



Research Publication

Bail Refusal and Homelessness Affecting Remandees in New South Wales

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EXECUTIVE SUMMARY

With remand figures increasing in New South Wales, there is a growing interest in exploring opportunities that could assist in reducing the rate at which homeless defendants are refused bail or are granted bail but unable to meet the conditions of their bail. The lack of suitable and stable housing may be a contributor to refusal of bail or inability to meet bail conditions. However, there is a paucity of criminological research regarding the impact of homelessness on increasing remand figures, the reasons for refusing bail and whether homelessness has an impact on court decisions to refuse bail.

As an active member of the National Partnership on Homelessness, Corrective Services New South Wales (CSNSW) received a federal grant to develop a number of targeted directives aimed at reducing homelessness for people affected by the criminal justice system. As part of this grant, the CSNSW Corporate Research, Evaluation and Statistics Unit (CRES) was commissioned to investigate homelessness among NSW defendants who were refused bail. Specific objectives of the study were to:

- Identify the number and proportion of defendants refused bail where homelessness was a factor
- Identify factors related to bail refusal decision
- Compare the characteristics of homeless and non-homeless defendants who were refused bail, and
- Explore the bail decision making process, particularly in reference to homelessness.

To achieve its aim and objectives, the study employed a multi-method research design to explore the role of homelessness on bail refusal, including: 1) literature review; 2) a retrospective analysis of data pertaining to 2,462 defendants in NSW remanded in custody between September and November 2009; 3) semi-structured interviews with remandees and members of the judiciary; 4) case studies; and 5) observations of the NSW Bail Court.

(1) Retrospective data analysis

A sample of 2,462 defendants remanded in custody between September and November 2009 was identified using data obtained through the CSNSW Offender Integrated Management System (OIMS) database. The Intake Screening Questionnaire (ISQ), a document completed upon reception into custody and stored electronically on OIMS, was used to identify current and historical residential status of defendants (homeless or non-homeless). Of the 2,462 defendants in the study sample, 2,338 had a valid ISQ, of which 2,041 comprised of non-homeless and 297 of homeless defendants. Of the 2,462 defendants in the study sample, information about most serious offence was available for 2,211, of which 2,032 comprised of non-homeless and 258 of homeless defendants.

Results showed the study sample to have the following characteristics:

- The majority of defendants reported stable housing. Upon reception, of the 2,338 defendants with a valid ISQ:
 - 39.8% reported living with family (n=931)
 - 27.0% reported being in rental accommodation (n=631)
 - 12.7% reported being homeless (n=297)
 - 12.2% reported living in shared accommodation (n=285)
 - 5.7% reported owning their own home (n=133)
 - 2.6% reported other types of housing arrangements (n=61)
- 10.9 per cent of the overall sample of 2,462 were female (n=269) and 88.8 per cent male (n=2,186)
- 24 per cent of the overall sample identified themselves as Indigenous (n=590), and
- In the overall sample, the age group with the largest representation was 20-24 years of age (19.6 per cent), followed by 25-29 years of age (19.2 per cent).

Data was analysed by residential status of defendants with a valid ISQ. The groups of homeless (n=297) and non-homeless defendants (n=2,041) were statistically similar in the proportions of:

- Females (12.5 per cent and 10.9 per cent, respectively)
- Indigenous defendants (23.2 per cent and 24 per cent, respectively), and

- Respondents expecting to withdraw from drugs at the time of their remand (22.6 per cent and 19.3 per cent, respectively)

The two groups of defendants (homeless and non-homeless) statistically differed in a number of characteristics. Compared to non-homeless defendants, significantly more **homeless defendants** reported:

- Having previously been treated or medicated for a mental health issue (46.1 per cent homeless and 36.3 per cent non-homeless, $p < 0.001$)
- A previous self harm attempt (32.3 per cent homeless and 20.3 per cent non-homeless, $p < 0.001$)
- Having no support at all whilst in custody (9.1 per cent homeless and 8.9 per cent, non-homeless, $p < 0.05$). These figures were derived through comparison of homeless and non-homeless defendants with no family support ($n = 399$).
- To be in receipt of the disability support pension (26.9 per cent homeless and 11.4 per cent non-homeless, $p < 0.001$).
- Having been previously incarcerated (79.1 per cent homeless and 31.5 per cent, non-homeless, $p < 0.001$).

Compared to homeless defendants, significantly more **non-homeless defendants** reported:

- Having completed Year 10 or equivalent (58.8 per cent non-homeless and 51.2 per cent homeless, $p < 0.05$) and as having completed a TAFE or trade qualification (50 per cent non-homeless and 43.1 per cent homeless, $p < 0.001$).
- Having no family support whilst in custody (13.8 per cent non homeless and 39.4 per cent homeless, $p > 0.001$).

Length of remand

- The largest proportion of bail refused defendants was released from custody within the first two weeks of their remand.
- The most common length of remand was 1 to 7 days for both homeless and non-homeless defendants (20.9 per cent and 24.9 per cent, respectively), followed by 8 to 14 days for both groups (12.1 per cent and 9.8 per cent, respectively).

Offence characteristics

- There was almost twice the number of violent offences compared to any other type of offence, irrespective of housing status.
- The most common current Most Serious Offence was Acts Intended to Cause Injury for both groups (34.7 per cent of charges for homeless and 41 per cent for non-homeless defendants).
- Non-homeless defendants tended to have more drug related offences (10.7 per cent of charges), whereas, the homeless defendants had a greater proportion of theft and related offences (8.4 per cent of charges) and unlawful entry/ burglary, break and enter offences (also 8.4 per cent of charges).

(3) *Semi-structured interviews*

Themes arising from semi-structured interviews with members of the judiciary included:

- Homelessness is likely to be considered by members of the judiciary, under these grounds of the *Bail Act 1978 (NSW)*, s.32: poor community ties and increased likelihood of the defendant failing to appear in court.
- Availability of accommodation and willingness of the defendant to report to police regularly, could improve the likelihood of bail being granted.
- Co-existence of homelessness with other psychosocial factors, such as mental impairment, substance abuse and intellectual disability.
- A lot of time is spent by legal representatives making telephone calls to service providers to secure accommodation for homeless defendants.
- Two proposals were provided: 1) The implementation of a centralised database, which would be updated by an overseeing body or individual housing providers on a daily basis to reflect when

vacancies arise; 2) The implementation of a court based service to assist homeless defendants to secure accommodation appropriate to their needs.

- The foreseeable barriers to the implementation of future initiatives included lack of funding, lack of collaboration between agencies and the limited ability of defendants to follow instructions and/or attend appointments.

(4) Case studies

Key findings from ten case studies with homeless defendants:

- The majority of cases studies involved the co-existence of substance abuse and mental health issues.
- The co-existence of substance abuse and mental health issues appears to have coincided with a general lack of stability in the lives of the defendants. In turn, this has resulted in greater difficulties securing appropriate accommodation.
- Lack of motivation or a limited capacity to live independently.
- All of the defendants had a criminal history and the majority had previous breaches of bail or failures to appear in court.
- Of the ten defendants, six were subject to a period of conditional liberty (i.e. bail, parole or periodic detention) at the time of their bail refusal.
- All of the 10 defendants had a history of primary, secondary, tertiary and marginal homelessness. Eight defendants had a history of long-term homelessness.
- Two defendants became homeless as a result of violence towards their partner.
- Whilst the majority of defendants recounted a dysfunctional upbringing, only a small proportion of cases had a history of intergenerational homelessness.
- Domestic violence was a feature in the majority of cases, including cases where the defendant was victim, perpetrator or both.
- A number of defendants refused viable accommodation options, declined the support of family members, demonstrated non compliance with the rules of an accommodation provider or failed to adequately maintain the accommodation granted to them.

(5) Observations of the NSW Bail Court

Key findings from observations made at Central Local Court and Parramatta Bail Court included:

- The approximate length of hearings varied between 2 and 30 minutes.
- The Magistrates emphasised the importance of community safety and the interests of the victim and defendant.
- During the two days of bail court observations, there were no cases in which bail was refused solely on the ground of homelessness. Rather, there was generally discussion about other factors, such as mental health issues, ability of the defendant to meet a financial bail condition, and the nature of the offences.

Conclusion

Homeless defendants accounted for approximately 12 per cent of the total bail refused population (n=2,462) between September and November 2009. The findings of the research revealed that homeless defendants were more likely to be refused bail due to poor community ties or risk of failing to appear in court.

There was no recorded data that identified a correlation between homelessness and bail refusal. Rather, homelessness appeared to exist in combination with a variety of other factors, including mental impairment, intellectual disability and substance abuse issues. These factors all have the potential to impact an individual's ability to live independently within the community. Notably, even in circumstances where defendants were provided with housing, their ability to utilise this support was contingent upon whether their other needs were being addressed. In addition, some defendants were unwilling to accept accommodation offered to them, or if accepted, were unable or unwilling to comply with the regulations of the accommodation provider. As a result, the motivation of the defendant to accept assistance offered to them had also been a factor influencing their experience with homelessness.

Results showed homelessness to be a complex problem, often accompanied by mental health issues, substance abuse and intellectual disability. For government initiatives to secure and maintain long term housing solution for homeless defendants, the holistic needs of the defendant must be addressed rather than simply their immediate housing requirements. Without an acknowledgement of homelessness as one component of a broader and more complex matrix of need, the ongoing issue of increased bail refusal for homeless defendants is likely to continue.

1. INTRODUCTION

With remand figures increasing in New South Wales, there is a growing interest in exploring opportunities that could assist in reducing the rate at which homeless defendants are refused bail or are granted bail but unable to meet the conditions of their bail. The lack of suitable and stable housing may be a contributor to refusal of bail or inability to meet bail conditions. However, there is a paucity of criminological research regarding the impact of homelessness on increasing remand figures, the reasons for refusing bail and whether homelessness has an impact on court decisions to refuse bail.

Corrective Services New South Wales (CSNSW) Corporate Research, Evaluation and Statistics Unit (CRES) was commissioned to investigate homelessness among defendants who were refused bail, as part of a federal grant for a number of targeted directives aimed at reducing homelessness for people affected by the criminal justice system. To achieve its aim and objectives, the current study employed a multi-method research design including bibliographical, quantitative, and qualitative methods.

The impact of homelessness on bail refusal was firstly explored by briefly examining five key elements within the criminological literature on homelessness and bail refusal: 1) remand statistics in NSW and any trends in the remand figures; 2) the NSW bail legislation and its impact on homelessness; 3) court proceedings and the bail decision making process; 4) psychosocial factors impacting homelessness. These are provided below, followed by quantitative and qualitative methods employed in the current research.

1.1 Remand statistics

Of the 10,405 persons in custody in New South Wales as at 2 May 2010, 2,685 had been remanded in custody awaiting trial or sentence. This figure suggests that as a proportion of total prisoners, remand inmates account for approximately 25 per cent (CSNSW, 2010). Whilst Australian prison numbers increased by around 20 per cent between 1995 and 2005, remand figures increased by between 50 and 270 per cent depending on the state or territory of Australia (Bamford, King and Sarre, 2005).

In 2001, a study was completed to examine the judicial outcomes for the 912 remand inmates received in March 1999 in New South Wales (NSW). The study found that of the 912 inmates, 4 per cent were still on remand after one (1) year, 41 per cent were given a custodial sentence, and 56 per cent were discharged without a further custodial sentence (Thompson, 2001).

Of the total remand population in NSW, as at 30 June 2008, 607 persons (24.5 per cent) had been on remand for 0-1 month, 625 persons (25.2 per cent) had been on remand for 1- 3 months, 477 persons (19.3 per cent) had been on remand for 3 - 6 months, 266 persons (10.8 per cent) had been on remand for 6 - 9 months, and 499 persons (20.2 per cent) had been on remand for longer than 9 months (Corbin, 2009).

The NSW remand figures suggest the complexity of bail decisions, may be attributed to a diverse range of influences including: possible increases in the number of people appearing before court, changes in defendant characteristics (including the nature of offences) or court delays resulting in longer periods spent on remand (Sarre et al, 2006; Fitzgerald, 2000). Furthermore, the above changes may also be correlated with amendments to the *NSW Bail Act 1978*, which have removed the presumption in favour of bail for many defendants and placed restrictions upon the number of bail applications that can be made (King et al, 2005).

1.2 NSW bail legislation

In NSW, adult and juvenile bail decisions are regulated by the *Bail Act 1978*, which defines bail as "authorisation to be at liberty under this Act instead of in custody". Prior to the implementation of the *Bail Act 1978* in NSW, bail was governed by common law and as a general rule bail was considered the right of the defendant (Steel, 2009). Since the enactment of this legislation, the granting of bail falls under the jurisdiction of the Police and Courts (Simpson, 1997; Jarrods, 2002; Bamford et al., 1999).

The implementation of the *Bail Act 1978* resulted in significant changes to the bail decision making process, including the formulation of three primary categories regarding presumption about bail (Fitzgerald and Weatherburn, 2004). These categories included: (i) offences which had an entitlement to bail, (ii) offences which had a presumption in favour of bail and (iii) offences which had no presumption in favour

or against bail. In 1988, a fourth category was introduced for offences which attracted a presumption against bail (Simpson, 1997).

Between 1987 and 2008, 32 significant amendments were made to the *NSW Bail Act 1978* (Steel, 2009). These amendments resulted in restrictions to the presumption of bail for certain types of offences, and limited the number of bail applications able to be made by a defendant. Consequently, it has been argued that these changes have contributed to the increased remand population (Bamford et al, 1999; Booth and Townsley, 2009; Boyle, 2009; Fitzgerald and Weatherburn, 2004). Fitzgerald and Weatherburn (2004) illustrate this point by noting that after the implementation of the *Bail Amendment (repeat offenders) Act 2002*, there was an increase of 7 per cent in the bail refusal rate throughout NSW Criminal Courts.

The *NSW Bail Act 1978* (s.32) stipulates that before a defendant is able to be considered for bail, a number of matters must be taken into account. They are summarised as follows:

- (a) The probability that the defendant will appear in court in respect of the offence for which bail is being considered;
- (b) Interests of the defendant to be free to prepare for their next court appearance and for any other lawful purpose, or if they are in danger of physical injury or in need of physical protection, or any special needs of the person (i.e. they are under 18 years, Aboriginal or Torres Strait Islander or have an intellectual disability or mental illness);
 - (b1) Protection of the victims and their close relatives, or any other person the court deems to be in need of protection;
- (c) The protection and welfare of the community having regard to:
 - The nature and seriousness of the offence (in particular whether the offence is of a sexual or violent nature or involves the use of a weapon)
 - Failure or anticipated failure of the person to meet their bail conditions
 - Likelihood of the person interfering with evidence, witnesses or jurors
 - Likelihood of re-offence if granted bail, and
 - Whether the defendant was alleged to have committed the offence whilst subject to a period of conditional liberty in relation to any other serious offence.

In order for a determination to be made regarding bail, the court must give consideration to whether the above variables outweigh the defendant's general right to liberty. As mentioned previously, the bail decision making process may be described as complex, as there are various considerations that must be taken into account in order to safeguard the judicial process and also ensure the safety and general rights of the defendant, alleged victim/s and the wider community.

One of the key issues that may impact the outcome of a bail application is whether a defendant has suitable housing. If the defendant is no longer able to reside at his/her usual residence due to the nature of offence, is living in temporary housing, or has no accommodation at all, then this is something the court may take into consideration when determining bail. Defendants in these circumstances would be described as 'homeless', in accordance with the Australian Bureau of Statistics (Chamberlain, 1999) definition:

1. **Primary homelessness:** people without conventional accommodation such as those who 'sleep out', or use derelict buildings, cars, railway stations for shelter.
2. **Secondary homelessness:** people who frequently move from temporary accommodation such as emergency accommodation, refuges, and temporary shelters. People may use boarding houses or family accommodation just on a temporary basis.
3. **Tertiary homelessness:** people who live in rooming houses, boarding houses on medium or long-term where they do not have their own bathroom and kitchen facilities and tenure is not secured by a lease.
4. **Marginal Homelessness:** people who are marginally housed: people in housing situations close to the minimum standard.

For the purposes of this research, the term 'homeless' will refer to **primary, secondary, or tertiary** homelessness only. In terms of the legislation, while homelessness is not an explicit bail consideration, it may be taken into account under S. 32 (a) of the *Bail Act 1978*. This section requires the court to consider whether the defendant is likely to reappear in court, based on their background and community ties including residence, employment, familial relations and prior criminal history.

