. The screws tell you that all the time. They will tell you that going to the [prison] library is a privilege, not a right. If you make a fuss, they send you down to secure.’

‘You don’t get rights in prison, so you can’t really say you get violated, can you?’

‘What rights have you got if you break the law, you know? I mean, if you break the law, you do the time. I believe that you don’t have any rights – you cop what you deserve.’

**Having said this, many participants stated emphatically that they did have the same rights as the rest of the population. The difference, they said, was either their degree of knowledge regarding what those rights were, or their capacity to ensure that their rights were respected.** Participants made comments to this effect:

‘We know our rights and stuff, but it doesn’t matter to them [the police], you know what I mean? When there’s nobody with authority around that’s on our side, we got no chance.’

One Indigenous girl related a story of her house being raided by police at a time when only children were present. She told how the children demanded that the police produce a warrant before they would agree to open the door. Regardless, the police rammed the door and entered the house. She said:

‘We kept saying [to the police] “we know our rights, we were taught by the best”. But they say “you’re just kids, you don’t know what you’re going on about.”’

When asked to define human rights, participants often mentioned those rights that were most important to them, particularly liberty and equality. Statements to this effect included:

‘Human rights means equal opportunity. The right to be able to walk down the street without getting harassed.’

‘The right to live and be who you are, who you want to be, without being bloody discriminated for it, you know what I mean?’

‘Human rights means to me where you have the freedom of speech to say what you want to say, and the right to walk down the street and not have anyone comment or judge.’

‘Being allowed to live free, as long as you don’t break any laws.’

‘Human rights means equal rights, with everybody.’

‘Human rights means to me that everybody should be equal and everybody should have the same opportunity as anybody else. I don’t care whether you’re black, white or brindle. It doesn’t worry me. Everybody should have the same, the same deal, you know?’

‘People should see you as another person, just like them.’

‘Human rights to me means choosing your own poison.’

Many recognised that human rights included economic and social rights, as well as civil ones:

‘Human rights to me means being able to live. Like in a house, and to have the things that you need. To be treated as a person.’

‘There’s a few basic fundamental things that everyone deserves. I believe that everyone has a right to food, clothing and shelter. They are human rights to me.’

‘To my mind, human rights is being given the full opportunity for development.’

‘It means to me that everyone’s got a fair chance in life: food, water, medical attention, a roof over their head and a decent earning, you know? A job or

something. But at the moment, poverty is up so high – how are they going to fix the problem?’

Notably, the need to balance the rights of disparate segments of the population was not lost on many of these participants. As one homeless participant said:

‘It depends on your idea of rights. Like some people just want the right to sleep on that park bench and other people just can’t stand them being there. Do you know what I mean? It’s a bit of a hard question.’

## **Conclusion**

Thus, the key findings from the interviews and focus groups with people experiencing poverty included:

- People experiencing poverty and homelessness endure extraordinarily high levels of police harassment and interference in their lives, including unnecessary and unlawful personal searches; indeed, many report suffering physical brutality at the hands of police officers;
- Indigenous people living on the streets are particularly vulnerable to police interference and harassment;
- The court system is often experienced as intimidating and confusing by people experiencing poverty and homelessness, although the Special Circumstances Court was cited as an exception to this;
- Many people experiencing homelessness and poverty have been supervised by community corrections, and/or have been housed in a correctional facility;
- Some people experiencing poverty in Queensland report having insufficient income to provide themselves with the necessities of life, including food, shelter, clothing and access to amenities;
- Many of those experiencing homelessness and poverty report feeling looked down upon, discriminated against, and excluded by mainstream society; and
- People experiencing homelessness and poverty are generally of the belief that they have no human rights, and/or that they are not capable of ensuring that the rights they do have are respected.

# CHAPTER 4: VIEWS OF CRIMINAL JUSTICE PROFESSIONALS ON POVERTY AND THE CRIMINAL JUSTICE SYSTEM

## Methods and participants

As noted in Chapter 2, the interviews and focus groups that individuals experiencing poverty participated in were supplemented by a survey, in online format, of criminal justice professionals. ‘Criminal justice professionals’ was operationally defined as those professionals who work within the criminal justice system, and those professionals whose roles require them to interact with the system alongside people experiencing poverty.

The survey instrument asked professionals to indicate the nature of their profession, their gender and whether they identified as a member of a minority group. Respondents were asked to answer nine multiple choice questions regarding the extent to which they believed people experiencing poverty were more likely to encounter difficulties associated with the operations of the criminal justice system. They were then invited to contribute more detailed qualitative remarks in relation to these questions.

A total of 54 responses was received. Of these, there were 12 community service providers, 10 private lawyers, nine members of the judiciary/magistracy, nine lawyers employed by Legal Aid (either as Legal Aid lawyers or duty lawyers), nine community legal service providers, two employees of the Office of the Public Prosecutor, one corrective services officer, and two ‘others’ (a youth worker and a ‘project coordinator’). While this breakdown indicates that a reasonably representative spread across various professions was obtained, unfortunately the discrete professional groups are too small to enable reliable comparisons to be made between them.

More generally, the majority of respondents were female (n=34) and did not identify as a member of a minority group (n=40). Thirteen respondents did identify as a member of a minority group: seven said they were from a low socio-economic background, three identified as gay, lesbian, intersex or transgender, two stated they were from a non-

English speaking background, and one identified as Indigenous. Interestingly, 15 respondents (28%) indicated in their qualitative comments that they had experienced poverty at some point in their lives.

## **Poverty and policing**

Respondents were asked to indicate the extent to which they agreed with the statement ‘People who are poor are more likely to be charged with criminal offences than people who are not poor.’ Eighty-five percent of respondents (n=46) indicated that they either agreed or strongly agreed with this statement. Further, 65% of respondents (n=35) indicated that they either agreed or strongly agreed with the statement ‘People who are poor are discriminated against by police officers on the basis of their socio-economic status’.

**When asked to provide qualitative comments as to why people experiencing poverty might be more likely to be charged with criminal offences, criminal justice professionals were most likely to cite ‘visibility’ as the reason;** 17 respondents explained that since people experiencing poverty occupy public spaces more than other community members, either because they are homeless or because they are escaping overcrowded or unsatisfactory living situations, they are more likely to attract police attention. Indeed, nine respondents noted that some laws directly criminalise homelessness, such as those related to ‘move-on’, trespass and ‘nuisance’ behaviour.