The NSW *Bail Act 1978* (s.32) defines community ties for non Aboriginal or Torres Strait Islander defendants by “the history and details of the person’s residence, employment and family situations and the person’s criminal record (if known)”. Or, in the case of Aboriginal or Torres Strait Islander defendants, community ties are defined “by the person’s ties to extended family and kinship and other traditional ties to place and the person’s prior criminal record (if known)”. For the purposes of this study, community ties will be defined in accordance with the above definitions.

Consequently, if a defendant has a history of homelessness, this may be regarded as a factor that negatively impacts their likelihood of reappearing in court and bail may be refused on these grounds rather than the specific fact they are ‘homeless’.

Given the nature of the amendments to the *Bail Act 1978*, it would appear there has been a shift in the overall aim of bail towards protecting the community rather than simply ensuring attendance at court (Steel, 2009; Booth and Townsley, 2009). However, remand in custody outcomes are a result of the “complex interweaving of legislative provisions and interpretations by magistrates and other actors in the process” (Bamford, King and Sarre, 1999: p xiii).

1.3 Overview of the bail decision making process

There is significant literature regarding the process of bail consideration and in particular arguments for and against bail, duration of hearings and restrictions on bail applications (Bamford, King and Sarre, 1999; Hucklesby, 1997). This literature is crucial to understanding the bail decision making process and the technical variables that may impact the outcome of bail hearings. This section highlights some of the key inter-jurisdictional issues impacting the bail decision making process.

Arguments for and against bail

In an observational study of Magistrates courts in the United Kingdom, Hucklesby (1997) found that police prosecution did not oppose bail in approximately 85 per cent of cases and in the other 15 per cent the defendant did not challenge the prosecution argument. It was noted that in “only 9 per cent of all cases observed was the outcome of the remand hearing contested in court” (p271). Bamford, King and Sarre (1999) also make reference to the Cobden Trust research in the United Kingdom, which found that “imprisonment has occurred without any discussion about bail having taken place in court” (p15). This finding was similar to that of a West Australian study, which found that of 648 defendants observed in the Magistrate Courts, 12 per cent of these were remanded in custody “without bail being debated or discussed in court” (Allan, Allan, Giles, Drake, Froyland, 2005: p329).

Duration of bail hearing

Research has indicated that bail consideration hearings in Australia and the United Kingdom are of typically short duration (Armstrong, 1977; King, 1971; Zander, 1979). An Australian study conducted by Armstrong (1977) revealed that the majority of bail hearings were less than two minutes in duration. The Cobden Trust study found that approximately 80 per cent of hearings in the United Kingdom were of less than 5 minutes duration, with the average being three minutes (King, 1971). These findings were replicated in Zander’s (1979) study of London Magistrates Courts, which revealed that 86 per cent of hearings lasted less than five minutes. It has been argued that the brevity of bail hearings raises concerns as to whether the bail decision is based on what happens in court, or what has transpired outside of the courtroom (Bamford, King and Sarre, 1999).

Restrictions on bail applications

The legislation governing the respective jurisdiction has the capacity to influence the number of applications for bail. As previously outlined, the NSW *Bail Act 1978* was amended by the *Bail Amendment Bill 2007*, which placed additional restrictions on the number of times a defendant may apply for bail (Booth and Townsley, 2009). The NSW *Bail Act 1978* (s22A) now limits a defendant to one bail application in any court with respect to an offence unless the person was not legally represented at their first hearing (and they now have representation) or the court is satisfied that new facts or circumstances have arisen since the previous application (Booth and Townsley, 2009).

The abovementioned changes have been introduced to prevent “magistrate shopping” and to “guard against repetitive bail applications that have no chance of success and can greatly disturb the victim and induce worry and anxiety at the prospect of the defendant’s release” (New South Wales Legislative Council, 2007: p2669). Irrespective, this provision may make a defendant cautious to submit a bail

application until their legal representation has all available information to put forward a strong argument on their behalf.

1.4 Factors impacting homelessness and bail refusal

Criminological research indicates homeless defendants are more likely to be imprisoned than those with housing (Baldry, 2007; Kellough and Wortley, 2002). A UK study by Morgan (1998), identified homelessness as the largest predictor of offending on bail, with 42 per cent of defendants bailed between 1993 and 1994 with no fixed place of abode, re-offending during their bail period. A recent Australian study conducted by the Youth Justice Coalition (YJC), indicated that the Parramatta Children's Court may have up to 50 incidents per year of "homeless young people being held in remand despite the magistrate granting them conditional bail" (in Boyle, 2009: p61). The relationship between bail refusal and homelessness extends to juvenile offenders as well as adults (see also Vignaendra, Moffat, Weatherburn and Heller, 2009). Whilst it is not the purpose of this study to explore juvenile justice issues, this relationship is still worth noting in order to highlight the complexity and extent of the issue.

In 2002, the Deputy Chief Magistrate of the Magistrates' Court of Victoria, Jelena Popovic stated that "it is a truism that the day-to-day life of a homeless person is often chaotic, unstructured, and can be taken up largely with essentials such as: where the next meal is coming from, obtaining drugs (for drug dependant people), obtaining money, obtaining shelter and a place to sleep for the night" (Popovic, 2002: p1). She noted that if a person has no address, they are unable to access social security benefits, are unable to be assigned to a local area mental health facility or access many drug treatment services (Popovic, 2002). Given the chaotic nature of a homeless person's life and the fact their basic needs are not met, they may have an increased likelihood of failing to attend court appearances or committing further offences to survive on the streets.

While homelessness may be considered a significant barrier to obtaining bail, there is limited empirical research into the other factors that might affect remand rates for Australia. Bamford, King and Sarre (1999) confirmed a correlation between problematic substance use, mental health issues, lack of community support and homelessness; all of which may impact an individual's ability to obtain and successfully complete a bail period.

Mental health and homelessness

Mental health issues have been identified as a common feature of homelessness (Bamford, King and Sarre, 2005; Jones and Crawford, 2007). In a 2005 study, Bamford, King and Sarre observed a number of general remand characteristics, some of which included a large proportion of female remandees, continued overrepresentation of Indigenous Australians and a lower average age for remand inmates as opposed to sentenced inmates. However, they identified mental health as being of particular concern:

"Mentally ill defendants present bail authorities with treatment issues and require the justice system to interact with mental health services. The lack of such services may lead, in some cases, to defendants who would more appropriately be placed within a therapeutic environment being placed in custody. Some bail decision-makers suggested that, on occasion, such defendants were remanded in custody because there was a better prospect of defendants accessing some form of treatment than if they were released on bail. Even if they would otherwise be granted bail, many of these defendants lack stable accommodation and the resources to ensure that they will attend court as required." (Bamford, King and Sarre: 2005: p96)

The nexus of mental illness and bail refusal is complex, and may be exacerbated by a number of factors such as lack of available community support services, treatment and appropriate housing. A comparison may also be drawn between defendants with mental health issues and those with substance use issues. It has been suggested that in some cases, "the needs of these defendants create a risk to the community, and bail decision makers feel unable to grant bail without a secure facility to provide care for them" (Bamford, King and Sarre, 2005: p110). One of the most significant issues impacting bail refusals is the lack of appropriate services and secure housing facilities within the community; thereby creating few viable alternatives to custody.

1.5 Indigenous Australians and bail refusal

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) revealed 30 per cent of the 99 deaths in custody involved unconvicted persons held in prison on remand. It was recommended “*wherever possible, discretion should be exercised to ensure that Aboriginal people are not incarcerated*” (Schwartz, 2005: p18). In 2001, the Aboriginal Justice Advisory Committee (AJAC) reviewed the legislation that governs bail in NSW, and examined the implications of this for Aboriginal defendants (Schwartz, 2005). One of the key criticisms of the current *NSW Bail Act 1978* is that it provides for monetary bail conditions, which arguably disadvantage Aboriginal persons from low socioeconomic households and hence, restrict their access to release on bail (Schwartz, 2005). The 2001 AJAC report found that:

“Monetary bail conditions were overwhelmingly employed. One court required financial security in 92 per cent of cases where bail was granted. The court was situated in a location where more than half of the Aboriginal residents have an income of less than \$300 per week. Despite this, the court routinely required bail sureties of up to \$5000, and in one case, demanded a \$1000 surety for a 17 year old defendant accused of offensive language.” (Schwartz, 2005: p18)

In 2002, the *NSW Bail Act 1978* was amended to take into account the special needs of Aboriginal people who are mentally ill or who have an intellectual disability (Booth and Townsley, 2009; Fitzgerald and Weatherburn, 2004). As such, the current NSW bail legislation provides that “financial [bail] conditions should only be imposed if no other conditions are likely to promote effective law enforcement, to protect the community and affected persons or to promote the rehabilitation of the accused” (Booth and Townsley, 2009: p45).

Another consideration in the granting of bail for Aboriginal defendants is their “ties to extended family and kinship and other traditional ties to place” (s32A *NSW Bail Act 1978*). This is particularly pertinent given that strong community ties have been correlated with an increased likelihood of a defendant re-appearing in court (Booth and Townsley, 2009). Notably, Schwartz (2005: p19) provided a case study of a Bail Justice in north-western NSW who instituted a practice of “ensuring that a defendant’s family be present at bail determinations to discuss with them what bail conditions would be appropriate and what they could do to ensure the accused’s compliance”. The court recorded few breaches of bail conditions during the period this practice was implemented. Schwartz (2005: p19) postulated that “as in all areas of the criminal law, measures are most fair and effective when they have been formulated with involvement and sanction from the community, and when they are appropriate to the specific circumstances of Aboriginal defendants”.

1.6 Remand and recidivism

Criminological research suggests that for many defendants, early diversion from the criminal justice system reduces the likelihood of their involvement in later years (Bamford, King and Sarre, 2005). The potential development of anti-social associations within a correctional centre is often seen as detrimental to new or less serious offenders who are often exposed to more long term or serious offenders. Vieraitis et al. (2007) suggested that the deleterious effects of imprisonment increase as the length of time served increases.

Further, the significant social and economic challenges that an ex-prisoner faces following release significantly increases their risk of homelessness and/or recidivism (Hartley 2008), hence their entanglement within the criminal justice system continues. Thompson (2001) argued that while many defendants are remanded into custody due to an inability to access the services they need. If appropriate housing and support was available, defendants may be more likely to complete their bail period successfully while being diverted from incarceration.

2. PROPOSED RESEARCH

With remand figures increasing in New South Wales, there is a growing interest in exploring opportunities that could assist in reducing the number of homeless defendants refused bail or granted bail but unable to meet the conditions of their bail. The lack of suitable and stable housing may be a significant contributor to refusal of bail or inability to meet bail conditions. However, there is a paucity of criminological research regarding the impact of homelessness on increasing remand figures, the reasons for refusing bail and whether homelessness has an impact on court decisions to refuse bail.

There is currently no empirical data in NSW which examines the proportion of people refused bail where homelessness was a factor. The current study is intended to identify the proportion of people refused bail where unstable housing or homelessness was an issue, and to develop a profile of the target group which will include exploration of the characteristics and needs of those remanded.

The overall aim of the current study is to examine the impact of homelessness on bail refusal in New South Wales. Specific objectives of the study are as follows:

- To identify factors that contributed to bail refusal in New South Wales.
- To provide number and percentage of people refused bail where homelessness was a factor.
- To identify characteristics of people refused bail in New South Wales including those where homelessness was a factor.
- To conduct a needs assessment of people who have a history of homelessness and bail refusal, in order to determine if known programs address the needs of this target group.

The specific study questions are:

- What are the characteristics of people refused bail in New South Wales?
- Is homelessness a factor in bail refusal in New South Wales?
- What are the characteristics and needs of people refused bail in New South Wales, where homelessness was a factor?
- What are the best mechanisms or strategies for addressing the needs of people refused bail where homelessness was a factor?

2.1 Methodology

This study employed a multi-method research design to explore the role of homelessness in bail refusal, including a: (i) literature review; (ii) retrospective analysis of data pertaining to people remanded to custody between September and November 2009; (iii) semi-structured interviews with remandees and judicial members; (iv) case studies; and (v) bail court observations. A description of the data analysis methodology and the results are provided below.

3. RETROSPECTIVE DATA ANALYSIS

3.1 Aim and methodology

Aim

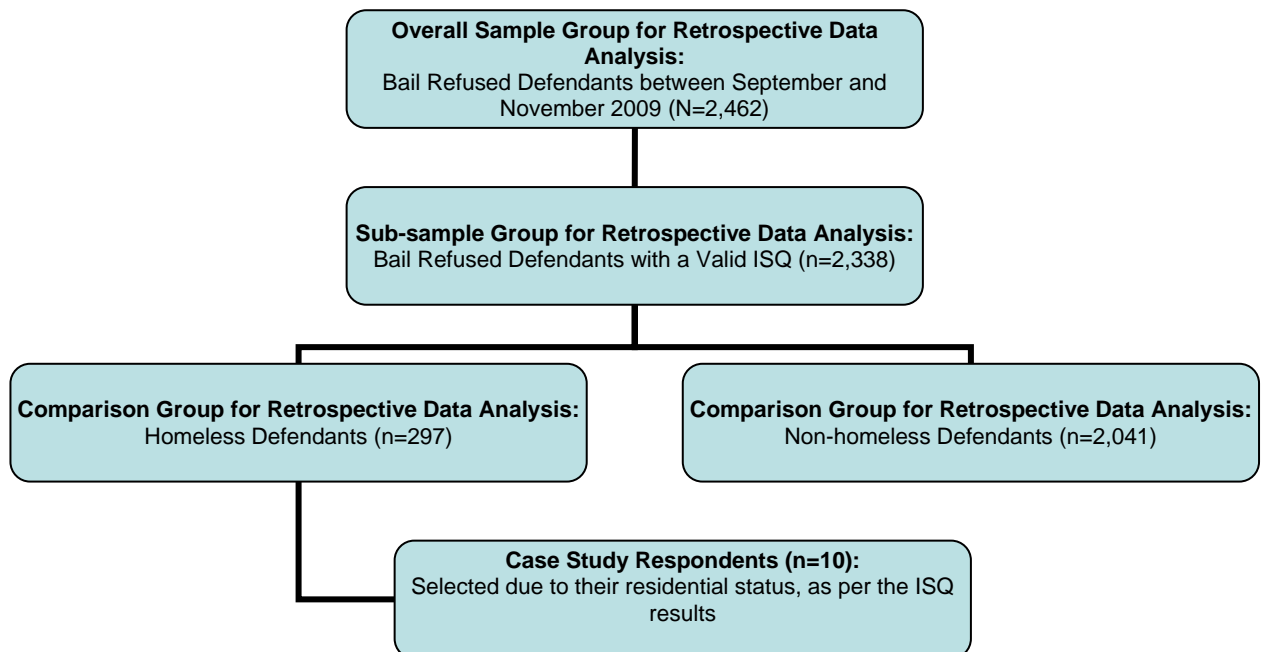
Retrospective data analysis was used to provide demographic and offence characteristics of people refused bail in New South Wales, including those who were homeless at the time of remand and those who were not.

Study sample

As shown in **Figure 1**, the overall study sample comprised of all defendants remanded to custody in NSW between September and November 2009 (n=2,462), which was identified using the CSNSW Offender Integrated Management System (OIMS) database. This timeframe was considered to provide a sufficient sample size by which to identify general demographic and offence characteristics of bail refused defendants.

The total sample was further refined to include defendants with a valid Intake Screening Questionnaire (ISQ) (n=2,338). This is a document completed for all inmates upon reception into custody, and contains information regarding their psycho-social needs, including residential status at the time of reception into custody. Using information contained in the ISQ, the sample was divided into homeless (n=297) and non-homeless defendants (n=2,041). This allowed for a comparison of demographic characteristics by residential status of defendants.

Figure 1 Overview of sample group selection process



Measures

The following information was obtained from OIMS in order to illustrate the characteristics of the sample population:

- Demographics
 - Gender
 - Age
 - Family characteristics and connection with family
 - Education
 - Employment history
 - Aboriginal or Torres Strait Islander status
 - Mental health status at reception
 - Alcohol and Other Drug issues at reception
 - Intellectual Disability status
 - Residential status at reception

- Details of Most Serious Offence
 - Court Location
 - Most serious offence type
 - Length of time on remand (if completed)
 - Prior involvement with Corrective Services NSW
 - Other information related to bail consideration

Procedure

Basic demographic characteristics were provided for the overall sample group. A comparison of defendants' demographic and offence characteristics was then conducted by residential status (homeless vs. non-homeless).

Data analysis

Chi-square test was used to assess differences in the frequency of demographic characteristics between the sub-samples of homeless and non-homeless defendants. More complex statistical analysis was beyond the scope of the current study and not required.