**Many respondents alleged that beat policing is inherently discriminatory in nature, and that people experiencing poverty are more likely to be charged than others, even if they are engaging in the same kinds of behaviours.** Two respondents claimed that beat policing is directly discriminatory against Indigenous people and, consistent with the views of those experiencing poverty themselves (reported on in the previous chapter), three respondents stated that a person’s mere appearance can attract police attention because assumptions are made regarding their character.

On a related point, four respondents reported that people experiencing poverty are often ‘stereotyped’ or ‘typecast’ by police, either directly or indirectly, on the basis of their poverty. Four respondents claimed that police were more likely to target poor and

vulnerable individuals, and neighbourhoods with high levels of poverty; one respondent claimed that this amounted to ‘over-policing’.

Seemingly, assumptions are being made by some police that ‘a poor person is more likely to commit offences.’ While respondents were not asked to evaluate why such a perception might be held by those with authority, some did offer suggestions. Two respondents blamed the concept of ‘otherness’, implying that a class-based ‘us and them’ mentality had emerged; they said that the community accepts, or indeed expects, that people characterised as ‘other’, including those experiencing poverty, be dealt with as a public nuisance. Three respondents noted that many community members consider people living in poverty to be personally responsible for the plight they face, thereby deeming their lifestyle, and their very selves, to be ‘unacceptable.’ As one of these respondents (a community legal service provider) said:

‘It’s almost as if what society deems as acceptable (well educated employed people) is what the police and policy makers use as a marker for potential criminality.’

Another strong theme that emerged on the topic of policing was drug use. Sixteen respondents claimed that people experiencing poverty are more likely to be charged with criminal offences as a result of drug addiction, either because they are charged with drug-related offences, engage in criminal behaviour while under the influence of drugs or alcohol, or because they are forced to engage in criminal behaviour to sustain their habit. Notably, many respondents attributed drug use, and other socially undesirable behaviours such as family violence, to the pressure and stress that poverty causes within families. As one respondent (a community service provider) said:

‘People who are poor are oppressed and discriminated against within our community so are more likely to be involved in activities that respond to their lack of self-esteem such as illicit drug use and perpetrating violence within the family.’

Along the same lines, another respondent (a lawyer employed by Legal Aid) remarked:

‘It’s not poverty that is the problem, it’s the results (and perhaps causes) of poverty: anger, frustration, lack of resources, poor social skills, etc.’

**Eight respondents commented that in many instances, people experiencing poverty commit criminal offences in order to survive.** These respondents represented petty theft, social security fraud and drug trafficking as necessary for many people experiencing poverty, since social security payments are insufficient to meet basic living expenses. The plight of women with children was a particular focus of these respondents. As one respondent remarked, the cost of one or two prescriptions alone can comprise a significant proportion of a family's fortnightly payment.

One respondent, a community legal service provider, stated:

'I have had 11 year olds stealing shampoo from Crazy Clarks, an orange and packet soup from the community canteen – they are not stealing gold watches or cigarettes.'

In apparent contradistinction to this, one respondent (an Aboriginal Legal Service worker) stated that, in their experience, some people living in poverty turn to illegal activities in order to obtain those things that the majority of community members take for granted, presumably in order to achieve a sense of social inclusion. This respondent said that 'seeing others with money or money bought items can lead poor people to commit criminal offences.'

**A further theme that emerged regarding why people experiencing poverty are more likely to attract criminal charges was lack of access to legal information and advocacy assistance.** Twelve respondents remarked that people experiencing poverty are often not aware of their legal rights and responsibilities, and this lack of knowledge increases their vulnerability to criminal charges. Nine respondents specifically remarked that people experiencing poverty often have difficulty advocating for themselves in situations that might lead to a criminal charge, and that they 'may not be able to express themselves or defend themselves in what a police officer regards as a proper manner.' The correlation between poverty and lack of education was a strong sub-theme that emerged in relation to this point; eight respondents remarked that low education levels or illiteracy are at least partly to blame for this lack of legal knowledge and inadequacy of oral expression.

Thus, on the subject of policing, the views of the professionals who responded to the online survey in many ways reflected those expressed in the interviews and focus groups by people experiencing poverty themselves.

## **Poverty and the court system**

Respondents were also asked whether they agreed with the statement ‘People who are poor experience more trouble navigating the court system than people who are not poor.’ Eighty-seven percent of respondents (n=47) indicated that they either agreed or strongly agreed with this statement. However, only 39% (n=21) either agreed or strongly agreed that ‘People who are poor are discriminated against by the courts on the basis of their socio-economic status.’ This accords with the views expressed by those experiencing poverty presented in Chapter 3.

When asked to provide qualitative remarks on why people experiencing poverty might encounter more difficulties navigating the court system than others, the strongest theme that emerged was lack of legal representation, or lack of quality legal representation. **Twenty nine respondents (54%) stated that how one fares in court is linked to the level of legal advice and representation one is able to secure.** Despite the apparent availability of duty lawyers and Legal Aid, respondents noted that many people experiencing poverty are forced to appear in court unrepresented. As noted in Chapter 3, duty lawyer representation in the Magistrates’ Court is only available if a defendant chooses to plead guilty. Some respondents remarked that people who are unable to secure private representation due to their poverty often plead guilty, even though a defence would have been available to them, in order to get the matter ‘over and done with’. Many respondents said that, in their belief, people experiencing poverty receive harsher sentences as a result of this lack of access to representation.

Other respondents conceded that advice and representation is generally available, but stated that the quality of the assistance received is sometimes sub-standard. Some respondents noted that this lack of quality is generally the result of ‘resourcing issues’ (‘inadequate funding and over extension’) within Aboriginal Legal Services and Legal Aid.

Six respondents commented on the practical difficulties that poverty creates for those forced to interact with the court system. Lack of access to transport can make accessing the courthouse difficult; homelessness can make document storage impossible; and family responsibilities can make court attendance a dilemma. As one respondent went on to say ‘many have problems simply having the money to get to a solicitor’s office or to court and being contactable by having a phone.’

Further, **15 respondents (28%) commented that the lack of education and literacy amongst people experiencing poverty contributes to their inability to navigate the court system.** According to these respondents, this results in a general lack of legal knowledge and a lack of access to written resources that might enable a person to become familiar with the system. Illiteracy also renders a person unable to read court documents or understand legal jargon. Further, seven respondents said an inability to appropriately articulate their concerns and/or advocate for themselves results in adverse outcomes for people experiencing poverty.