3.2 Results

The retrospective data analysis provided demographic characteristics for the overall sample of 2,462 defendants refused bail between September and November 2009 (refer to Overall Defendant Snapshot). Further analyses were then carried out on the sub-sample of defendants with a valid ISQ (n=2,338), to enable a comparison between the psychosocial characteristics of homeless (n=297) and non-homeless defendants (n=2,041) (refer to Comparison of Homeless and Non-homeless Defendants). Notably, the offence characteristics were only available for 2,211 defendants, which comprises of 258 homeless (39 or 13.1 per cent missing) and 2,032 non-homeless (9 or 0.5 per cent missing).

3.2.1 Overall defendant snapshot

Characteristics of all defendants refused bail between September and November 2010 (n=2,462) are provided below.

Demographic characteristics

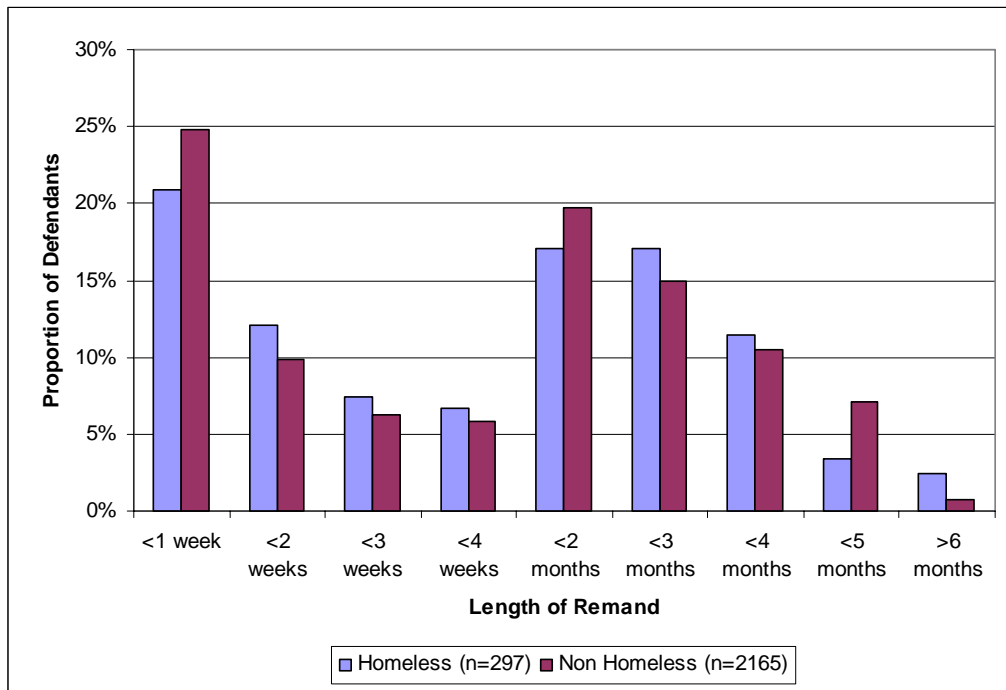
Between September and November 2009, there were 2,462 defendants remanded in custody in New South Wales correctional centres. Of this population (n=2,462), 269 were female (10.9 per cent), 2,186 (88.8 per cent) were male and 7 (0.3 per cent) were unknown. There were 590 Aboriginal or Torres Strait Islander (ATSI) defendants (24 per cent). The age groups with the largest representation among defendants on remand were 20-24 years of age with 482 out of 2,462 defendants (19.6 per cent) and 25-29 years of age with 473 defendants (19.2 per cent).

Length of remand

As shown in **Figure 2**, of the total sample of defendants (n=2,462) remanded in custody between September and November 2009, the largest proportion of homeless (62 of 297 or 20.9 per cent) and non-homeless (538 of 2165 or 24.8 per cent) defendants, including 124 defendants whose residential status were missing, were released within seven days of their remand.

The next most common length of remand for homeless and non-homeless defendants was 1 to 2 months (52 or 17.1 per cent and 433 or 19.7 per cent, respectively), followed by 2 to 3 months for both homeless and non-homeless defendants (52 or 17.1 per cent and 319 or 15 per cent, respectively). There were 7 (2.4 per cent) homeless defendants and 20 (0.7 per cent) non-homeless defendants remanded for 155 days or longer.

Figure 2 Proportion of defendants remanded in custody between September and November 2009 by length of time on remand and residential status (N=2,462)



Source: CSNSW Corporate Research, Evaluation & Statistics

* Includes 124 defendants whose information on residential status were missing

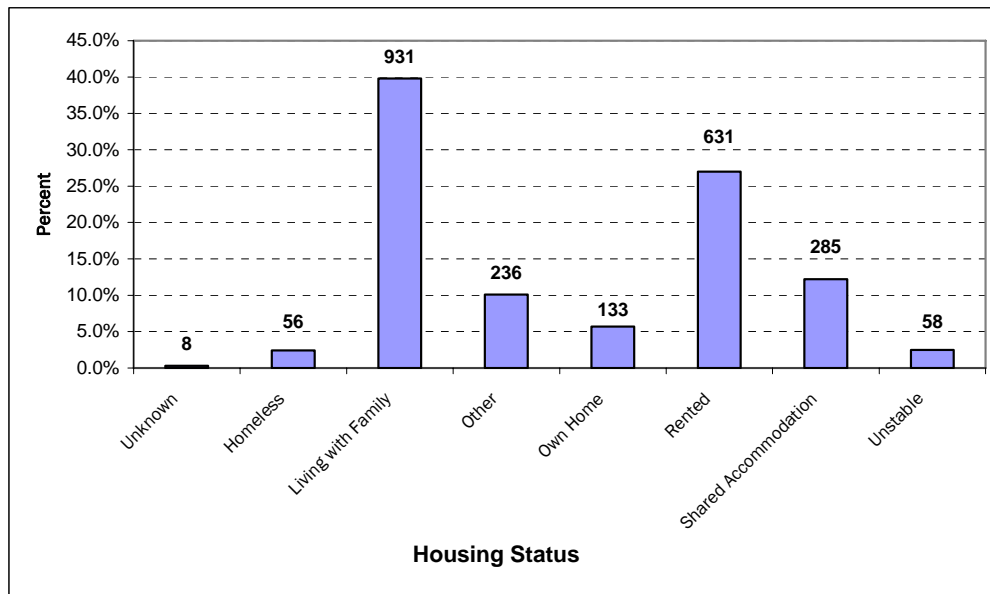
3.2.2 Comparison of defendants by residential status

This section provides a snapshot of the demographic characteristics of all defendants refused bail between September and November 2009 who had a valid ISQ (n=2,338) score electronically on CSNSW OIMS database.

Residential status

The majority of defendants reported stable housing. As shown in **Figure 3**, of the defendants refused bail between September and November 2009 with a valid ISQ (n=2,338), the housing status with the highest representation was living with family with 931 (39.8 per cent), followed by those in rental accommodation with 631 (27 per cent). The total homeless defendants were 56 (2.4 per cent) and there were 58 (2.5 per cent) defendants with unstable housing. The 'other' category was manually sorted to identify the total number of homeless defendants. The defendants residing in Housing NSW accommodation or those incorrectly included in this category were removed from this list. As a result, there were 183 (7.8 per cent) homeless defendants within the other category. This resulted in a total of 297 (12.7 per cent) homeless defendants with a valid ISQ (n=2,338).

Figure 3 Proportion of defendants refused bail between September and November 2009 by residential status (n=2,338)



Source: CSNSW Corporate Research, Evaluation & Statistics

Of the defendants refused bail between September and November 2009 with a valid ISQ (n=2,338), 8 per cent were in receipt of housing assistance from Housing NSW (n=163). There was missing data for 1 defendant out of the total 2,338. Given the ISQ did not differentiate between those in long-term Housing NSW accommodation and those in short-term tenures, the stability of the defendants' accommodation was unknown. For the purposes of this study, they were not regarded as homeless. However, it should be noted that:

"If a [Housing NSW] tenant is going into prison, or is an Accord client who is participating in a rehabilitation program, they can apply to retain the tenancy for up to three months. However, if Housing NSW is reasonably satisfied that the imprisonment will be in excess of three months, Housing NSW can ask the tenant to relinquish the tenancy immediately.

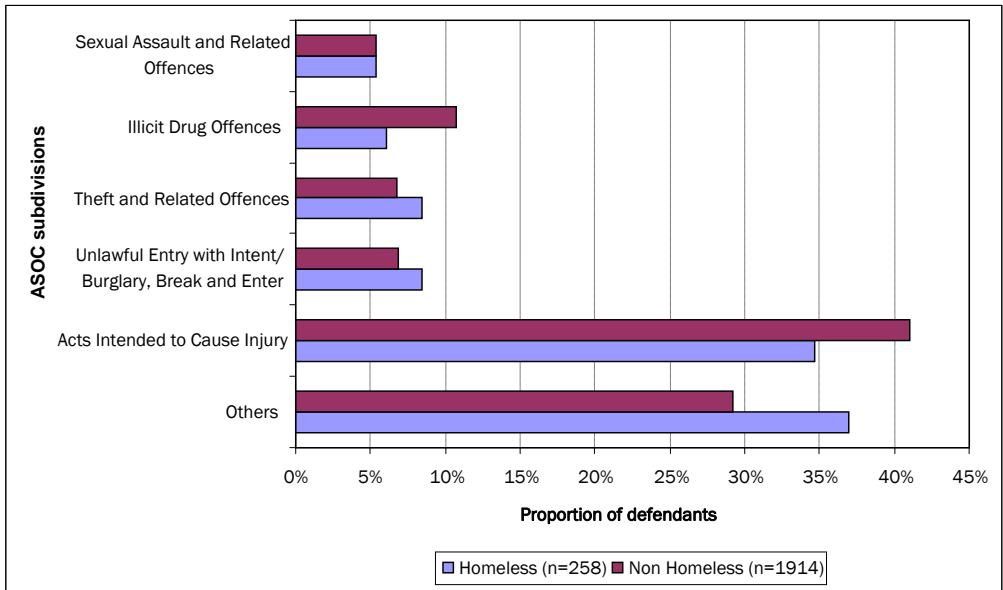
Housing NSW will consider each case on its merits. However, if the reason for imprisonment is related to a breach of the tenancy agreement, Housing NSW will take action to terminate the tenancy. If the tenant has not been released from prison at the end of three months, Housing NSW will consider an application for succession of tenancy from a remaining household member, or terminate the tenancy." (Housing NSW, 2010)

Given the above Housing NSW policy and contingent upon whether the judicial outcome is a sentence greater than three months, there may be defendants who become homeless due to their incarceration.

Most serious offence (MSO) characteristics

The Most Serious Offence (MSO) is determined in accordance with the National Offence Index (NOI); an Australian offence severity scale. As shown in **Figure 4**, the most common MSO for defendants, according to Australian Standard Offence Classification (ASOC) division codes, was Acts Intended to Cause Injury with 103 charges (34.7 per cent) for homeless defendants and 784 (41 per cent) charges for non-homeless defendants. The second most represented ASOC Division amongst homeless defendants was Theft and Related Offences (25 or 8.4 per cent) and Unlawful Entry with Intent/ Burglary and Break and Enter (25 or 8.4 per cent). The second most represented ASOC Division amongst non-homeless defendants was Illicit Drug Offences (204 or 10.7 per cent) followed by Unlawful Entry with Intent/ Burglary and Break and Enter (132 or 6.9 per cent). There were 39 (13.1 per cent) and 9 (0.5 per cent) missing data for homeless and non-homeless defendants, respectively.

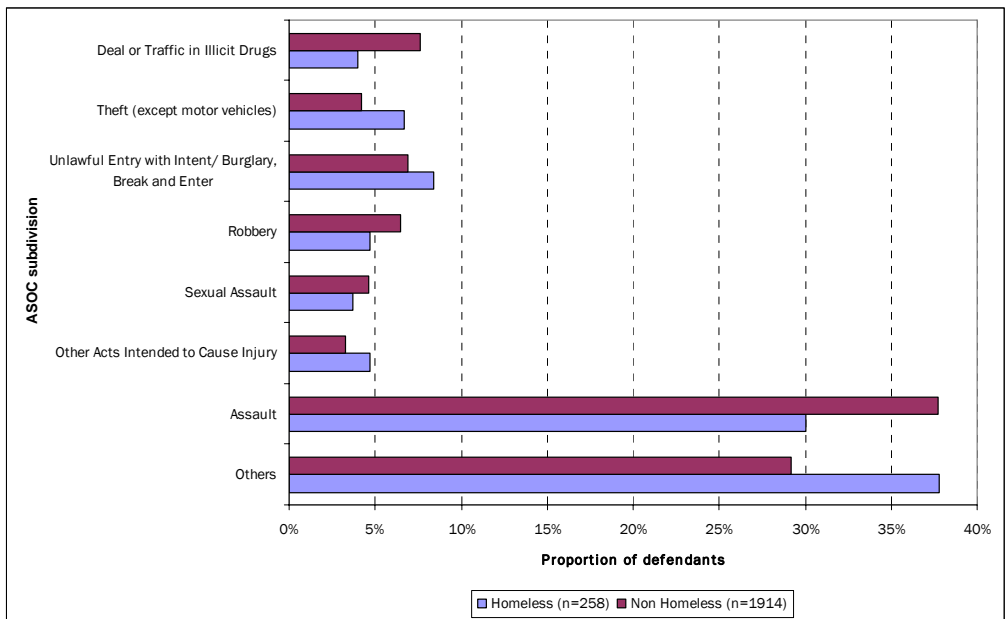
Figure 4 Proportion of the five (5) most represented ASOC divisions for defendants remanded in custody between September and November 2009 by residential status (n=2172)



Source: CSNSW Corporate Research, Evaluation & Statistics

As shown in **Figure 5**, of the charges received by defendants refused bail between September and November 2009, the most common according to ASOC subdivision codes was Assault with 89 homeless defendants (30 per cent) and 721 non-homeless defendants (37.7 per cent). This was followed by Unlawful Entry with Intent/ Burglary, Break and Enter with 25 homeless defendants (8.4 per cent) and Deal or Traffic in Illicit Drugs with 146 non-homeless defendants (7.6 per cent). There were 39 missing data for homeless defendants (13.1 per cent) and 9 for non-homeless defendants (0.5 per cent).

Figure 5 Proportion of the five (5) most represented ASOC subdivisions for defendants remanded in custody between September and November 2009 by residential status

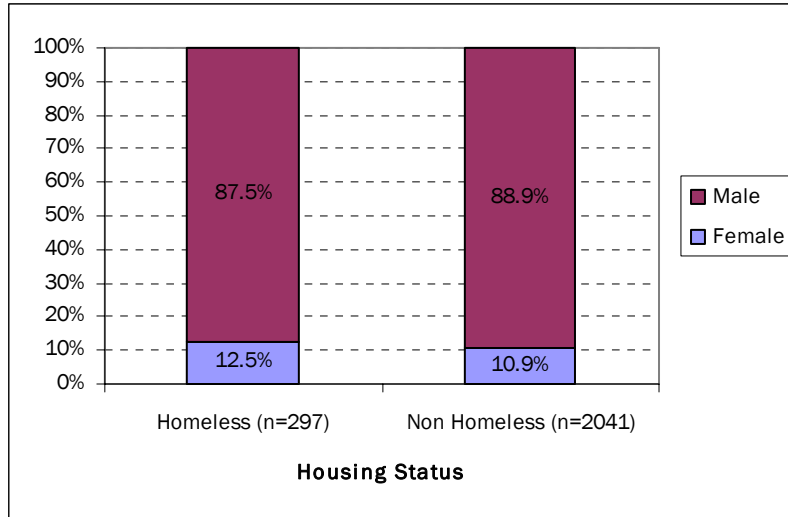


Source: CSNSW Corporate Research, Evaluation & Statistics

Gender

Statistical tests failed to detect a significant difference between the proportion of male and female defendants between the homeless and non-homeless sub-samples. As shown in **Figure 6**, there were 10.9 per cent females (n=269) and 88.9 per cent males (n=2,186) and 0.3 per cent unknown (n=7) in the non-homeless sub-sample. Of the defendants with a recorded history of homelessness or unstable housing, there were 12.5 per cent females (n=37) and 10.9 per cent males (n=260), with missing data for 0.02 per cent of defendants (n=6).

Figure 6 Proportion of defendants refused bail between September and November 2009 by gender and residential status (n=2,338)

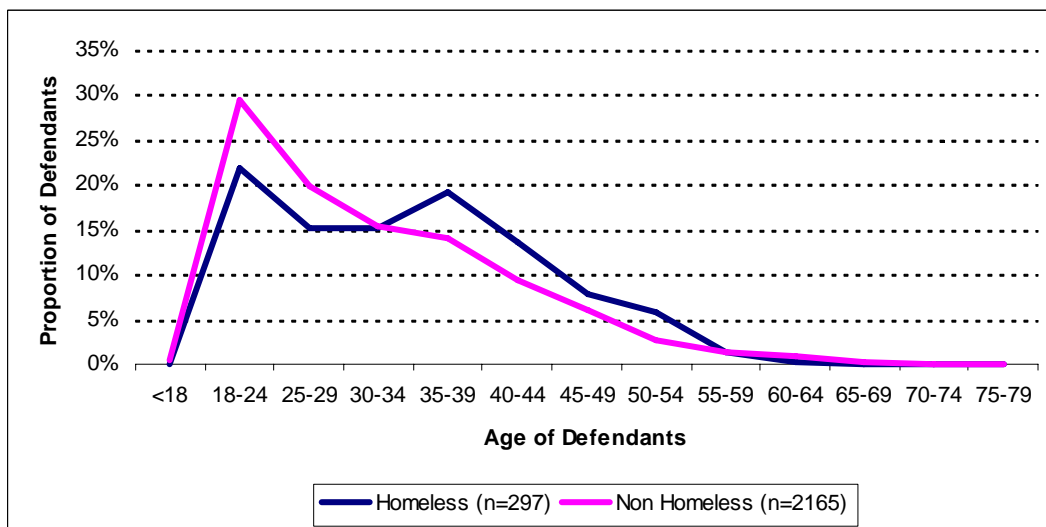


Source: CSNSW Corporate Research, Evaluation & Statistics

Age

As shown in **Figure 7**, the age group with the largest representation among homeless defendants on remand was 20-24 years of age with 21.9 per cent of defendants (65 of 297) followed by the age group 35-39 with 19.2 per cent of 57 defendants (57 of 297). The specific ages with the largest representation among homeless bail refused defendants were 35 (14 or 4.7 per cent) and 38 (14 or 4.7 per cent). The age group with the largest representation among non-homeless defendants on remand was 18-24 years of age with 29.5 per cent of defendants (638 of 2,165) followed by the age group 25-29 with 19.8 per cent of defendants (428 of 2,165). The specific ages with the largest representation among non-homeless bail refused defendants were 18 (107 or 4.9 per cent) and 24 (98 or 4.5 per cent).

Figure 7 Number of defendants refused bail between September and November 2009 by age and residential status (n=2,462)



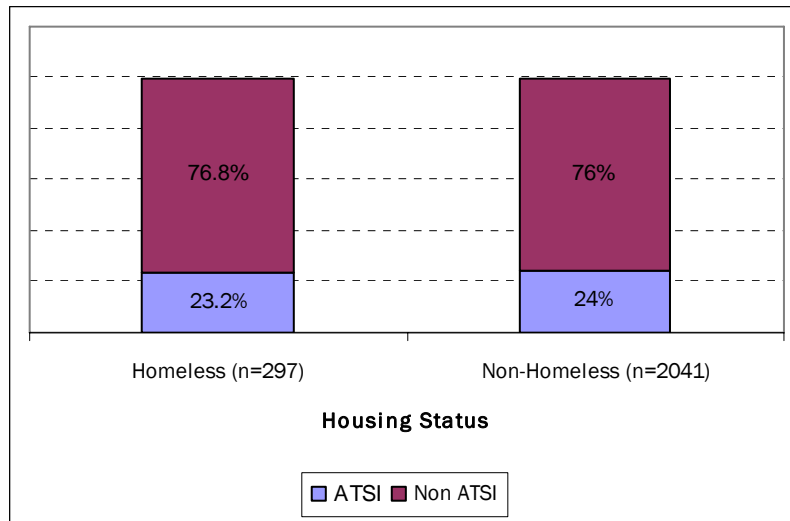
Source: CSNSW Corporate Research, Evaluation & Statistics

* Includes 124 defendants whose information on residential status were missing

Aboriginal and Torres Strait status

Statistical tests failed to detect a significant difference in the proportion of Aboriginal and Torres Strait Islander (ATSI) defendants between the homeless and non-homeless sub-samples. As shown in **Figure 8**, 23.2 per cent of homeless persons identified themselves as Aboriginal or Torres Strait Islander (n=69) compared to 24 per cent of non-homeless defendants (n=491). There was missing data for one defendant out of a total 2,338 offenders with a valid ISQ.

Figure 8 Proportion of defendants refused bail between September and November 2009 by ATSI and residential status (n=2,338)

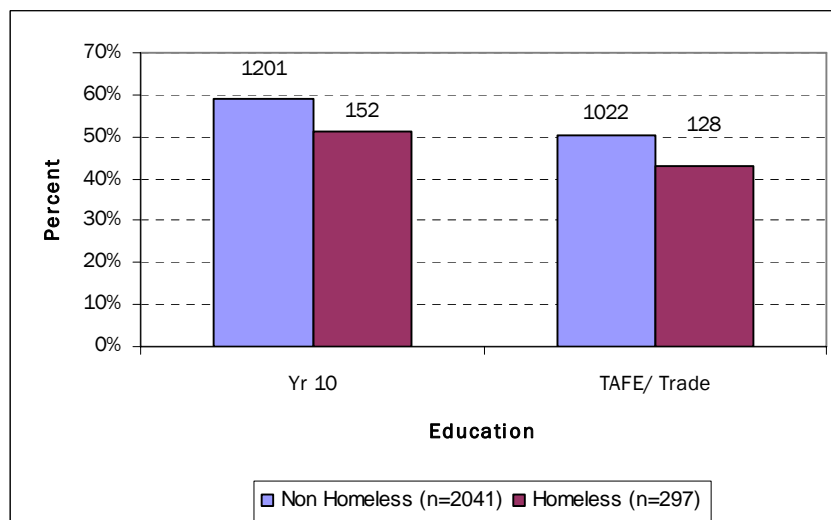


Source: CSNSW Corporate Research, Evaluation & Statistics

Education attainment

Significantly more defendants in the non-homeless category reported having completed Year 10 or equivalent ($\chi^2 = 5.827$, $df=1$, $p<0.05$) and as having completed a TAFE or trade qualification ($\chi^2 = 10.090$, $df=1$, $p<0.001$). As shown in **Figure 9**, 58.8 per cent of non-homeless defendants reported having completed Year 10 (n=1,201) and 50 per cent reported having completed a TAFE or trade qualification (n=1,022). This was in contrast to homeless defendants with 51.2 per cent reporting having completed Year 10 (n=152) and 43.1 per cent reporting having completed a trade or TAFE qualification (n=128). There was missing data for 4 defendants out of a total 2,338.

Figure 9: Proportion of defendants refused bail between September and November 2009 who reported having completed a trade, TAFE, Yr 10 or equivalent by residential status (n=2,338)



Source: CSNSW Corporate Research, Evaluation & Statistics

Statistical tests failed to detect a significant difference between the proportion of homeless and non-homeless defendants who reported that their level of reading or writing prevented them from finding a job or pursuing further study. There was a slightly higher proportion of homeless defendants (12.1 per cent or 36) compared to non-homeless defendants (10.2 per cent or 209) who considered their level of reading or writing to prevent them from finding a job or pursuing further study. Of this group, there were missing data for 2 defendants of a total 2,338 defendants with a valid ISQ.

Specialised supported accommodation

Of the 297 homeless persons in the valid study sample, there were 8 (2.7 per cent) homeless persons living in specialised supported accommodation for a disability and 8 (2.7 per cent) living in specialised supported accommodation for mental health issues. The rate of non-homeless persons living in supported accommodation for a disability or mental health issues was lower, with 2 (0.04 per cent) and 1 of 2041 non-homeless person (0.1 per cent), respectively.

Social support

Significantly more defendants in the non-homeless category reported having no family support whilst in custody ($\chi^2 = 120.496$, $df=1$, $p<0.001$). As the results showed, 13.8 per cent of non-homeless defendants reported being without family support ($n=282$) compared to 39.4 per cent of homeless defendants ($n=117$, with missing data for 3 defendants of a total 2,338 defendants).

Significantly more defendants in the homeless category reported having no support at all whilst in custody ($\chi^2 = 5.255$, $df=1$, $p<0.05$). Of the defendants with no family support (399 or 17.1 per cent), there was a higher proportion of homeless defendants (27 or 9.1 per cent) than non-homeless defendants (182 or 8.9 per cent) without any support at all.

Finances

Significantly more defendants in the homeless category reported being in receipt of Centrelink benefits ($\chi^2 = 6.760$, $df=1$, $p<0.01$). There was a higher proportion of homeless defendants (74.7 per cent or 222) compared to non-homeless defendants (67.2 per cent or 1,372) in receipt of Centrelink benefits prior to being remanded in custody, with missing data for 3 defendants of a total of 2,338 defendants.

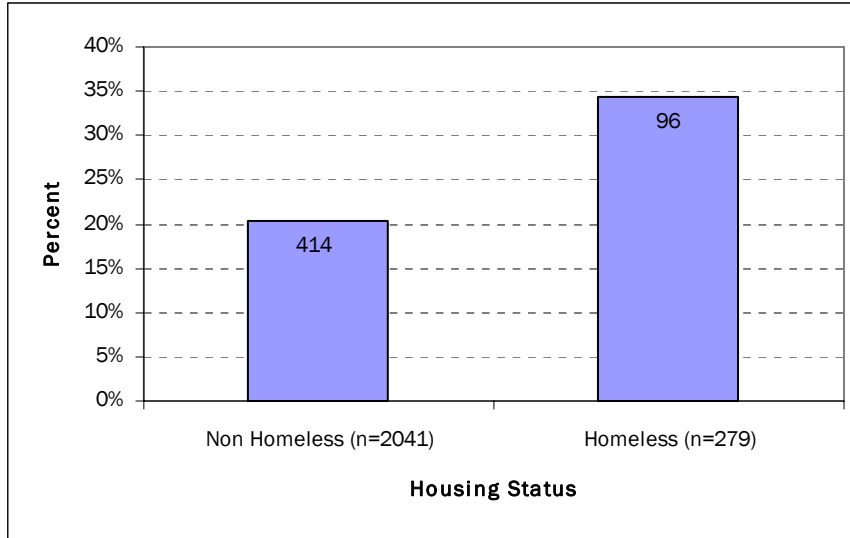
Mental health

Significantly more defendants in the homeless category reported having had previously been treated or medicated for a mental health issue ($\chi^2 = 34.105$, $df=1$, $p<0.001$). The findings indicated, 46.1 per cent of homeless defendants ($n=137$) compared to 36.3 per cent of non-homeless defendants ($n=741$), reported having been treated or medicated for a mental health issue, with missing data for 2 defendants of a total of 2,338 defendants.

Statistical tests failed to detect a significant difference between the proportion of homeless and non-homeless defendants who had experienced major changes or incidents in their lives in the 12 months prior to being remanded in custody. The results have shown that, 42.8 per cent of homeless defendants ($n=127$) and 39 per cent of non-homeless defendants ($n=796$) reported having experienced major changes or incidents in their lives in the 12 months prior to being remanded in custody, with missing data for 2 defendants of a total of 2,338 defendants.

Significantly more defendants in the homeless category reported a previous self-harm attempt ($\chi^2 = 23.383$, $df=1$, $p<0.001$). As shown in **Figure 10**, 32.3 per cent of homeless defendants ($n=96$) compared to 20.3 per cent of non-homeless defendants ($n=414$) reported a previous self-harm attempt, with missing data for 24 defendants of a total of 2,338 defendants.

Figure 10: Proportion of defendants refused bail between September and November 2009 with a previous self-harm attempt by residential status (n=2,338)*



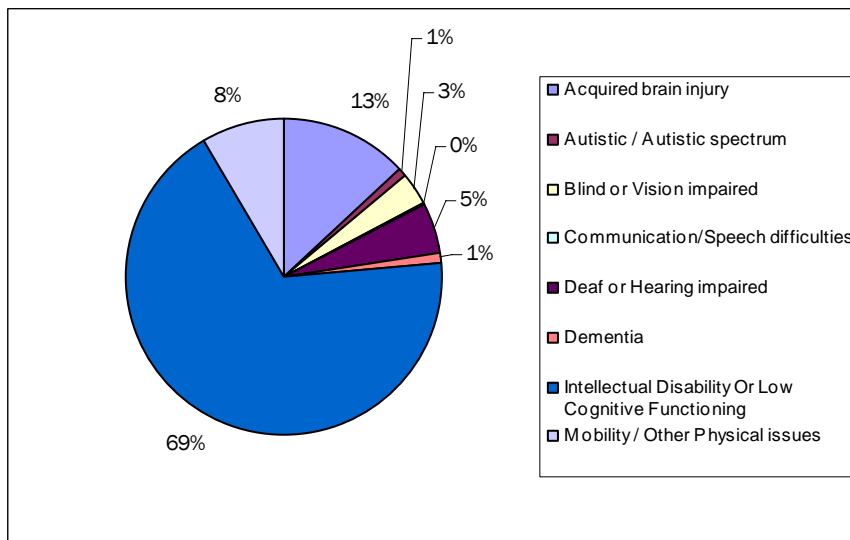
Source: CSNSW Corporate Research, Evaluation & Statistics
 * There were missing data for 24 defendants of the total of 2,338 defendants.

Disability

Significantly more defendants in the homeless category reported having been in receipt of the disability support pension ($\chi^2 = 45.592$, $df=1$, $p<0.001$). There were more than double the proportion of homeless defendants (26.9 per cent or 75) compared to non-homeless defendants (11.4 per cent or 233) in receipt of the Disability Support Pension, with missing data for 2 defendants of a total of 2,338 defendants.

As shown in **Figure 11**, of the defendants referred to CSNSW Statewide Disability Services and refused bail between September and November 2009 (n=474), the highest representation of disability was related to intellectual or low cognitive functioning with 68 per cent of defendants (n=322) followed by acquired brain injury with 13.1 per cent of defendants (n=62).

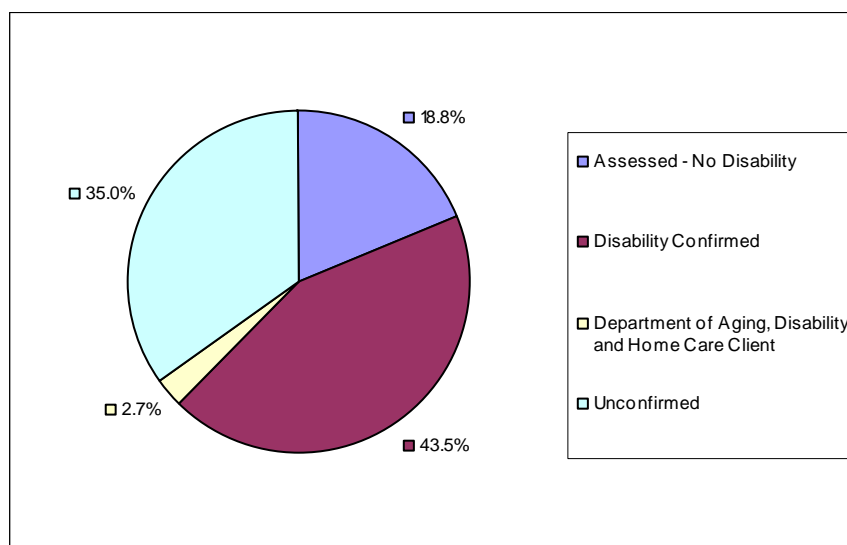
Figure 11: Proportion of disabled defendants refused bail between September and November 2009 by disability referral type (n=474)



Source: CSNSW Corporate Research, Evaluation & Statistics

As shown in **Figure 12**, of the defendants referred for a disability assessment and refused bail between September and November 2009 (n=474), 43.5 per cent had their disability confirmed (n=206) and 18.8 per cent were assessed as not having a disability (n=89). Notably, 1.5 per cent (n=7) of defendants were participants in the Department of Aging, Disability and Home Care (DADHC) Criminal Justice Program (CJP) and another 1.3 per cent of defendants (n=6) were DADHC clients. Another 16.9 per cent of defendants were either released prior to being assessed or refused to partake in an assessment of their disability (n=80).

Figure 12: Proportion of disabled defendants refused bail between September and November 2009 by disability referral status (n=474)



Source: CSNSW Corporate Research, Evaluation & Statistics

Domestic violence

Statistical tests failed to detect a significant difference between the proportion of homeless and non-homeless defendants with current AVO order(s). As findings indicated, 65.4 per cent of non-homeless defendants (n=702) and 38.7 per cent of homeless defendants (n=115) with previous Apprehended Violence Order(s) (AVO), with missing data for 5 defendants of a total of 2,338 defendants.