**In addition to this, 13 respondents (24%) commented that people experiencing poverty are intimidated by the court system.** A further nine respondents commented on the complexity of the court system, and noted that both the language and setting are alienating for vulnerable defendants. As one respondent remarked, ‘court is hard for any first time user’, yet many respondents were of the belief that people experiencing poverty may be more disadvantaged within the system than others. One respondent explained:

‘[People experiencing poverty] are unlikely to get all the information that they need and will commonly be baffled by the language and process – not to mention the apparently illogical ceremony and unspoken hierarchy that operates within the courtroom. If they are illiterate or of low literacy as well as poor, they will commonly misunderstand spoken words, not be able to understand written documents, and be confused by legal jargon.’

Ironically, and in opposition to the comments above, one respondent remarked that people experiencing poverty may, in fact, be more experienced and thus proficient at navigating the court system than others, as a result of their frequent attendance. As noted, relatively few respondents alleged that people experiencing poverty were directly discriminated against by members of the judiciary and magistracy, although one respondent, in their qualitative remarks, said that some judges and magistrates, as well as

barristers and solicitors, may become ‘embittered or jaded by hearing the “same old stories” again and again.’ This respondent alleged that despite the fact that these ‘old stories’ are in fact true, the result might be a ‘hardening of heart’, leading to ‘one law for the rich and one for the poor.’ In addition to this, a small number of respondents believed that unrepresented litigants are ‘looked down upon’ by the courts, and are more likely to receive harsh sentencing outcomes for this reason.

## **Poverty, prison and having a criminal record**

Respondents were also asked to indicate the extent to which they agreed that ‘People who are poor are more likely to end up in prison than people who are not poor.’ Eighty-five percent of respondents (n=46) indicated that they did in fact agree, or strongly agree, with this statement. However, only 39% (n=21) agreed or strongly agreed that ‘People who are poor are discriminated against within the corrective services system on the basis of their socio-economic status’. Notably, there was a large degree of ambivalence demonstrated in relation to this latter statement, with 44% of respondents to the question (n=23) indicating that they ‘neither agreed nor disagreed’.

When asked why people experiencing poverty might be more likely to end up in prison than other members of the community, most respondents agreed that this was the cumulative effect of all the issues already raised in relation to policing and the courts: since people experiencing poverty are more likely to be charged with criminal offences, and are less likely to be able to successfully navigate the court system, they are thus more likely to end up in prison.

However, two additional themes that surfaced are worthy of note. First, a number of respondents commented that people experiencing poverty are more likely than others to *repeatedly* be the subject of criminal charges. Many commented that once police attention has been attracted, it can be ‘extremely difficult to stay out of their way’. Further, the outcome of past court proceedings can lead to additional charges being laid, for example in situations where a court order has been breached or a fine cannot be paid, or where the person is charged with failing to appear in court in the first place. Thus, it seems that people living in poverty can become trapped in a cycle of repeated criminal

convictions because the underlying causes of their offending behaviour are not being addressed.

Another prominent theme borne out of this question was that of hopelessness. Many respondents commented that people experiencing poverty who have received multiple convictions lose hope and ‘develop an attitude of inevitability’. As a result, they no longer attempt to resist or defend charges laid against them, and they may make less of an attempt (where it is within their power) to cease their offending behaviour. One respondent remarked that such people begin to ‘believe they are unfixable or no-one really cares.’ With no support, they experience a ‘diminishment of their personal autonomy’, and become ‘apathetic’. Indeed, one respondent remarked that such persons may consider prison to be ‘the best option’.

Respondents were also asked to comment on the relationship between poverty and having a criminal record. When asked whether they agreed that ‘People experiencing poverty are more likely to have a criminal record than people who are not poor’, 85% (n=46) either agreed or strongly agreed. In their qualitative comments, most respondents remarked that the increased propensity of having a criminal record amongst those experiencing poverty was a consequence that flowed from the impacts of policing and the operations of the court system on the lives.

However some respondents made unique comments regarding the impact of this as a by-product of the criminal justice system. Two respondents, a community legal service provider and a Legal Aid lawyer, observed that people experiencing poverty are more likely to receive a conviction than other community members because they are less able to demonstrate ‘compelling personal reasons’, such as employment or current enrolment in tertiary education, to justify the non-recording of a conviction.

Also worthy of note are the comments of one respondent who remarked that the chain of causation sometimes flows in the opposite direction; that people may actually end up living in poverty as a result of their having a criminal record, and the adverse impact that this has on their employment prospects.

## Poverty and exclusion

Of all of the survey items, respondents were most divided on issues related to poverty and social exclusion. Respondents were asked to indicate the extent to which they agreed with the statement 'People who are poor are excluded from society.' Nineteen percent of respondents (n=10) strongly agreed with the statement; 31% (n=17) agreed; 22% (n=12) indicated that they neither agreed nor disagreed; 24% (n=13) disagreed; and 4% (n=2) strongly disagreed. The high level of disparity in the results closely parallels the wide range of views obtained from people experiencing poverty on the same issue (see Chapter 3).

When asked how they would define poverty, most respondents cited relative deprivation of material goods. Many used the word 'struggle' in their definitions, another theme which parallels the responses obtained from people experiencing poverty themselves. Some respondents went further and discussed some of the symptoms, or practical consequences, of poverty, including lack of opportunity, lack of power and influence, lack of education, hopelessness and isolation. Many linked the concept of poverty with 'social exclusion' (in its various forms), remarking that poverty results in exclusion from mainstream social and leisure activities, particularly as our society becomes increasingly 'consumer driven' and 'obsessively materialistic'. Lack of access to technology such as the internet was of particular concern to a number of respondents who were of the view that the digital divide is increasingly resulting in poorer persons' exclusion.

However, in their qualitative comments regarding social exclusion, many respondents indicated that social isolation is not necessarily correlated with poverty. While agreeing that people experiencing poverty are 'suppressed', 'marginalised' and even 'oppressed', many respondents were not prepared to agree that they were thus excluded. Indeed, one respondent (a private lawyer) remarked that 'often poorer people have more of a social life than richer isolated people.' Further to this, **some respondents remarked that in their experience, people experiencing poverty often go to great lengths to conceal their struggles.** One respondent said 'Some people are pretty good at disguising their poverty which they are ashamed of.' Another related their experience of poverty as a child and said 'I hid my poverty by never telling anyone where I lived and never inviting anyone home.' Yet another remarked:

‘Having risen above poverty, through good fortune more than good management, I know how soul destroying poverty can be. Our system is designed to isolate and identify the impoverished at every turn. Do you have a health card? Do you have a pension card?’