Alcohol and other drugs

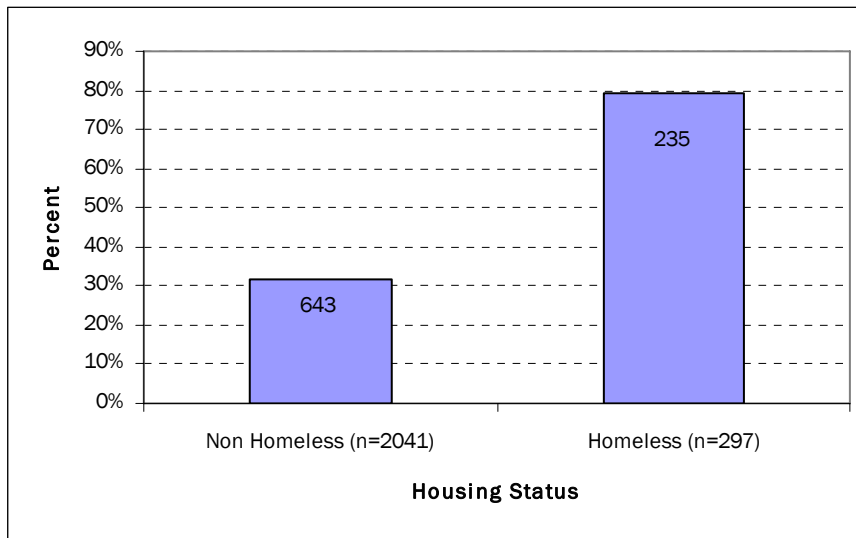
Statistical tests failed to detect a significant difference between the proportion of homeless and non-homeless defendants expecting to withdraw from drug (prescribed and/or over the counter medication) at the time of their remand. Findings indicated, 19.3 per cent of non-homeless defendants (n=393) and 22.6 per cent of homeless defendants (n=63) were expecting to withdraw from drugs (prescribed and/or over the counter medication) at the time of their remand in custody, with missing data for 3 defendants of a total of 2,338 defendants.

Statistical tests failed to detect a significant difference between the proportion of homeless and non-homeless defendants expecting to withdraw from alcohol at the time of their remand. As findings have shown, 11.6 per cent of non-homeless defendants (n=237) and 11.5 per cent of homeless defendants (n=32) were expecting to withdraw from alcohol at the time of their remand in custody, with missing data for 3 defendants of a total of 2,338 defendants.

Prior incarceration

Significantly more defendants in the homeless category reported having been previously incarcerated ($\chi^2 = 14.162$, $df=1$, $p<0.001$). As shown in **Figure 13**, a higher proportion of homeless defendants (79.1 per cent or 235) compared to non-homeless defendants (31.5 per cent or 643) reported a previous history of incarceration, with missing data for 1 defendant of a total of 2,338 defendants.

Figure 13: Proportion of defendants refused bail between September and November 2009 who had been previously incarcerated by residential status (n=2,338)*



Source: CSNSW Corporate Research, Evaluation & Statistics
There were missing data for 1 defendant of the total of 2,338 defendants.

3.3 Discussion on data analysis

The quantitative analysis provided insight into the demographic and offence characteristics of homeless and non-homeless defendants refused bail between September and November 2009. Although the generalisability of the study findings cannot be ascertained, the results are able to illustrate some of the characteristics and issues experienced by this sample group.

The largest proportion of bail refused defendants in the study sample was released from custody within the first two weeks of their remand. Whilst the reasons for this are unknown, it could be due to defendants' wish to consult their legal representation prior to making a bail application or being refused police bail on a Saturday night when the next court date would not be until the following Monday. Notably, over half of all defendants bail refused between September and November 2009 were released within 5 weeks of their incarceration and under 20 per cent of defendants were remanded longer than 3 months.

There was no significant difference between homeless and non-homeless defendants in terms of gender, ATSI status, and drug and alcohol use. The comparative ages of the defendant groups were similar; however there was a higher proportion of homeless defendants within the 35 to 39 age group. It is unclear whether this result could be generalisable to the overall defendant population, or whether it was unique amongst this sample group. It is also noted that the majority of defendants was remanded in custody within the Greater Sydney metropolitan region.

The majority of defendants remanded between September and November 2009 reported stable housing; with just over 10 per cent reported to have been homeless. It is noteworthy that, of the 10 per cent of defendants who were in receipt of assistance from Housing NSW, it remained unclear how many would have forfeited their accommodation due to their incarceration. As such, the proportion of homeless defendants upon release from custody may be greater than that on reception.

Compared to non-homeless defendants, a significantly higher proportion of homeless defendants reported having had mental health issues, an intellectual disability, history of self-harm or to be in receipt of Centrelink benefits, in particular the Disability Support Pension. In addition, whilst there were more non-homeless defendants without family support, there were significantly more homeless defendants who reported no support at all. This suggested that even if non-homeless defendants did not share close relationship with their family, they may still have benefited from the support of friends, partners or other community members, unlike homeless defendants who were more likely to have no support and poorer community ties.

Notably, statistical tests failed to detect a significant difference between the number of homeless and non-homeless defendants who had experienced major changes or incidents in their lives in the 12 months prior to their incarceration. This surprising result suggested that prior episodes of incarceration or loss of housing might not have been perceived by defendants as major life events. This finding warrants further investigation in future research.

The findings showed that there was no significant difference between the proportion of homeless and non-homeless defendants with an apprehended violence order at the time of their incarceration. This finding was surprising given the information obtained later in semi-structured interviews, which suggested that there may be a population of defendants whose accommodation dissolves as a result of domestic violence related offending.

In relation to the nature of the offences defendants were charged with, there was almost twice the number of violent offences than any other type of offence, irrespective of housing status. However, the non-homeless defendants tended to have more drug related offences, whereas, the homeless defendants had a greater proportion of theft or unlawful entry/ burglary, break and enter offences. It is unclear how many of the defendants charged with a violent offence, had a presumption against bail. However, the nature of the offence would have been a factor taken into consideration during the bail decision making process.

Given the self-report nature of the Intake Screening Questionnaire (ISQ), the accuracy of these results remains uncertain. However, these figures provided a general indication of the proportion of defendants in need of housing at the time of their remand.

4. OBSERVATIONS OF THE NSW BAIL COURT

4.1 Aim and methodology

Aim

The purpose of court observations was to gain a better insight into how bail decisions are made. In particular, court observations examined:

- the time spent by the magistrate in considering bail,
- the information presented to the magistrate for the purpose of making bail decisions,
- the recommendations by the prosecutor,
- the decision made by the magistrate, and
- reasons for the decision.

Procedure

Detailed notes were taken of all court observations, and included information, such as duration of consideration, arguments made by defence or police prosecution, whether or not bail was discussed and if so, what the outcome was.

Setting

Observations of approximately 100 court proceedings were conducted at two Magistrate Courts in metropolitan Sydney in April 2010.

Data analysis

File notes obtained during court observations were categorised and quantified.

4.2 Results

Key observations of the court process are detailed below (please refer to Appendix 4 for a detailed description):

- the approximate length of hearings varied between 2 and 30 minutes,
- hearings at one of the larger metropolitan courts tended to be of longer duration and involved a greater level of input from the defence, police prosecution and defendant,
- when discussion regarding bail occurred, the Magistrate tended to emphasise the importance of community safety and the interests of the victim and defendant,
- during the two days of bail court observations, there were no cases in which bail was refused solely on the ground of homelessness. Rather, there was generally discussion about other factors, such as mental health issues, ability of the defendant to meet a financial bail condition, and the nature of the offences.

4.3 Discussion

Hearings lasted between 2 and 30 minutes. Notably, the lengthiest hearings generally occurred when the Magistrate had to read documents, there was debate between the defence and prosecution regarding sentencing or there was discussion regarding mental health issues. In addition, the hearings at one of the larger metropolitan courts tended to be of longer duration and involved a greater level of input from the defence, police prosecution and defendant.

Furthermore, when discussion regarding bail occurred, the Magistrate tended to emphasise the importance of community safety and the interests of the victim and defendant. During the bail court observations there did not appear to be any cases in which bail was refused solely on the grounds of homelessness. In cases where housing was a factor, there was generally discussion regarding other factors, such as mental health issues, ability of the defendant to meet a financial bail condition, and the nature of the offences.

This research was not intended to provide a comprehensive examination of bail court proceedings, but rather to highlight some of the general themes discussed during bail considerations and how this compared to the broader literature. As such, given that observations were conducted at two NSW metropolitan courts in two days, the results are not intended to be representative of the NSW Bail Court.

5. SEMI-STRUCTURED INTERVIEWS WITH JUDICIAL MEMBERS

5.1 Aim and methodology

Aim

The aim of the semi-structured interviews was to gain insight into complexities associated with the bail decision making process, and to explore any key issues raised by members of the judiciary.

Study sample

Using targeted sampling, members of the judiciary were invited to participate in a semi-structured interview.

Study setting

The judicial members were offered the opportunity to participate via telephone, audio-visual link, written responses or in person, depending upon their preference and availability.

Procedure

While the interview procedure used a semi-structured format guided by specific questions, it was open-ended in nature to be responsive to emerging topics and themes (Appendix 2).

5.2 Results

- Homelessness is likely to be considered by members of the judiciary, under these grounds of the *Bail Act 1978 (NSW)*, ss.32: poor community ties and increased likelihood of the defendant failing to appear in court.
- Availability of accommodation and willingness of the defendant to report to police regularly, could improve the likelihood of bail being granted.
- Co-existence of homelessness with other psychosocial factors, such as mental impairment, substance abuse and intellectual disability; requiring a multi-faceted approach.
- A significant amount of time is spent by individual legal representatives making telephone calls to service providers to secure accommodation for each homeless defendant; detracting from their professional duties.
- A number of suggestions emerged from the interviews, including:
 - the implementation of a centralised inter-agency database, which would be updated by an overseeing body or individual housing providers on a daily basis to reflect when vacancies arise, and
 - the implementation of a court based service to assist homeless defendants to secure accommodation appropriate to their needs.
- The foreseeable barriers to the implementation of future initiatives included lack of funding, lack of collaboration between agencies and the limited ability of defendants to follow instructions and/or attend appointments.
- It was also suggested there are differences in attitudes and responses towards homelessness between rural and metropolitan locales, with rural location having a more collective spirit and, consequently, greater assistance from extended family and friends is provided to homeless defendants.

5.3 Discussion

Themes arising from semi-structured interviews with members of the judiciary included:

Community safety

A common theme throughout the judicial interviews was the relationship between homelessness, poor community ties and increased likelihood of the defendant failing to appear in court. This is consistent with the information contained in the literature review, which indicates that homelessness is likely to be considered under these grounds (*Bail Act 1978 (NSW)*, s.32). Judicial members perceived a correlation between geographical location and frequency of homeless defendants appearing in court. Whilst this was partly attributed to the increased availability of emergency accommodation facilities in certain regions, it

was also suggested that there are differences in attitudes and responses towards homelessness between rural and metropolitan locales.

Social issues

An important observation made by judicial members during interviews was the co-existence of homelessness with other psychosocial factors, such as mental impairment, substance abuse and intellectual disability. The complexity of need suggested the adoption of an initiative that is able to address the level of diverse need experienced by the defendant. One of the judicial members noted mental impairment and substance abuse as issues that could take precedence over the basic need for shelter. This would indicate the importance of a collaborative and/or multifaceted approach towards addressing the prevalence of bail refusal where homelessness is a factor.

Inter-agency co-operation

A need for improved inter-agency strategic solutions was identified. Two proposals were provided: (i) The implementation of a centralised database, which would be updated by an overseeing body or individual housing providers on a daily basis to reflect when vacancies arise; (ii) The implementation of a court based service to assist homeless defendants to secure accommodation appropriate to their needs.

Resource investment

The foreseeable barriers to the implementation of future initiatives included lack of funding, lack of collaboration between agencies, and the limited ability of defendants to follow instructions and/or attend appointments.

The two primary propositions to assist in reducing bail refusals were:

1) *Centralised inter-agency database* - The implementation of a centralised inter-agency database, which would be updated by either an overseeing body or individual service providers on a daily basis to reflect when new vacancies arise. This database would be a collaborative effort between emergency and/or crisis accommodation providers, hostels, boarding houses, residential rehabilitation centres and other short to long term housing providers. The aim would be that each service provider updates the database on a regular basis to reflect whether or not they have vacancies. This database could then be accessed by legal representatives, housing service providers and government agencies to assist defendants to obtain appropriate accommodation. Another option is that an overseeing body takes on the responsibility of telephoning the housing providers on a daily basis and then updating the database accordingly.

2) *Court-based bail assistance service* - The development of a court based service to assist homeless defendants to secure accommodation appropriate to their needs. One of the judicial officers considered the greatest obstacles facing this initiative to be the limited ability of defendants to follow instructions and turn up for appointments. In addition, it was noted that mental impairment and alcohol and drug abuse issues tended to take precedence over the need for shelter.

The foreseeable barriers to the implementation of any future initiatives included lack of funding, lack of collaboration between agencies and the limited ability of defendants to follow instructions and/or attend appointments.

6. CASE STUDIES

6.1 Aim and methodology

Aim

The case studies were intended to provide a personal perspective to some of the issues raised in the empirical data, such as substance abuse, mental health issues, domestic violence and housing. Whilst efforts were made to confirm the self report information provided by participants, this was not possible in all cases.

Interviews conducted as part of the case studies provided homeless defendants with an opportunity to discuss their experiences of homelessness and the bail decision making process. The qualitative research is particularly valuable in that it provides detailed personal knowledge not accessible using quantitative research methodology. Whilst a number of similarities are evident within the case studies, they were not intended to be representative of the entire NSW offender population. Rather, the case studies demonstrate the broad range of circumstances and behaviours surrounding the experience of bail refusal and homelessness.

Whilst semi-structured interviews and case studies did not provide a complete understanding of the relationship between bail refusal and homelessness, they served to highlight some of the complexities surrounding these issues. The limitations of semi-structured interviews are subject acquisition based on self-selection, reliability of information based on self-report and the difficulties associated with collecting collateral information. Further, given the small sample size, the generalisability of what the respondents reported (even when verified), is problematic. However, it is anticipated the results will provide support and further consideration for those seeking to reduce the number of defendants refused bail where homelessness is a factor.

Selection process

Using targeted sampling, 33 defendants were selected to participate in semi-structured face-to-face interviews according to their responses on the Intake Screening Questionnaire (ISQ), which reflected a history of homelessness. Of these 33 defendants, 22 agreed to participate. From this initial sample of 22 interviewed defendants, ten defendants were selected for case study analysis, as there was sufficient collateral information in CSNSW files on their background and the findings from their interviews were consistent with key issues identified in the literature review and quantitative analyses. All of the defendants voluntarily agreed to participate in the research and were guaranteed confidentiality.

The majority of the correctional centres housing interview participants were located in the Greater Sydney region. Interviews were also conducted at NSW regional correctional centres located in Lithgow, Kirkconnell, Bathurst, Goulburn and Kariong.

Procedure

The information contained in the case studies was extracted from semi-structured interviews with the respondents and CSNSW records including the OIMS database, Community Offender Services case history files and court information provided by the Bureau of Crime Statistics and Research (BOCSAR). All names were replaced with pseudonyms to protect the confidentiality of the respondents.

6.2 Results

6.2.1 Case study one - Jason

Background

Jason was a 43 year old man, who was serving a six month fixed sentence for assault, possession of a weapon, stealing and failing to appear in court. He had one prior conviction in NSW for possession of stolen goods for which he had received a period of community based supervision and reportedly had a significant criminal history in Victoria. Jason had been granted bail on four occasions in relation to his current offences. Although, due to his failure to remain at the stated address he had breached his bail and was remanded in custody for approximately six weeks prior to being sentenced.

Whilst Jason was not specifically remanded in custody due to homelessness, it appears this was still a factor that contributed to the circumstances resulting in his bail refusal. Notably, Jason had an extensive history of unstable housing, consisting predominantly of primary and secondary homelessness. During these periods he reported he had lived on the streets, men's hostels, boarding houses, Housing NSW emergency housing and sleeping on friend's couches. In addition, Jason had attended a homeless person's drop in centre in the city on a daily basis. He considered this to have been a very useful resource as it provided him with meals, laundry facilities and a caseworker who was able to assist him with accommodation. Jason mentioned that when he was living in Melbourne he had predominantly been residing in housing commission premises.

Jason recounted a dysfunctional childhood and stated he had been made a ward of the state due to "uncontrollable" behaviour when he was nine years of age. He noted that his criminal lifestyle had resulted in the dissolution of his relationship with his foster parents. Whilst he reported a positive relationship with his four siblings, all of whom resided interstate, he added they had not had contact with him since he wrote a letter to them almost a year before. In terms of domestic relationships, Jason reported his wife and children were overseas and no longer maintained contact with him. He disclosed a history of domestic violence in this relationship and cited this as a precipitating factor to one of his previous failures to appear in court.

Issues

Aside from homelessness, Jason had a longstanding history of substance abuse, involving the use of alcohol, heroin, buprenorphine, benzodiazepines, 'ice', amphetamines and cannabis. With the exception of a custodial based detoxification program, the only intervention he had participated in was a two week detoxification program in 1994. His issues in this regard remained unaddressed.

Mental health issues had also been a pervasive factor of Jason's life since he was diagnosed with Schizophrenia in 1989. Since moving to Sydney in the previous few years, he had received intermittent treatment from the psychiatrists who conducted weekly visits to two of the major metropolitan men's hostels. One of the key issues compounding Jason's mental health issues was his non-compliance with prescribed medications, which resulted in his experience of hallucinations and paranoia. Offender records confirmed that he had also been shot in the head in 2000, and still had the bullet lodged in his brain. Consequently, Jason expressed ongoing concerns regarding his safety.

Defendant's circumstances

Jason's longstanding history of substance abuse, mental health issues and minimal motivation to change these aspects of his life, appear to have created a barrier to attaining stable accommodation in the community. In particular, since his incarceration, welfare officers had attempted to assist him to locate post release accommodation through referring him to two hostels in Sydney city; one of which he had stayed at previously. Whilst one of the applications was pending, the other had declined to have him return due to his ongoing substance abuse and lack of motivation to help himself.

Future plans

Jason was hopeful of obtaining post release crisis accommodation through Housing NSW and added that he was on a priority housing list. Failing this, he was not sure what his options were and stated he might return to living on the streets or seeking refuge in hostels. Jason stated his most significant concern was if he was granted accommodation through Housing NSW and then re-offended, this could result in the loss of his accommodation.

6.2.2 Case study two - Sarah

Background

Sarah was a 36 year old Aboriginal woman, serving a four month fixed sentence for shoplifting and possession of goods suspected of being stolen. She had been charged with these offences whilst on parole for offences of a similar nature. She had an extensive criminal history, consisting of violent, robbery, weapon, dishonesty, driving and drug related offences, in addition to two previous failures to appear in court. She had been subject to various community based orders and generally exhibited a poor response to supervision; characterised by multiple failures to report for appointments, ongoing substance abuse, turbulent familial relationships, homelessness and re-offence.

Sarah had been initially granted bail in July 2009, although she had her bail refused in September 2009. She regarded homelessness as a significant factor related to her bail refusal and previous failures to appear in court. Of note, Sarah had been on remand for approximately two months before she was sentenced to eight months incarceration with a four month non parole period. Subsequently, she was released to parole in January 2010, although she breached this order and was returned to custody after approximately three weeks.

Sarah recounted an extensive history of primary and secondary homelessness, compounded by turbulent familial and domestic relationships, poor community support, anti-social peer associations, longstanding substance abuse and mental health issues. Further, she added her sister and nephew were also homeless, reflecting a history of intergenerational homelessness.

Since the age of 24, Sarah had lived with family members and friends, although these tenures had been generally short-lived due to conflicts within these relationships. Subsequently, she spent significant periods living on the streets and in other emergency accommodation facilities. Sarah stated *"sometimes I come back to gaol so I have somewhere to stay"* and added this was quite common amongst inmates. She considered incarceration to be a safer option than the streets.

During periods of community based supervision, Sarah had accessed the assistance of her Probation and Parole Officer to locate accommodation. For the most part, she had lived an itinerant and chaotic lifestyle; frequently moving between the houses of her friends and family. Eventually, she entered a supported accommodation facility provided by CSNSW, however she was returned to custody after re-offending and continuing to abuse illicit substances.

Issues

Sarah was on the methadone program and had a longstanding history of substance abuse, including amphetamines, benzodiazepines and heroin. Offender records reflected that substance abuse had been a pervasive aspect of her life, and it had continued throughout periods of community based supervision and incarceration. Prior to her incarceration, she had regularly attended a methadone clinic in southwest Sydney. This clinic provided her with counselling and had made numerous attempts to secure accommodation in a rehabilitation centre; however she had declined this option.

In terms of her mental health, Sarah was in receipt of medication to treat depression and bi-polar Disorder. Offender records reflected that her condition had been exacerbated by the suicide of her partner in 2005, whom she had been in a relationship with for seven years. Of note, this relationship had been marred by domestic violence and alcoholism. Also, compounding her mental health issues, Sarah reported that she had been the victim of a violent sexual assault and numerous physical assaults, including a stabbing.

Defendant's circumstances

During her incarceration, Sarah received housing assistance from Welfare Officers, and Offender Services and Programs staff. As such, she had been awaiting the outcome of referrals to supported accommodation providers in the community. In addition, she had been in contact with staff from a program that provides post release support for inmates, including transport to appointments, assistance with housing and to establish networks with relevant service providers in the community. If this program were unable to locate post release accommodation, Sarah suggested she might be able to access emergency accommodation through Housing NSW.

Future plans

Sarah expressed concern regarding her post release accommodation plans and stated *"it's winter, it's getting cold"*. She added *"I don't even want to get out... I don't want to get out there and go to nothing again. You've got people you can always talk to here... welfare, psychs"*. Despite the assistance she was receiving from the abovementioned service providers, Sarah disclosed she was still very worried about her future plans.

6.2.3 Case study three - Carla

Background

Carla was a 43 year old woman, who was awaiting sentence for multiple counts of forging or altering a prescription for prescribed medication. She had been charged with these offences whilst on bail for similar offences. Carla had an extensive criminal history, consisting of prostitution, dishonesty, driving, violence and drug related offences, in addition to six previous failures to appear in court and numerous breaches of bail. Similar to Sarah, she had been subject to various community based orders and had generally exhibited a poor response to supervision; characterised by failures to report for appointments, ongoing substance abuse, turbulent domestic relationships, homelessness and re-offence.

Whilst Carla had identified homelessness as a significant factor in her life, she did not consider it as the reason she was refused bail. Instead, she cited her refusal to disclose the identity of her co-offenders to police and the fact she was already on bail for similar offences. Although, she stated her homelessness had contributed to previous failures to appear in court and added it makes “every day a battle”.

Carla recounted an extensive history of primary, secondary and tertiary homelessness. She disclosed that in the 2 ½ years prior to her incarceration, she had been living on the stairs of a library in an inner Western Sydney suburb. She reportedly had lost her previous accommodation due to domestic violence and the alleged criminal behaviour of her room mate. Subsequently, she had a poor rental history and was no longer able to secure private rental accommodation.

In addition to residing with friends and family, Carla had lived in caravan parks, housing commission residences, supported accommodation facilities for mothers and their children, as well as various residential rehabilitation centres. She stated she would not accept accommodation in refuges or hostels as she had trust issues with them. In addition, Carla had received housing assistance from her caseworker when she was residing at Bolwara Transitional Centre, a CSNSW residential pre-release centre for female inmates with chronic drug or alcohol problems. She had also accessed services through two women’s housing organisations in Sydney city, which proved to be valuable resources.

Carla recalled a dysfunctional upbringing marred by turbulent familial relationships, domestic violence and the suicide of her grandfather. She disclosed running away from home on numerous occasions to escape the alleged sexual abuse of a family member, which resulted in her first experience of homelessness. Carla stated her parents were deceased and she had a strained relationship with her sister. She reported having limited to no contact with her three adult children.

Issues

Carla had an extensive history of substance abuse consisting predominantly of heroin and cannabis use. Notably, she began using inhalants and ‘pills’ at age 12, before progressing to heroin at age 14. Her drug use had continued throughout much of her adult life. As such, she had attempted numerous residential rehabilitation programs and had participated in the methadone program at various times throughout her life. Substance abuse appeared to have been a significant precipitating factor to much of her offending behaviour.

As a result of Carla’s early involvement with the criminal justice system and longstanding history of substance abuse, she had received limited formal education and had not participated in paid employment for over twenty years. Her lifestyle was reflective of a degree of institutionalisation, in which she had become accustomed to the correctional centre environment and subsequently struggled to adapt to lawful community life when released.

Defendant’s circumstances

Given that she was unsentenced, Carla had not spoken to offender services and programs staff in relation to post release accommodation.

Future plans

Carla was unsure where she would live once she was released from custody. She mentioned that her partner was also homeless and slept in the warehouse where he worked. She added she was very worried about securing post release accommodation.

6.2.4 Case study four - Jarrod

Background

Jarrod was a 21 year old Aboriginal man, who was serving a three month fixed sentence for driving whilst disqualified and resisting arrest, which he had committed whilst on parole. As such, he was also serving the remaining six months of his parole in custody. Jarrod had an extensive juvenile and adult criminal history, consisting of violence (including domestic violence), dishonesty, driving and alcohol related offences, in addition to four previous failures to appear in court and twelve breaches of bail. Notably, police documents cited his history of breaching bail, failures to appear in court and weak community ties as factors related to previous bail refusals. Additionally, Jarrod had been subject to numerous community based orders through Juvenile Justice and CSNSW and had generally exhibited a poor response to supervision; characterised by failures to report for appointments, ongoing alcohol abuse, re-offence, frequent changes of address, relationship conflicts and custody battles regarding his child.

Jarrod stated he had initially been granted bail in relation to his current offences, although he breached it after he failed to remain at the Illawarra residential rehabilitation centre he had been released to. He attributed this to his being under considerable stress at the time due to the poor health of his grandmother and custody issues with his child. In addition, Jarrod stated Housing NSW had provided him with a three-bedroom house prior to entering the rehabilitation centre, which added to his reluctance to remain in the program when it would mean surrendering this accommodation. Inevitably, however, he ended up losing this accommodation after he separated from his partner. Consequently, he was provided with four weeks emergency accommodation at a caravan park, which was funded by Housing NSW.

Jarrod recounted an extensive history of primary, secondary and tertiary homelessness. His first experience with homelessness was when he ran away from home at age thirteen due to family problems. He stated he was caught by police sleeping in abandoned house. Since this time, he has run away from home on numerous occasions; often residing with various family, friends or his partner. In addition, he has sought the assistance of an organisation in the Illawarra area that provides housing assistance and support letters for homeless youths. He considered this resource to have been useful. Of note, Jarrod identified a correlation between his homelessness and an increased propensity to commit offences in order to sustain his lifestyle and associated drug use.

Issues

Jarrod had an extensive history of substance abuse, including alcohol, cannabis and amphetamines. Offender records reflect that he had engaged in criminal behaviour in order to fund his drug use. Despite this, Jarrod had not yet completed a residential rehabilitation program and his attendance at drug and alcohol counselling appointments in the community was erratic. Additionally, when he was younger, Jarrod was diagnosed as having Oppositional Defiance Disorder.

Defendant's circumstances

Since being remanded in custody, Jarrod had not contacted offender services and programs staff for assistance with accommodation. Despite this, he expressed motivation to contact welfare staff and Housing NSW in order to explore his options regarding accommodation.

Future plans

Jarrod reported he had no confirmed post release accommodation plans. He stated he might possibly reside with his mother or grandmother. Although, as his step-father and uncle lived at these locations the tenure would only be short-term, given he did not have a good relationship with them. He stated he might also be able to reside with friends for a "few days at a time". Although, Jarrod considered that he would be "setting [himself] up to fail" if he were released from custody into unstable accommodation. He added he would likely "fall into the same old traps" and as such, was very worried about his post release accommodation plans.

6.2.5 Case study five - Darren

Background

Darren was a 25 year old man, serving a four and a half month fixed sentence for making a vexatious telephone call to an emergency service number. He was charged with this offence whilst on parole for a similar offence. He had an extensive criminal history commencing at the age of 13 and consisting of violent, robbery, stealing, property and drug related offences, in addition to five prior breaches of bail. Additionally, he had been subject to various community based orders and generally exhibited a poor response to supervision; characterised by multiple failures to report for appointments, ongoing substance abuse, negative peer associations, strained familial and domestic relationships, homelessness and re-offence.

Whilst Darren recounted an extensive history of primary, secondary and tertiary homelessness, he did not consider this to have been a factor related to his bail refusal. He stated his first experience with homelessness was when he was a teenager, and would often run away from home due to conflict with his step-father. On these occasions, he would generally reside with family and friends. However, he had also lived in homeless shelters, men's hostels, caravan parks, in emergency accommodation provided through Housing NSW, or on the streets. Further, he claimed the Department of Aging, Disability and Home Care (DADHC) had offered him accommodation on the condition he had his finances managed by the Office of the Protective Commissioner. Although, he stated he had declined this offer.

Darren disclosed concerns for his safety at one of the men's hostels he had stayed at for four months, located in north western NSW. He stated this was due to the aggression and volatility of some of the other residents. Offender records reflected he was eventually evicted from this hostel due to continued refusal to comply with the house rules. At the time of his departure, his room was described as 'squalid', as he had not cleaned or maintained it.

Prior to his incarceration, Darren received assistance from various advocacy groups in north western NSW, who had sought to improve his independent living skills, assist him with accommodation and provide him with transport to appointments. Offender records reflected that despite this assistance, Darren had struggled to live independently in the community and had failed to maintain contact with service providers and attend appointments with his supervising Probation and Parole Officer.

Offender records reflected Darren had a dysfunctional and emotionally deprived upbringing, characterised by the drug use of his biological mother and his own participation in prostitution and stealing to care for his siblings. During his younger years, he was raised in an environment where violence and impulsivity was modelled to him as an effective method of problem solving. As such, he was regularly suspended from high school due to anger management problems; eventually leaving in Grade 10. Darren had a limited employment history and had been in receipt of the Disability Support Pension since he was 18 years old, due to his Epilepsy.

Issues

Darren's itinerant lifestyle and inability to live independently in the community appeared to have related to his mental health issues and intellectual functioning. As a child he was diagnosed as having a mild intellectual disability, although as an adult he was re-assessed as falling within the borderline range of intellectual functioning. In addition, Darren had also been diagnosed as having Antisocial Personality Disorder, Schizophrenia and possible Attention Deficit Hyperactivity Disorder. Despite the seriousness of these diagnoses, he demonstrated a history of non-compliance with his medication regime.

Compounding his mental health issues, Darren had an extensive history of substance abuse issues. Notably, he began smoking cannabis when he was 9 years old and since this time, had developed a pattern of heavy alcohol consumption. Offender records reflected that Darren appeared unmotivated to change his lifestyle in this regard and had not participated in residential rehabilitation programs.

Defendant's circumstances

Following his incarceration, Darren received specialised services related to his intellectual disability. These services provided him with access to psychological intervention, programs and assistance to develop independent living skills.

Future plans

Darren was hopeful he would be provided with emergency accommodation through Housing NSW, following his release from custody. Failing this, he suggested he might be able to reside with friends or foster family in north western NSW. He indicated these stays could only be for short-periods though. Despite the ad-hoc nature of these plans, Darren stated he was “not worried” about attaining post release accommodation.

6.2.6 Case study six - Charles

Background

Charles was a 27 year old man, serving a twelve month sentence with a nine month non parole period, for a domestic violence related offence and damage to property. He had committed these offences whilst subject to parole for similar domestic violence related offences. Charles had a lengthy criminal record, with offences committed in multiple states throughout Australia. His offending history consisted predominantly of domestic violence, weapon, property, driving and drug related offences, in addition to numerous failures to appear in court and breaches of bail. Furthermore, Charles had been subject to various community based orders. Whilst his response to supervision had been generally positive, as noted above, he had breached parole due to re-offence.

Charles disclosed an intermittent history of homelessness that was largely correlated with the demise of his relationships, both familial and domestic. Whilst he had predominantly resided with previous partners and various family members, these tenures often had ended abruptly due to his violent behaviour when intoxicated. As such, he had been the subject of numerous apprehended violence orders (AVO), some of which protected his step-parents, sister and ex-partners. Offender records reflected that Charles' experience with homelessness largely had been the product of his inability to regulate his emotions whilst intoxicated.

During periods of homelessness, Charles resided in hostels, with friends and family, and on the streets. Originally from Queensland (QLD), he had lived in Western Australia (WA) and various south western NSW locations, including near the Australian Capital Territory (ACT) border. Whilst he considered homelessness to have been a significant factor in his life, he did not perceive it to be the reason his bail had been refused. Instead, he postulated his bail had been refused due to his “criminal past”.

Issues

Charles had a longstanding history of problematic alcohol consumption, interspersed with periods of cannabis and intravenous amphetamine use. Notably, he had a well documented history of becoming violent when intoxicated. Whilst this was a significant contributor towards his offending behaviour, he had participated in limited formal intervention to address his substance abuse issues. Instead, he had maintained periods of abstinence at his own volition.