**Many respondents noted the extraordinary resilience demonstrated by people experiencing poverty. Generally, respondents to the online survey were much less forgiving of ‘the system’ than the interview and focus group participants were, and were much more willing to characterise the system as failing people experiencing poverty, rather than attributing blame to circumstance, or poorer individuals themselves.**

## **Poverty and rights**

Respondents were also asked to indicate the extent to which they agreed with the statement ‘People who are poor do not enjoy the same human rights as people who are not poor.’ Sixty-one percent (n=33) agreed or strongly agreed with this statement.

Respondents’ qualitative remarks shed further light on why the rate of agreement was not higher. **A number of respondents opined that the problem is not that people experiencing poverty do not have rights *per se*, but rather that they lack the means, or the inclination, to assert these rights.** These respondents indicated that people experiencing poverty ‘spend a lot of energy just surviving’ and thus it is practically difficult for them to deal with any breaches of their rights that occur. This is broadly consistent with the findings from the interviews and focus groups presented in Chapter 3.

Having said this, respondents listed a number of human rights that are routinely violated in the context of poverty. The most common rights mentioned were the right to housing or an adequate standard of living (n=10), the right to equality and non-discrimination (n=6), the right to education (n=5), the right to legal representation/access to justice (n=4), and the right to an adequate standard of health (n=4).

## Conclusion

Thus, the key findings from the online survey of criminal justice and related professionals are:

- Many of those working within the criminal justice system alongside people experiencing poverty are strongly of the view that the high visibility of homeless and poor people in public space results in increased police attention;
- Many of those working within the criminal justice system alongside people experiencing poverty are of the view that police discriminate against people experiencing homelessness and poverty, particularly Indigenous people;
- Lack of access to legal advice and advocacy assistance is perceived by criminal justice and related professionals to result in adverse outcomes for people experiencing poverty in criminal trials;
- Criminal justice and related professionals believe that the court system is inordinately intimidating and complex, and that people experiencing poverty are more likely to be adversely impacted by this than others;
- Criminal justice and related professionals agree that people experiencing poverty are more likely to have convictions recorded against them, and are more likely to end up in prison; and
- Many of those who work with people experiencing poverty observe the extraordinary strength and resilience that their clients demonstrate, despite the multiple layers of disadvantage they are faced with.

# CHAPTER 5: DISCUSSION AND RECOMMENDATIONS

## Overview

The results of this research paint a disturbing picture regarding the plight of those experiencing poverty in Queensland. High levels of harassment by police, lack of knowledge of their rights or inability to ensure they are enforced, and disproportionate representation amongst the prison population all indicate that the operations of the criminal justice system impact particularly adversely upon people experiencing poverty. Further, personal stories of deprivation and social exclusion, mixed with their strong sense of pride and resolve, demonstrate the extraordinary forbearance that those experiencing poverty exhibit on a daily basis as they attempt to function as members of Queensland society.

The following discussion draws on the reflections of participants in this study to advance a series of 20 recommendations aimed at addressing some of the issues raised during the course of this research. Recommendations are made with regard to each of the three arms of the criminal justice system – police, the courts and corrective services – as well as the general lived experience of poverty and social exclusion.

## Police

Clearly, the use by police of their powers amongst vulnerable groups must be reviewed. The level of police harassment reported amongst people experiencing poverty is excessive and is not obviously matched by a reduction in crime rates or an increase in community safety. Instead, high levels of harassment amongst marginalised groups are resulting in fundamental rights violations, disrespect for the police service, and extreme personal hardship.

## Recommendation 1

**That an independent inquiry into policing amongst poor, Indigenous and other vulnerable groups be undertaken, with serious attention being given to the wide-spread allegations of excessive police harassment and brutality.**

The *Royal Commission into Aboriginal Deaths in Custody* (1991), the *Fitzgerald Report* (1989) and the *Report on Law and Poverty* (1976) all concluded that police received insufficient cultural awareness training, and inadequate continuing education regarding the special needs of vulnerable groups.<sup>1</sup> Certainly, police officers cannot and should not be required to act as social workers. As Sackville stated in the *Report on Law and Poverty*, ‘the criminal law is a very clumsy and heavy-handed tool to use to care for people’.<sup>2</sup> However, it must be acknowledged that a law and order approach to disadvantage is not working. The most recent Queensland Police Service *Annual Statistical Review* unapologetically reports an 11% increase in ‘good order’ offences (ie. offences such as ‘public nuisance’, resisting arrest, disobey move-on direction, etc.) across the state from 2004/05 to 2005/06.<sup>3</sup> Indeed, half-yearly statistics reveal a 19% increase in ‘good order’ offences during the first six months of 2006.<sup>4</sup> This increase in ‘good order’ offences over 2004/05 and 2005/06 is the latest in a continuing trend in this direction. In 2005, the Queensland Police Service reported a 6% increase in ‘good order’ offences from 2003/04 to 2004/05,<sup>5</sup> following an 8% increase between 2002/03 and 2003/04.<sup>6</sup> Since the aim with regard to all other offences is to achieve a reduction in the rate of reported crime, it is unclear why the same efforts to reduce offending behaviour related to maintaining ‘good order’ seem not to be made.

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<sup>1</sup> Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody: Final Report – Volume 5*, 1991, recommendations 87 and 88; G.E. Fitzgerald, *Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, Queensland Parliamentary Library, Brisbane, 1989 at 180, 280; Ronald Sackville, *Commission of Inquiry into Poverty – Second Main Report: Law and Poverty in Australia*, Commonwealth Parliament, 1976 at 200-201, 253, 273.

<sup>2</sup> Sackville, *ibid* at 255

<sup>3</sup> Queensland Police Service, *Annual Statistical Review 2005/06*, 2006 at 15.

<sup>4</sup> The Hon Judy Spence Minister for Police and Corrective Services, ‘Crime continues to fall in Queensland’, *Media Release*, 6 March 2007.

<sup>5</sup> Queensland Police Service, *Annual Statistical Review 2004/05*, 2005 at 15.

<sup>6</sup> Queensland Police Service, *Annual Statistical Review 2003/04*, 2004 at 15.

## **Recommendation 2**

**That the Queensland Police Service undertake to reduce the rate of 'good order' offending in Queensland as a performance indicator, in the same way that crime reduction across other offences is considered a performance indicator.**

Alternative strategies for dealing with 'offending' behaviour amongst people experiencing poverty and homelessness in Queensland must be developed if the rate of good order offending is to be reduced.

First, police require specialised training, and continuing education, regarding cultural awareness and sensitivity, and the appropriate treatment of vulnerable persons including those experiencing homelessness. They need to be familiar with available local community services, and establish partnerships and protocols with them to ensure that a collaborative approach is taken to the treatment of vulnerable public space users.