Charles had a history of mental health issues, which appeared to have been compounded by his abuse of alcohol and illicit substances. Notably, he had been hospitalised for a period of six months after suffering drug induced psychosis and assaulting his step-father. In addition, he was diagnosed as having schizophrenia and attention deficit hyperactivity disorder (ADHD). Although, he had ceased medication for ADHD when he was sixteen years old after reporting a cessation of the symptoms related to this.

Defendant's circumstances

Charles expressed intentions to speak to correctional centre welfare officers regarding post release accommodation. Although, given his sentence had a parole period attached, he was aware he would also receive housing assistance from his Parole Officer nearer to his earliest release date.

Future plans

Charles disclosed he was “very concerned” about his post release accommodation plans. Whilst he had submitted an application for Housing NSW premises, he was aware there was often a waitlist attached to this. As such, he suggested he might be able to reside with a friend in the south western NSW region. Although, he added this could only be a short-term solution.

6.2.7 Case study seven - Emily

Background

Emily was a 26 year old woman, serving a nine month sentence with a six month non parole period for assault. In addition, she was also serving the remainder of a periodic detention order, which she had breached after committing her current offence. Emily had a lengthy criminal record, consisting predominantly of violent, dishonesty and drug related offences. In addition, she had numerous breaches of bail and previous failures to appear in court. She attributed these to a variety of factors including poor memory, fears she would be incarcerated and concerns regarding her accommodation. Notably, she did not consider her bail refusal to have been related to her homelessness. Instead, she stated she would lie to the court and say she was living with friends. In terms of her prior contact with CSNSW, Emily had been subject to various community based orders and had generally exhibited a poor response to supervision; characterised by homelessness, strained familial and domestic relationships, limited motivation to participate in interventions and failure to attend appointments.

Emily was born and raised in the western suburbs of Sydney, growing up in what she described as a “good family”. Following the death of her father when she was eight years old, she reportedly attempted suicide and began exhibiting signs of rebelliousness. Her first experience with homelessness began when she ran away from home at the age of fourteen. Offender records reflected she had declined the assistance of her mother and older sister, instead choosing to live with various friends or on the streets. Emily’s mother died when she was eighteen years old and it was at this time that her sister began to distance herself. Emily added that her sister was no longer supportive of her, due to her ongoing substance abuse and criminal lifestyle.

In terms of her housing history, Emily described an extensive history of primary, secondary and tertiary homelessness. Prior to her incarceration, she had been living in premises provided by Housing NSW, although she and her children reportedly had been evicted after she accepted responsibility for damage her ex-partner had caused to the property during an instance of domestic violence. She added she had not reported his behaviour as he would have breached his parole. Following this, she reportedly “hocked” or sold her belongings, or committed break and enters, to pay for accommodation in motels. She stated refuges were not usually an option, as they generally would not accommodate herself and her three children. She added she had lived in crisis accommodation, caravan parks and emergency accommodation provided by the Housing NSW.

Additionally, Emily had lived with friends, family and her ex-partner’s parents. Although, she stated these tenures generally had been short lived due to personality conflicts. Notably, offender records reflected that Emily’s sister had provided her with furniture and a private rental property, although this had not worked out as Emily had been unable to cover her general living expenses. On a separate occasion, offender records reflected that she, her ex-partner and their children had been evicted from their Housing NSW premises due to the poor conditions they were living in, which included animal faeces in the carpet. There were allegedly four dogs, two chickens, one cat and a ferret living at the property. While Emily was remanded in custody, her children were in the care of her mother in law, who had also submitted an application for custody.

Issues

Emily had a longstanding history of substance abuse, commencing with the use of cannabis when she was twelve years old and progressing to heroin use by her mid teens. Offender records reflected she had been using approximately \$200 of heroin per day prior to her most recent incarceration; a trend which spanned much of her life. Consequently, she had reportedly overdosed on numerous occasions. Whilst she claimed to have participated in short-term rehabilitation programs, these did not appear to have impacted her use of illicit substances.

Emily had a history of depression, anxiety and self-harm, which appeared to have been exacerbated by the death of her parents and her chaotic lifestyle. She was also alleged to have been the victim of three previous sexual assaults. Offender records reflected she presented as “undernourished” and had ulcers in her mouth. In addition, she claimed to have been diagnosed with cervical cancer shortly prior to her incarceration.

Defendant's circumstances

Emily planned to contact offender services and programs staff to assist her in contacting accommodation providers in the community. Although, given the length of her sentence, she had not yet sought assistance in this regard.

Future plans

Emily was aware she would face additional difficulties following her release, due to her limited education and lack of previous employment. In terms of accommodation, she was hopeful of securing accommodation through a service provider in the NSW Central Coast. She stated the organisation provided accommodation to people on social security benefits, or from low income families. She stated she was only willing to reside on the Central Coast, as she wanted to be close to her children.

Emily noted she was "very worried" about her post release accommodation. She stated that in the correctional centre she received three meals a day and a warm bed, whereas in the community "you have to find things to sleep on so you don't get piles from the cold". She added "there is nothing better than a warm bed" and security, because "it is very, very scary the way guys look at you" on the street.

6.2.8 Case study eight - Shaun

Background

Shaun was a 35 year old man, awaiting sentence for numerous offences including breach of an Apprehended Domestic Violence Order, assault, possession of a knife, drink driving and break and enter. He had an extensive criminal history, consisting of violent (including domestic violence), stealing, property, driving (including drink driving) and dishonesty offences. Shaun had been subject to various community-based orders, and had generally exhibited a poor response to supervision.

Shaun stated he had not applied for bail due to his homelessness and the serious nature of his offences. He recounted an intermittent history of primary, secondary and tertiary homelessness, since his parents had "kicked" him out of home when he was 15 years old. Since this time, he had lived at friend's houses, motels, refuges, squats, on the streets and with various partners. In addition, he had been provided with housing assistance from Housing NSW and various refuges. At the time he was charged with his current offences, Shaun had been living with his partner. However, this arrangement dissolved due to an alleged domestic violence incident involving her son.

Shaun recalled a dysfunctional upbringing, characterised by the divorce of his biological parents when he was young and the alcoholism and domestic violence of his step-father. As a result, he stated he no longer maintained contact with his family. Offender records reflected Shaun had three children to three different mothers, none of whom he maintained contact with. Notably, he had minimal support in the community.

Issues

Shaun had an extensive history of substance abuse including alcohol, cannabis, amphetamines, heroin, cocaine and ecstasy. He reportedly commenced the use of alcohol when he was nine years old. By the time he was 22 years old, his drinking had progressed to half a carton of beer or a bottle of spirits on a daily basis. In addition, he began using cannabis when he was eleven years old and by the age of nineteen, was spending \$210 per day on heroin. Despite six unsuccessful attempts at residential rehabilitation, Shaun reportedly abstained from drugs between 2007 and 2009. He attributed this to his partner's positive influence and his desire to avoid becoming violent whilst intoxicated. Upon the dissolution of their relationship in 2009, Shaun relapsed into alcohol and amphetamine use.

Offender records reflected Shaun left high school in Grade 8 and had not engaged in any further vocational endeavours. Since this time, he had participated in a number of casual jobs, none of which lasted longer than eleven months. Although, since separating from his partner in 2009, Shaun had been unemployed.

Offender records reflected that Shaun had a history of problematic gambling, which commenced when he was sixteen years old. At this time, he would spend up to \$600 per week, leaving him with only minimal money remaining to purchase food and other necessities. Whilst he reportedly ceased gambling in 2007, this behaviour recommenced following the separation from his partner. Notably, he had also engaged in two episodes of self-harm since that time.

It appeared Shaun's homelessness, relapse into substance abuse, self-harm and lack of employment was correlated with his inability to effectively cope with the breakdown of his relationship; resulting in a destabilisation of his life.

Defendant's circumstances

Given that Shaun was awaiting sentence, he had not yet spoken to offender services and programs staff about securing post release accommodation.

Future plans

Shaun was hopeful of securing accommodation through Housing NSW, although he was aware there was a lengthy waitlist. In the meantime, he planned to stay with friends and live in squats, refuges and on the streets. He expressed concern regarding his future accommodation.

6.2.9 Case study nine - Samantha

Background

Samantha was a 31 year old woman, awaiting sentence for dishonesty, drug, assault, driving, and shoplifting offences. She attributed these offences to her homelessness and substance abuse. Notably, Samantha had an extensive criminal history, predominantly consisting of dishonesty, shoplifting, drug and assault related offences. She had been subject to various community based orders and had generally exhibited a poor response to supervision; characterised by multiple failures to report for appointments, ongoing substance abuse, turbulent familial and domestic relationships and homelessness. She reported a previous history of failing to appear in court and attributed this to a variety of factors including her fear of going to the correctional centre.

Whilst homelessness was a significant issue for Samantha, she had not considered it to have been the primary reason she was refused bail. Instead, she attributed her bail refusal to the number and nature of the offences she was charged with. Additionally, Samantha had an extensive history of primary, secondary and tertiary homelessness. Offender records reflected her first episode of homelessness was shortly after she left home at the age of sixteen. Since that time, she had occupied her own accommodation for approximately four months. The rest of the time she had stayed with friends, family, people she had met that night, in her car, hostels, boarding houses, hotels, public toilets, trains, Smith Family bins and had spent various periods incarcerated.

Samantha stated she had been unable to secure private rental accommodation due to her unemployment and noted it was difficult to get into hostels and boarding houses due to the waitlists. She added hostels and boarding houses were filled with "scary people who steal from you". She recalled living in a hostel in an inner Western Sydney suburb approximately five years before, although she had decided to leave after three months. She attributed this decision to having felt "invaded" as a result of the curfews and because "the lady who run [sic] it wanted to know everything". Following this, she reportedly moved to a residential treatment service in the South Sydney area, for women with children, who were on a program of methadone maintenance. She stated she was evicted from this residence due to a misunderstanding involving another resident.

Samantha stated she had been provided with a Housing NSW residence a few years before. Although, she reportedly left this residence after the "squatters" next door had stolen from her. As a result, she went "back to living on the streets". Notably, Samantha had previously sought housing assistance from a hospital social worker and a staff member at a methadone clinic in the Newcastle region. During previous community based orders, she had also accessed the assistance of her supervising Probation and Parole Officer.

Samantha recounted a dysfunctional upbringing marred by turbulent familial relationships, domestic violence, alcoholism and drug use, the suicide of her uncle and the sudden death of her brother and father when she was five years old. Offender records reflected her mother taught her to shoplift when she was eight years old, which resulted in her early involvement with the criminal justice system. In addition, Samantha had numerous domestic relationships, although these were marred by criminal behaviour, drug use and violence. She had two children in the care of various family members, with whom she maintained contact.

Issues

Samantha had a longstanding history of drug abuse, which commenced at the age of ten. Since this time, she had reportedly used cannabis, benzodiazepines, amphetamines and heroin. Notably, offender records reflected she was using up to \$800 of heroin per day at one stage. Attempts at residential rehabilitation, as a juvenile and adult, had been unsuccessful. Samantha also had a history of mental health issues including anxiety, anorexia and possible kleptomania.

Defendant's circumstances

Given Samantha was unsentenced; she had not yet accessed housing assistance through the correctional centre's Offender Services and Programs staff.

Future plans

Samantha had no post release accommodation and added she was unable to live with family due to restrictions imposed by the Department of Community Services (DoCS). She stated she had also "*blown her chances*" with family due to her continued drug use. She was hopeful of receiving a long parole period so she could access housing assistance from a Parole Officer.

6.2.10 Case study ten - James

Background

James was a 33 year old Aboriginal man, who was raised in the south coast region of NSW. He was serving a nine month sentence for breaching his parole order. Of note, he was serving parole for using or threatening to use a weapon to commit a serious indictable offence and aggravated break and enter whilst armed. Both of these offences were domestic violence related and were committed against his then partner. James attributed these offences to his intoxication at the time. Notably, he had a previous criminal history including domestic violence and alcohol related offending. He had also breached multiple community based supervision orders due to non-attendance at community service, re-offence and continued drug use.

James reported an intermittent history of homelessness, which appeared to have been correlated with the breakdown of his domestic relationships. He stated he had been homeless for approximately six to seven weeks prior to his current period of incarceration and attributed this to his offending behaviour. He added CSNSW Community Offender Services had not permitted him to reside with his parents due to their close geographical proximity to his victim. Whilst he had been approved to live with his brother, he did not want to reside there due to his brother's consumption of alcohol. As a result, he had stayed with various friends.

In terms of his housing history, James recounted a pattern of primary, secondary and tertiary homelessness. He stated he had lived in his car and also had stayed with friends, family members and ex-partners. In addition, he claimed he had put his name down for an Aboriginal Lands Council house approximately ten years before, although this had not come to fruition. In the period prior to his incarceration, he had reportedly received housing assistance from a service provider in the south coast region of NSW.

In terms of his community ties, James had reportedly benefited from the support of his parents, siblings and former employer. He had a strained relationship with his ex-partner, due to a history of violence and arguments regarding the custody of their three children. In addition, he had been the subject of numerous Apprehended Domestic Violence Orders.

Issues

James had a history of cannabis use and problematic alcohol consumption, which appeared to have been a factor in his offences. Notably, he appeared to lack the ability to regulate his anger whilst intoxicated.

Defendant's circumstances

Since his incarceration, James had not accessed the assistance of the correctional centre's Offender Services and Program staff.

Future plans

James had no confirmed post release accommodation plans and added “*all I want is my own house... and hopefully it has a few rooms for my kids*”. Of note, he stated he might be able to reside with his parents upon release and also planned to ask his former employer for housing assistance.

6.3 Discussion

The ten case studies provide insight into the complex relationship between homelessness and bail refusal. As previously mentioned, there were numerous similarities amongst the case studies, as reflected through the recurrence of common themes. Consequently, comparisons of the defendants and their circumstances are reflected in the tables below.

Table 1 shows general descriptive information about the defendants including gender, age, ATSI status and criminal antecedents. Notably, all of the defendants had a criminal history and the majority had breached previous bail orders and failed to appear in court. In particular, six of the defendants had been subject to a period of conditional liberty (i.e. bail, parole or periodic detention) at the time of their bail refusal. Whilst the impact of these factors on each of the bail decisions is unable to be ascertained, they are all identified as considerations within the NSW bail legislation.

Table 1: General characteristics of case studies

Name	Gender	Age	Sentenced	ATSI	Criminal history	Previous breaches of bail	Previous failure to appear
Jason	Male	43	Yes	No	Yes	Yes	Yes
Sarah	Female	36	Yes	Yes	Yes	Yes	Yes
Carla	Female	43	No	No	Yes	Yes	Yes
Jarrold	Male	21	Yes	Yes	Yes	Yes	Yes
Darren	Male	25	Yes	No	Yes	Yes	Yes
Charles	Male	27	Yes	No	Yes	Yes	Yes
Emily	Female	26	Yes	No	Yes	Yes	Yes
Shaun	Male	35	No	No	Yes	Unknown	Yes
Samantha	Female	31	No	No	Yes	Yes	Yes
James	Male	33	Yes	No	Yes	Unknown	No

Table 2 provides an overview of the defendant’s experiences with homelessness. Notably, all of the defendants had a history of primary, secondary, tertiary and marginal homelessness. Further, the majority of case studies had a history of long-term entrenched homelessness. In the other cases, homelessness appears to have been correlated with domestic violence. As such, the stability of housing in these cases was disrupted by the defendant’s violent behaviour. Whilst the majority of defendants recounted a dysfunctional upbringing, only a small proportion of cases had a history of intergenerational homeless.

Table 2: Overview of homelessness by category (case study analysis)

Name	Primary	Secondary	Tertiary	Marginal	Inter-generational	Nature
Jason	Yes	Yes	Yes	Yes	No	Long-term
Sarah	Yes	Yes	Yes	Yes	Yes	Long-term
Carla	Yes	Yes	Yes	Yes	No	Long-term
Jarrold	Yes	Yes	Yes	Yes	No	Long-term
Darren	Yes	Yes	Yes	Yes	Yes	Long-term
Charles	Yes	Yes	Yes	Yes	No	Intermittent
Emily	Yes	Yes	Yes	Yes	No	Long-term
Shaun	Yes	Yes	Yes	Yes	No	Intermittent
Samantha	Yes	Yes	Yes	Yes	No	Long-term
James	Yes	Yes	Yes	Yes	No	Long-term

As mentioned previously, a number of key themes emerged throughout the case studies. **Table 3** outlines the prevalence of alcohol and drug use (AOD), mental health (MH) issues, intellectual disability (ID) and

domestic violence (DV) within the case studies. Notably, almost all cases studies involved the co-existence of substance abuse and mental health issues. In addition, domestic violence was a feature in the majority of cases, including instances where the defendant was victim, perpetrator or both. Notably, the co-existence of substance abuse and mental health issues appears to have coincided with a general lack of stability in the lives of the defendant. In turn, this had resulted in greater difficulties securing appropriate accommodation. In the fifth case study, this scenario appeared to have been compounded by the defendant's intellectual disability.

Table 3: Summary of psychosocial issues (case study analysis)

Name	Substance abuse	Mental health	Intellectual disability	Domestic violence
Jason	Yes	Yes	No	Yes
Sarah	Yes	Yes	No	Yes
Carla	Yes	Yes	No	Yes
Jarrold	Yes	Yes	No	Yes
Darren	Yes	Yes	Yes	No
Charles	Yes	Yes	No	Yes
Emily	Yes	Yes	No	Yes
Shaun	Yes	Yes	No	Yes
Samantha	Yes	Yes	No	No
James	Yes	No	No	Yes

Another common theme within the case studies was an inability or lack of motivation amongst defendants to effectively utilise the services available to them. This was particularly evident in the case study of Jason, whose ongoing non-compliance with anti-psychotic medication and limited motivation to change his lifestyle, had resulted in his being declined entry into a temporary accommodation facility. This theme was also evident within Sarah's case study, wherein her ongoing substance abuse and subsequent re-offence had resulted in the loss of her accommodation. Her homelessness was then exacerbated by her continued refusal to enter into a residential rehabilitation facility, despite the opportunity availing itself.

This theme was also evident in Darren's case study in which his non-compliance with the rules of his supported accommodation provider, failure to maintain hygienic living conditions, lack of motivation to address his substance abuse issues and refusal to accept provisional assistance from DADHC, resulted in his continued homelessness. This situation was compounded by his borderline intellectual functioning, which impacted his ability to live independently. In the case of Emily, her foray into homelessness appears to have stemmed from her decision to run away from family members. Over the years, her defiant behaviour and criminal behaviour had contributed to the alienation of her family and resulted in a reduction of her support networks.

Not only did the case studies illustrate the complexity of needs experienced by the defendants, but they also highlighted that securing accommodation is only one part of the solution. This was evidenced in a number of case studies, where the defendants had refused viable accommodation options, declined the support of family members, demonstrated non-compliance with the rules of the accommodation provider or had failed to adequately maintain the accommodation granted to them. In these cases, the provision and/or availability of accommodation appears to have been only one part of the solution. And, when used in isolation from other services, or without the full support and/or motivation of the defendant, has the capacity to provide only a temporary solution to a much greater problem.

7. OVERALL DISCUSSION

Throughout the current study, a variety of common themes emerged. These are detailed below:

Homelessness and poor community ties

One of the most consistent findings was the relationship between homelessness, poor community ties and previous failures to appear in court flagging an increased likelihood to do so in the future. Quantitative analysis supported this relationship, with homeless defendants being more likely to have poor community support compared with non homeless defendants. The case studies were also reflective of this theme, with the majority of respondents having experienced volatile familial and interpersonal relationships, poor community ties, previous failures to appear in court and previous breaches of bail. Notably, the judicial interviews reinforced the relationship between these variables highlighting that if the defendant was homeless, then common bail considerations included poor community ties and risk of failing to appear in court. These findings were consistent with those contained in the literature review (*Bail Act 1978 (NSW)*, ss.32).

Mental illness

A recurrent theme in the study was the frequency of mental illness, low cognitive ability, prior episodes of self harm and intellectual disability amongst homeless defendants. These factors were consistent with the findings of Bamford, King and Sarre (1999) and Jones and Crawford (2007). Whilst the judicial interviews and case studies were reflective of high levels of substance abuse issues amongst this population, the quantitative research did not identify substance abuse as being more prevalent among homeless defendants compared to non homeless defendants. Whilst the reasons for this are unclear, it may be a result of the already high proportion of substance abuse issues amongst bail refused defendants in general. Irrespective, results suggested a high prevalence of substance abuse issues in combination with mental health and intellectual impairment for homeless defendants.

Domestic violence

Additionally, case studies revealed that domestic violence was a common factor experienced by homeless defendants. Whilst the data did not identify homeless defendants as having a higher probability of an active or historical Apprehended Violence Order (AVO), the data could not identify whether the defendant had been the victim of domestic violence themselves. As a result, the proportion of defendants who had been a victim of domestic violence remains unclear. As such, the frequency of domestic violence as a factor related to homelessness could be higher than what is reflected in the quantitative results. However, the case studies indicated that domestic violence is often experienced in combination with substance abuse and mental health issues.

Homelessness and chaotic lifestyles

Given the myriad of psycho-social factors prevalent within the sample population of homeless defendants, it is not surprising that their lifestyles are often described as chaotic within broader sociological literature. This perception was confirmed during the judicial interviews and was a major focus of the case study analysis. Given that homeless defendants may be without basic essentials such as food and shelter, their time and energy is generally spent trying to survive rather than focusing on when their next court hearing is. This was confirmed in the case studies: a number of the defendants attributed their failure to appear in court to their homelessness and subsequent chaotic lifestyle. Given the small number of participants interviewed for the case studies, it was not possible to link this finding with the available data findings.

Role of the defendant in their homelessness

A recurrent theme that emerged from the case study analysis was the role the defendant played in their own homelessness. Whilst not intended to detract from the often devastating experience of homelessness, it is important to note the impact motivation, capacity and actions may have upon a defendant's housing status. For instance, there were circumstances in which the defendants' alleged offending resulted in the loss of their housing. These circumstances were generally apparent when the defendant had been charged with domestic violence related offences, although it could also apply to other offences where the co-resident was a victim. In addition, a number of case studies highlighted an unwillingness of the defendant to enter into residential rehabilitation, to reside with family or to enter into other supported accommodation facilities. Whilst there may have been valid reasons guiding their decision, it is important to note that some cases of homelessness may be resultant from a decision to decline available options.

During the study, a group of homeless defendants were identified who were unable or unwilling to comply with the rules of their accommodation provider resulting in their homelessness. Contributing factors for this failure to comply were varied, including factors, such as drug dependence, intellectual impairment, mental illness and continued engagement in a criminal lifestyle. This compliance factor was confirmed by the judicial interviews. It was suggested that in such circumstances, communication between non government service providers and government departments is required to address the defendant's overall needs. As such, the provision of housing in isolation from other services was considered to be insufficient in cases where the defendant had multiple issues needing to be addressed.

The importance of collaboration in future initiatives

The semi-structured interviews with judicial members highlighted the importance of collaboration between key stakeholders as paramount to the success of any future initiatives to minimise bail refusal for homeless defendants. Whilst the judicial members' suggestions regarding future initiatives varied, emphasis on the utility of using existing housing and support services to address the needs of the defendants was a commonality. This is in accordance with the broader research findings, which emphasise the complexity of homelessness and bail refusal as an issue, and call for a multi-faceted approach towards reducing it.

In addition to the above considerations, it is also important to note the geographical variants that may impact any future initiatives to reduce the remand of homeless defendants. As discussed in the results of the judicial interviews, a distinction was drawn between regional and metropolitan NSW, in respect of general attitudes and approaches towards homeless. As such, policy makers may need to take this into consideration prior to the development of any future initiatives. Notably, it was not within the scope of this study to discuss cultural attitudes towards homelessness, or to compare community perceptions and existing measures to reduce its occurrence. Rather, it was the aim of this research to highlight the nature and complexity of the issue. It should be noted that in order for any future initiatives to be considered, they will need to be evaluated in terms of their efficacy within other jurisdictions, ability to address wide-ranging issues and applicability to the regional and metropolitan NSW landscapes.

8. OVERALL CONCLUSION

Homeless defendants accounted for approximately 12 per cent of the total bail refused population (n=2,462) between September and November 2009. The findings of the research indicated that homeless defendants were more likely to be refused bail due to poor community ties or risk of failing to appear in court.

There was no recorded data that identified a correlation between homelessness and bail refusal. Rather, homelessness appeared to exist in combination with a variety of other factors, including mental health, intellectual disability and substance abuse issues. These factors all had the potential to impact an individual's ability to live independently within the community. Notably, even in circumstances where defendants were provided with housing, their ability to utilise this support was contingent upon whether their other needs were being addressed. In addition, there were defendants unwilling to accept accommodation offered to them, or if accepted, were unable or unwilling to comply with the regulations of the provider. As a result, the motivation of the defendant to accept assistance offered to them was also a factor influencing their experience with homelessness.

Qualitative and quantitative results showed homelessness to be a complex problem, often accompanied by mental health issues, substance abuse and intellectual disability. For Government initiatives to be able to secure and maintain long term housing for homeless defendants, the holistic needs of the defendant must be addressed rather than simply their immediate housing requirements. Without an acknowledgement of homelessness as one component of a much broader and more complex issue, the problem of bail refusal for homeless defendants is likely to continue.

9. STUDY LIMITATIONS

1. This study was unable to establish whether homelessness was a factor related to bail refusal: Whilst Section 32 of the *Bail Act 1978* stipulates the reason for bail refusal must be recorded, current practice does not involve an electronic recording system, but rather a hand written form completed by the Magistrate and only accessible via the relevant Court file. This document does not specify whether the defendant was homeless. Rather, it contains the reasons, in accordance with legislative requirements, that a defendant was refused bail. As such, court records were not relied upon in this research.

2. Availability of documentation: Given the data being analysed involves relatively recent flow data, in some cases the court process may not have been finalised. Hence, the “time spent on remand”, was not available for all participants.

3. Time constraints: The limited time frame placed on the current study did not allow for saturation of the qualitative data and hence the results were indicative of the experiences and opinions of only those participating in the study. Furthermore, the time frame did not allow for data to be obtained from the courts regarding the sentence outcomes for all bail refused defendants. Whilst some sentencing outcomes were available within CSNSW electronic records, this information was not available for all defendants.

4. There were issues regarding the standardisation of the Intake Screening Questionnaire (ISQ): Whilst this document proved to be a rich source of information about the defendants, it was not developed for research purposes. Instead, the questions were intended to screen any immediate issues experienced by the defendant upon their reception into custody and as such, there were some inconsistencies in the completion of the form. As a result, the data was manually sorted where information was inaccurately entered.

5. Generalisability of case studies: Given the limited number of case studies and lack of saturation due to time restraints, the results are unable to be generalised to the wider remand population. Instead, the results are intended to highlight some of the key issues experienced by defendants with a history of homelessness who have been remanded in custody.

6. Accuracy of self-report data from bail refused defendants: Both the case studies and ISQ relied upon self-report data obtained from the bail refused defendants. The accuracy of this data is contingent upon their honesty and level of recall.

7. Generalisability of bail court observations: Given the bail court observations were completed in two metropolitan courts, they do not represent issues in regional courts. Additionally, the observations were conducted over two days. As such, they are not considered to be representative of the broader range of issues impacting bail decisions.

8. Access to Information: Due to access restrictions, the level of background information for the case studies varied. Furthermore, the availability of information also impacted the decision as to which case studies could be used.

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11. APPENDICES

Appendix 1: Semi-structured interview plan for bail refused defendants

Interview Location:

Interviewer:

Date: ___ / ___ / 2010

Introduction

“This survey looks at the role of homelessness in bail refusal. You do not have to answer any questions that make you feel uncomfortable. Please ask me to explain anything that you do not understand. There are no right and wrong answers – your opinion is what is important. All information you provide will be kept confidential and will only be used for this research project. I will need to tape record your responses. Are you ok with this? (Tape machine turned on with permission). Research tells us that a large number of people are being refused bail. So, we want to know whether homelessness affects a defendant’s ability to receive bail and if so, what we can do to avoid people being held on remand because of this.”

Theme: Background information

D.O.B: ___ / ___ / ___ Gender: M F
Aboriginal or Torres Strait Islander: Y N
Prior Criminal History: Y N
Previously Incarcerated: Y N
Previous Fail to Appear/s: Y N

Theme: Housing

1. Have you ever been homeless?

YES NO

If yes, what were the reasons and how long were you homeless?

2. Have you used any services to help find accommodation?

YES NO

If yes, did you find these useful – why or why not?

3. Have you ever lived in temporary accommodation, such as hostels, emergency housing, boarding houses, ‘couch surfing’?

YES NO

If yes, what type of accommodation, for how long and what was the reason for this?

4. Where do you plan to live when you are released from custody, and will this be temporary or long-term?

5. If you are waiting for Department of Housing, where will you live in the meantime?

Theme: Support of family / friends

6. Do you have the support of your family?

7. Have you had the support of your family in the past?

YES NO

8. Would your family provide you with accommodation, if needed?

YES NO

If no, what are the reasons for this?

If yes, would you accept this accommodation?

9. Have any of your family members been homeless?

YES NO

If yes, provide details:

10. Do you have any friends that would provide you with accommodation, if required?

YES

NO

11. Do you have a partner that could provide you with accommodation, if required?

YES

NO

12. Are any of your family members, or your partner, a victim of your current offence/s?

YES – Partner YES – Family Member _____ NO

13. If a Magistrate granted you bail, although your family / friends had to pay a surety, would they be willing or able to do this?

YES

NO

If no, why?

14. Have you ever been refused bail because you were unable to meet a monetary bail condition?

YES

NO

Theme: Court process

15. Where were you living when you were charged with your current / previous offence/s?

16. Did you consider this accommodation to be stable?

YES

NO

Why?

17. If you were homeless / living in temporary housing at the time of your court appearance, do you think this was part of the reason you were refused bail?

YES

NO

18. If yes:

a. Why do you think that was?

b. Did you use any services to help you find accommodation / improve your chances of bail? If so, were they useful?

c. What service/s would be useful if you needed accommodation to improve your chances of bail?

19. Has being homeless or living in temporary housing ever:

a. Affected your ability to remember court dates or attend hearings?

b. Gotten you into trouble with the law?

20. What do you think are the main reasons you were refused bail?

21. Is there anything that could help you to get bail in future? Why?

Theme: Concerns

22. Do you have any concerns about your current or future accommodation?

Yes

NO

Why?

23. Do you plan to ask anyone for help with accommodation?

YES

NO

Why or why not?

24. How concerned are you about the following:

a. Being refused bail due to homelessness or unstable housing?

Not worried

A Little Worried

Somewhat Worried

Very Worried

b. Finding accommodation upon release from custody:

Not worried
A Little Worried
Somewhat Worried
Very Worried

Interviewer Notes:

Appendix 2: Semi-structured interview plan for judiciary members

Theme: Homelessness.

- Can you tell me about your experience with homeless people coming before the Court?
- Do you believe homelessness is an issue for many people coming before the Court?
- Based on your experience, what are some of the issues affecting homeless people coming before the court?

Theme: Court process

- What impact does the current bail legislation have in dealing with issues like homelessness?
- Do you consider homelessness to be a compounding factor in bail refusal?
- Based on your experience, is there anything that may help in reducing the number of people refused bail where homelessness is a factor?

Theme: Support services

- What services have you used in the past?
- Why were these services useful, or not?
- What type of support would you like to see available for homeless defendants?
- Based on your experience, are there any factors that could reduce the efficacy of services aimed at diverting homeless defendants from custody?

Appendix 3 - Ethical considerations

Institutional approval

The study protocol was approved by the Commissioner, the relevant Assistant Commissioner, and the Director of Research of CSNSW and was monitored by the Corporate Research, Evaluation and Statistics Unit of CSNSW. All interview participants provided consent to take part in the study and were provided with information regarding the nature, purpose and duration of the interviews. All prospective participants were provided with the opportunity to ask questions prior to giving informed consent form and again at the beginning of the interview.

Data handling and storage

All files and paper based data are protected through the use of locked filing cabinets located in the Research Unit of CSNSW to be accessed by the research team only. All electronic data is accessed through local password protected databases in computers in CSNSW.

The interviews were recorded, in cases where consent was provided by the respondent to do so. All interviews recorded using a digital tape recorder, were downloaded to the investigator's computer. These files were saved on the investigator's personal drive and the original interview erased from the digital recorder. The interview files were password protected and anonymous. That is, all qualitative data was stored in an anonymous format.

Confidentiality

All data was reported as part of group aggregates and average figures, with no information that may identify individual participants being reported. All study participant data are considered as strictly confidential.

Period of data storage

All data obtained will be stored for a period of seven years in order to warrant internal and external control of study results. Thereafter, all paper based and electronic data will be destroyed.

Data elimination

Data elimination will be by shredding of any paperwork containing original data after seven years, and deletion of study data which could be linked to study participants from computer drives.



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