In this study, allegations of misconduct were particularly made against junior police officers. This is consistent with the findings of the *Fitzgerald* Report; the following statement taken from the report seems to still apply today:

'Junior police must be properly supervised and guided in investigative procedures. They must come to appreciate the benefits of external and procedural controls over the exercise of powers, and understand that these controls tend to remove bases for criticism of them and of the quality of the evidence they present to the courts.'

## **Recommendation 3**

**That the Queensland Police Service establish formal partnerships with community services and develop protocols for service delivery to homeless and other marginalised public space users.**

#### Recommendation 4

**That the Department of Police and Corrective Services commit to ensuring that their workforce receive tertiary education in either Justice Studies or related disciplines such as Sociology, Psychology and Social Work. This is consistent with Queensland’s Smart State initiative, and is consistent with the recommendations of the Fitzgerald Report.**

#### Recommendation 5

**That police officers, particularly junior officers, receive adequate, continuing training on issues related to cultural awareness and sensitivity, and best practice in responding to vulnerable people, including those experiencing homelessness.**

Second, police should not interfere with the use and enjoyment of public spaces by members of the public unless their behaviour poses a real risk of harm. As Sackville said in the *Report on Law and Poverty*:

‘the mere fact that public displays of drunkenness and extreme poverty are offensive to some people does not warrant the imposition of criminal sanctions, particularly when those sanctions are obviously ineffective to overcome the problem. Where the “offender” actually causes harm to other people, the police have ample power to arrest him [sic].’<sup>7</sup>

This sentiment was echoed in the *Final Report of the Royal Commission into Aboriginal Deaths in Custody*. It recommended that public drunkenness be decriminalised, and that arrests for offensive language be monitored, to ensure that the principle of ‘arrest as the sanction of last resort’ is upheld.<sup>8</sup>

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<sup>7</sup> Sackville, above n1 at 255.

<sup>8</sup> See recommendations 79, 86 and 87 of the *Royal Commission into Aboriginal Deaths in Custody*, above n1.

#### **Recommendation 6**

That police officers be instructed that they should only interfere with individuals' use and enjoyment of public space if there is a reasonable risk that harm to another person will result if they fail to intervene. (This requirement should appear in legislation rather than just being added to the *Operations and Procedures Manual*.)

This could be achieved by:

- inserting a provision to this effect in the *Police Powers and Responsibilities Act 2000* (Qld);
- carefully rewording the offence of public nuisance (in section 6 of the *Summary Offences Act 2005* (Qld)); and/or
- repealing section 47 of the *Police Powers and Responsibilities Act 2000* (Qld) which allows a police officer to move a person on in circumstances where their mere presence could cause *anxiety* to a member of the public.

Third, attempts must be made to ensure that the rights of public space users are respected and upheld by police officers. Many participants in this research were of the view that they had no rights when it came to police, or that they were incapable of ensuring that those rights that they did have were respected. The addition of a *Charter of Rights* to the *Police Powers and Responsibilities Act 2000* (Qld) (similar to that contained in the *Child Protection Act 1999* (Qld)), might go some way towards formalising the existence of rights in public space, and ensuring that the human rights of marginalised public space users are recognised and respected by police officers.

#### **Recommendation 7**

That a 'Charter of Rights' be inserted into the *Police Powers and Responsibilities Act 2000* (Qld), based on the model established in the *Child Protection Act 1999* (Qld), that explicitly recognises and legally protects the rights of all public space users to use and enjoy Queensland's public spaces without fear of intimidation or harassment by police officers.

The Charter should be developed in consultation with marginalised public space users, and should (at least) recognise the following rights of public space users, as enshrined in the

***International Covenant on Civil and Political Rights:***

- the right to freedom from discrimination on the basis of race, colour, national or social origin, or other status;
- the right to freedom from cruel, inhuman or degrading treatment or punishment;
- the right to be treated with humanity and respect for human dignity;
- the right to liberty of movement; and
- the right of peaceful assembly.

In particular, respecting individuals' freedom from cruel, inhuman or degrading treatment must be acknowledged to include freedom from unreasonable search and seizure. Many participants in this research reported being searched frequently, and sometimes unlawfully, and were unsure of their rights regarding police searches.

**Recommendation 8**

**That the Crime and Misconduct Commission undertake an investigation into police powers related to search and seizure, with a particular focus on:**

- the frequency of police searches conducted in public places;
- the frequency of strip searches conducted in the course of police investigations;
- the level of knowledge amongst members of the public regarding when a search or seizure conducted by police is lawful; and
- the extent to which the use of police powers related to search and seizure is conducted in accordance with the legislation.

The results of this research suggest that good order 'offenders' may present an easy target for police officers who need to prove to their superiors that they have been hard at work. As was noted in Chapter 3, it is widely believed that police officers are required to demonstrate that they have met a certain 'quota' for the day, and that this necessitates their approaching people, apparently needlessly, in the street to 'get a name for their book'. This is a serious allegation, and should be treated as such by the Police Commissioner and the Police Minister. Such a perception has the effect of undermining police credibility and fuelling contempt for the Service as a whole. The Queensland Police Service boasts of having a police to population ratio that exceeds the national average,<sup>9</sup> yet comments such as these might imply that there are too many police officers

<sup>9</sup> Queensland Police Service, *Annual Statistical Review 2005/06*, 2006, 'Commissioner's foreword'.

on beat duties in the inner-city, or that certain elements of police culture need to be reformed.

**Recommendation 9**

**That an independent inquiry into police practices be conducted, with particular attention being paid to the extent to which police productivity is measured by arrest quotas.**

Many participants remarked that their opportunity to complain against what they perceived as unjust or inhumane treatment by police was limited. Some stated that they had attempted to make a complaint against a police officer, to the Crime and Misconduct Commission for example, and had been ignored, or had experienced difficulties in navigating the complaints system.

Perhaps the most effective way of ensuring that all complaints against police officers are collected and processed is the establishment of an ‘incidents register’. Incidents registers allow individuals to register a complaint simply by completing an ‘incident form’ outlining the circumstances surrounding the event in question; the form can then be submitted to an organisation, such as the Crime and Misconduct Commission, requiring only a minimal input of resources. Over time, these incident forms come to comprise a collective body of evidence establishing improper conduct, thereby forming a basis for review, evaluation and reform. Such registers have been successfully used by non-government organisations in the United States<sup>10</sup> and Canada,<sup>11</sup> and these models could be replicated in Queensland.

**Recommendation 10**

**That the Crime and Misconduct Commission establish a police service complaints mechanism that is accessible to all community members. A best practice model that could be applied is the establishment of an ‘incidents register’ so that all persons who wish to lodge a complaint against a police officer may do so simply by completing a basic form.**

<sup>10</sup> The United States National Law Centre on Homelessness and Poverty set up an incidents register to record instances of ‘violence or harassment of a person experiencing homelessness’; see National Coalition for the Homeless and the National Law Centre on Homelessness and Poverty, *A Dream Denied: The Criminalisation of Homelessness in US Cities*, 2006.

<sup>11</sup> The Canadian Association of Elizabeth Fry Societies set up an incidents register to record episodes of discrimination and misconduct by corrective services officers; see [http://www.elizabethfry.ca/caefs\\_e.htm](http://www.elizabethfry.ca/caefs_e.htm).

## The courts and the law

The development and expansion of legal aid services and duty lawyer schemes across Queensland represents a substantial leap forward since the Henderson Commission of Inquiry. Certainly, the participants in this research had far fewer criticisms of the court system, and made fewer lamentations regarding access to legal advice and representation, than those who contributed to the 1976 *Report on Law and Poverty*.

However, some of the issues identified by the 1976 report seem not to have been adequately addressed, and remain pertinent today. First, many participants in this project stated that the level of non-legal support available at court was insufficient. It was noted in the *Report on Law and Poverty* that ‘the pervading presence of police in the magistrates’ courts must create doubts in an accused person as to the objectivity of the courts’, and similar observations were made by participants in this research. In particular, Indigenous and Disability Liaison Officers were stated to be valuable, but few and far between. On the other hand, the Brisbane Special Circumstances Court, which is staffed by a Homelessness Liaison Officer and presided over by a magistrate demonstrating due respect and sensitivity towards vulnerable defendants, was highly praised.

The Brisbane Special Circumstances Court is a pilot project being conducted by the Brisbane Magistrates’ Court; it has not received any formal government support or funding. It is a resource-intensive initiative, requiring for success a full-time liaison officer, community service presence and support, and a substantial amount of court time owing to the case management and supervisory approach taken by the magistrate. Yet it is a model that apparently works, having enjoyed success both in Brisbane and in Melbourne.<sup>12</sup> On this basis, serious consideration should be given either to rolling it out across the State, or to ensuring that some of its philosophies and approaches are mainstreamed throughout Queensland’s Magistrates’ Courts.

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<sup>12</sup> In Melbourne, see Anne Condon and Annie Marinakis, ‘The Enforcement Review Program’ (2003) 12(4) *Journal of Judicial Administration* 225. In Brisbane, see Tamara Walsh, ‘The Queensland Special Circumstances Court’ (2007) *Journal of Judicial Administration* (forthcoming).

### **Recommendation 11**

**That, in recognition of the success of the Special Circumstances Court, the Queensland Government provide targeted funding to Queensland Magistrates' Courts to enable:**

- (a) a substantial increase in the presence of court liaison officers, particularly Indigenous Liaison Officers, Disability Liaison Officers and Homelessness Liaison Officers; and**
- (b) either:**
  - a special circumstances list to operate out of all Queensland Magistrates' Courts; or**
  - an amendment to the *Penalties and Sentences Act 1992 (Qld)* to create clear sentencing alternatives allowing for the referral of defendants to community services and informal supervision by the court of defendants' progress; and**
- (c) continuing education for magistrates regarding alternative sentencing options and their appropriateness for certain offender groups.**

Another issue raised by participants in this research that remains unchanged since the 1976 report is the pressure, either explicit or implicit, placed on vulnerable defendants to plead guilty to minor offences. In part, this is the result of Legal Aid's duty lawyer policies which ensure legal representation in cases where a defendant pleads guilty, but make it extremely difficult for defendants who plead not guilty to obtain assistance. Community legal services attempt to pick up some of the slack, relying heavily on pro bono assistance from corporate law firms and private lawyers, but their resources are extremely limited and many of them, including the Homeless Persons' Legal Clinic (a project of the Queensland Public Interest Law Clearing House Inc.), experience such precarious funding arrangements that their future viability is constantly in doubt.

### **Recommendation 12**

**That the Queensland Department of Justice and the Attorney-General commit targeted funds to Legal Aid Queensland, and community legal services, for the sponsoring of summary trials, to allow those charged with minor offences to defend their charges with adequate legal assistance.**

Further, lack of legal assistance and pleading guilty generally culminates in a criminal record, which perpetuates the cycle of poverty by preventing individuals from making a ‘fresh start’. Participants reported that having a criminal record prevented them from obtaining employment and housing, and prejudiced their chances of retaining parental responsibility for their children.

Under the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld), convictions for summary offences (ie. offences heard in the Magistrates’ Court) remain on a person’s record for five years, while convictions for indictable offences (ie. offences heard in higher courts) remain on a person’s record for 10 years. With regard to some summary offences, participants commented that it seemed unjust that any record be kept at all. Many reported that their criminal record consisted of ‘vagrancy-type’ offences, and other offences committed as a direct result of poverty and homelessness, and they felt that such offences were not serious enough to warrant disclosure, and the discrimination that this attracted.

**Recommendation 13**

That a review of the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) be undertaken with a view to determining its impact on perpetuating the cycle of poverty. Special attention should be given to whether the disclosure periods are too long for certain offences, and indeed whether certain offences (particularly those that are status-related) should form part of an individual’s criminal record at all.

## **Corrective services**

As has been noted, not all participants in this research had been subject to supervision by Queensland Community Corrections or had served a custodial sentence in a Queensland prison. Participants overwhelmingly spoke more about police than corrective services, however more than half of all participants stated that they had been supervised by corrective services in the past, and many of these had been housed in a correctional facility. Considering that the general rate of imprisonment in Queensland is 178 per

100,000,<sup>13</sup> these numbers are extremely high, and indicate that people experiencing poverty are disproportionately represented within the corrective services system.

For those who had interacted with community corrections in the past, regardless of whether their experience was positive or negative in nature, a clear central theme emerged: community corrections officers are in a unique position to provide those on probation or parole with the support and practical assistance they require to re-build their lives. Further, the manner in which community corrections officers interact with those subject to probation and parole orders has a profound impact on how those persons view both themselves, and the system in general. In light of these findings, community corrections officers should aim to provide social services and support to those subject to community corrections orders, in addition to supervision, if the cycle of crime and poverty is to be broken.

**Recommendation 14**

**That community corrections officers be encouraged to take a case management, rather than a merely supervisory, approach to their work, and that community corrections officers receive adequate training and continuing education aimed at the development of case management skills.**

For those participants that had been in prison, or had a parent that had been in prison, the main concern raised was lack of access to family members. Children of prisoners related heart-breaking stories of being separated from their parent, emotionally and physically. They noted with gratitude that some corrective services officers permitted them to touch and hug their parents, but that others treated them harshly and made visits even more frightening and stressful than need be. It is well established that the rehabilitative goals of incarceration are best achieved when prisoners have access to strong, supportive family relationships;<sup>14</sup> best practice in prisoner rehabilitation should be applied in this regard.

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<sup>13</sup> Australian Bureau of Statistics, *Corrective Services, Australia 4512.0*, 2006.

<sup>14</sup> See Sackville, above n1 at 209-210; Tamara Walsh, *Incorrections: Investigating Prison Release Practice and Policy in Queensland and its Impact on Community Safety*, 2004 at 69-71.

#### **Recommendation 15**

**That the policies and practices regarding family visits in Queensland prisons be reviewed to ensure that contact between prisoners and their family members, particularly parents and children, is enhanced and maximised.**

A sentence of imprisonment, no matter how short, has serious repercussions for prisoners' lives, and the lives of their family members. Upon release, former prisoners are often left without housing and employment, and are frequently reliant on social security benefits as they seek to re-establish their lives. If the cycle of poverty is to be reversed, prisoners should not be released from prison without sufficient resources to provide them with basic necessities; nor should they be released with no prospect of obtaining employment. The *Report on Law and Poverty* made a number of recommendations related to this that have still not been implemented in Queensland, including that work programs be made freely available to all prisoners, and that prisoners receive reasonable wages for prison work.<sup>15</sup>

#### **Recommendation 16**

**That prisoners be sufficiently resourced whilst in prison to enable them to achieve an adequate standard of living upon their release; this would include:**

- **making prisoner education a priority in all Queensland prisoners by allowing all prisoners to engage in full-time study if desired, and by recruiting additional education officers;**
- **making prison work available to all prisoners and providing reasonable wages in exchange for such work to enable prisoners to save money to assist them to re-establish their lives after their release;**
- **funding aftercare services at a sufficient level to ensure the provision of case management services to all prisoners upon their release, including housing, job search and general welfare assistance.**

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<sup>15</sup> Sackville, *ibid* at 209-210. That these recommendations are in accordance with international best practice was established in the *Incorrections Report*, *ibid*.

## Poverty and social exclusion

The results of this research clearly demonstrate that people experiencing poverty in Queensland are adversely impacted by the operations of the criminal justice system. In particular, excessive police interference in their lives, the pressure to plead guilty, the resultant criminal record and exposure to the corrections system perpetuates the cycle of poverty, and often leads to feelings of hopelessness and contempt towards ‘the system’.

Yet, an extraordinary degree of resilience was demonstrated by participants in this research. Participants generally exhibited a strong sense of resolve, and were quick to recognise competing interests, and the pressures faced by those within the system whose decisions routinely impact adversely upon them. They also expressed a great deal of compassion for those less fortunate than themselves – many reported that they did what they could to assist those they knew whose need was greater than theirs.

Further, many participants in this research refused to identify as ‘poor’; indeed for some, the suggestion was offensive to them. Many stated that since they did not live in ‘Africa’ they were not entitled to consider themselves ‘poor’; rather, they described themselves as ‘strugglers’, or thought of themselves more in terms of what they were not: ‘not snobs’, ‘not rich’, ‘not well-dressed’.

This is a side of poverty that is not often portrayed by the media, or in the literature.<sup>16</sup> The fact that there is a general desire for something better, and a commitment by many to work towards a better life, contradicts common conceptions of ‘poor’ people as ‘idle’, ‘lazy’, ‘dole-bludgers’, and implies that initiatives that aim to build self-respect and recognise inherent human dignity are likely to be of some success amongst this group (the Special Circumstances Court provides a good example of this).

It also suggests the need for wide-scale public education regarding the extent and causes of poverty and homelessness in Australia. Participants in this research who experienced poverty reported feeling looked down upon, victimised and misunderstood. Yet as two participants demonstrated, the difference between a ‘well-respected middle class’ family and a homeless family is often just a couple of unfortunate, unforeseen events. A broad

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<sup>16</sup> Although it was explored in Mark Peel, *The Lowest Rung: Voices of Australian Poverty*, Cambridge University Press, 2003.

campaign aimed at humanising people experiencing poverty and homelessness would go some way towards addressing the kinds of exclusion that participants in this research described.

#### **Recommendation 17**

**That the Queensland Government commit to taking a whole of government approach to addressing the social problems associated with poverty, in recognition of the fact that it is a multifaceted, and particularly corrosive, phenomenon. Such a commitment might include:**

- **investigating how the various State Government Departments might contribute to tackling the causes of poverty in Queensland;**
- **coordinating resources and services between Departments to ensure adequate and appropriate service delivery to people experiencing poverty in Queensland; and**
- **commissioning and funding an independent inquiry into discrimination on the basis of homelessness or social status in Queensland – the Anti-Discrimination Commissioner could be resourced to undertake this investigation under *Anti-Discrimination Act 1991 (Qld) s236.***

#### **Recommendation 18**

**That government fund a wide-scale public education campaign aimed at humanising people experiencing poverty. The campaign should aim to inform the public of the:**

- **extent and causes of poverty and homelessness in Australia;**
- **resilience demonstrated by people experiencing poverty and homelessness in Australia; and**
- **inappropriateness (both socially and economically) of applying a law and order response to poverty and homelessness in Australia.**

In addition to the sense of exclusion reported on by participants in this research, there were significant allegations of discrimination made, perpetrated both by agents of the criminal justice system as well as members of the public in general. Neither homelessness nor social status are protected attributes under any of Australia's anti-discrimination statutes.<sup>17</sup> Further, recent case law suggests that the exercise of police powers prior to the

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<sup>17</sup> Bella Staggoll and Philip Lynch, *Promoting Equality: Homeless Persons and Discrimination – Submission Regarding Discrimination on the Ground of Social Status*, Homeless Persons' Legal Clinic, Melbourne, 2002.

making of an arrest is not covered by anti-discrimination law in many jurisdictions either.<sup>18</sup> Amendments to anti-discrimination Acts both at Commonwealth and State level would go some way towards ensuring that people experiencing poverty and homelessness were not discriminated against in the course of policing or other operations of the criminal justice system.

#### **Recommendation 19**

**That anti-discrimination statutes around Australia be amended to include:**

- homelessness or social status as a protected attribute; and
- operations of the criminal justice system, including policing, as a protected area of activity.

Finally, the very use of the word ‘poverty’ by researchers and commentators may need to be rethought. Since the results of this research suggest that many people who live below the ‘poverty line’ do not think of themselves as poor, the descriptive terms applied to these people in broader literature and discourse may require revision. Indeed, the required shift in thinking may go beyond mere terminology. It is possible that the use of this term amongst observers conjures up a ‘victim mentality’ that is not an accurate or respectful reflection of the experiences of those being analysed. Greater consultation with those affected is needed to ensure effective law and policy reform.

#### **Recommendation 20**

**That formal consultation with people experiencing ‘poverty’ be conducted by government when devising policy or law reform strategies that impact upon this population group.**

## **Final remarks**

Participants in this research who were living in poverty were anxious to know that their stories would be faithfully told to the community, to government and to those agents within the system whose decisions routinely impact adversely upon them. An effort has

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<sup>18</sup> *Commissioner of Police, NSW Police Service v Estate of Russell* [2001] NSWSC 745; *Budd v State of NSW* [2006] NSWSC 1266.

therefore been made here to ensure that the integrity of participants' comments has been maintained, so that they might speak for themselves, not through a 'mouthpiece'. Their words have not been altered. Their grammar has not been corrected, nor have their curses been eliminated.

The results of this research are a sad indictment on Queensland and Queenslanders. We must all take responsibility for the manner in which vulnerable people in our community are treated; none of us are too far removed from the system, as one participant observed. A commitment must be made by all to work together to ensure that the words of this participant are proven to be untrue:

'A lot of the people who live below the poverty line are never going to get their head out of the water, you know? They're always up to their nose in the proverbial. Once you're down, you're down, and I say society doesn't actually help you because they've always got the thumb on you and just keeping you down.'

# APPENDIX A – INTERVIEW SCHEDULE



## CRIMINALISATION OF POVERTY PROJECT

### TRIGGER QUESTIONS FOR INTERVIEWS/FOCUS GROUPS

NB: It is acknowledged that the wording of the questions may change between groups/individuals (depending on the age etc. of the participants) however the general gist must be maintained.

1. What, if any, is your experience of the Queensland Police Service?
2. What, if any, has your experience been of the court system in Queensland?
3. What, if any, has your experience been of the Queensland Corrective Services system?
4. What, if any, has your experience been of having a criminal record, or having a conviction recorded against you?
5. What do you consider poverty to be? Do you consider yourself to be poor or not?
6. Do you feel included/valued by society? In what ways?
7. Do you feel your rights are respected? Do you feel discriminated against?  
(What does 'human rights' mean to you? What does 'discrimination' mean to you?)

Prompt questions:      How do you feel you have been treated?  
                                    In what way?  
                                    What do you put that down to? Why do you say that?  
                                    Tell us about that...  
                                    Did you feel discriminated against?  
                                    Did you feel your rights were violated?  
                                    What was the impact of that on you/your life?

# APPENDIX B – ONLINE SURVEY INSTRUMENT



## THE CRIMINALISATION OF POVERTY: ONLINE SURVEY

Dear participant,

I invite you to participate in this survey, on the subject of ‘poverty and the criminal justice system’, as a professional who engages with the criminal justice system on a regular basis. The purpose of this survey is to ascertain your views on the extent to which people experiencing poverty are impacted by the workings of the criminal justice system, including policing, the court system and corrections.

The survey includes both ‘tick the box’ questions, and questions where space is provided for more detailed comments, if you wish to provide them.

You are under no obligation to complete this survey. It is simply something I hope you will consider doing. Of course, no consequences will flow either from participation or non-participation.

The survey does not require you to identify yourself – you will remain anonymous at all times. The results of the survey will be made available on my home page, if you are interested, at [www.lawandpoverty.org/tamarawalsh](http://www.lawandpoverty.org/tamarawalsh).

This study adheres to the guidelines of the ethical review process of The University of Queensland. Whilst you are free to discuss your participation in this study with me (I am contactable on 3365 6192), if you would like to speak to an officer of the University not involved in the study, you may contact the Ethics Officer on 3365 3924.

Also, if you experience any difficulties in completing the survey (eg. the website is not running properly), I’d really appreciate your letting me know by email: [t.walsh@uq.edu.au](mailto:t.walsh@uq.edu.au).

Thanks so much for your time.

Dr Tamara Walsh

## **Part 1: Demographic information**

1. Please indicate your profession:

Community Service Provider  
Community Legal Service Provider  
Judge or Magistrate  
Legal Aid or Duty Lawyer  
Prosecutor  
Private lawyer  
Police Officer  
Corrective Services Officer  
Other:

2. Please indicate your gender:

Male  
Female

3. Please indicate whether you identify as:

Aboriginal or Torres Strait Islander  
A person who has a disability  
A person who speaks English as a second language  
A person from a low socio-economic background  
Gay, lesbian, intersex or transgender  
None of the above

## **Part 2: Poverty and the criminal justice system – multiple choice**

Please indicate the extent to which you agree with the following statements

[Participants select from: strongly agree/agree/neither agree nor disagree/disagree/  
strongly disagree]

1. People who are poor are more likely to be charged with criminal offences than people who are not poor
2. People who are poor experience more trouble navigating the court system than people who are not poor
3. People who are poor are more likely to end up in prison than people who are not poor
4. People who are poor are more likely to have a criminal record than people who are not poor

5. People who are poor are excluded from society
6. People who are poor are discriminated against by police officers on the basis of their socio-economic status
7. People who are poor are discriminated against by the courts on the basis of their socio-economic status
8. People who are poor do not enjoy the same human rights as people who are not poor

### **Part 3: Poverty and the criminal justice system – comments**

Please indicate your response to the following questions

1. If you agreed that people who are poor are more likely to be charged with criminal offences than those who are not poor, why do you think this is the case?
2. If you agreed that people who are poor experience more trouble navigating the court system than those who are not poor, why do you think this is the case?
3. If you agreed that people who are poor are more likely to end up in prison than people who are not poor, why do you think this is the case?
4. If you agreed that people who are poor are more likely to have a criminal record than people who are not poor, why do you think this is the case?
5. If you agreed that people who are poor are excluded from society, why do you think this is the case?
6. If you agreed that people who are poor are discriminated against within the criminal justice system, why do you think this is the case?
7. If you agreed that people who are poor do not enjoy the same human rights as people who are not poor, why do you think this is the case?

### **Part 4: Poverty**

1. What does 'poverty' mean to you?
2. Would you say that you have experienced poverty? If so, in what ways?
3. Do you have any additional comments you would like to make?