

Move on to Where? Legal and Moral Implications of Moving People Experiencing Homelessness From the Public Realm

Shannen Vallesi, Research Officer; Lisa Wood, Associate Professor;
Craig Cumming, PhD, Candidate/ Research Fellow,
School of Population and Global Health University of Western Australia

Background

On any given night there are over 8,000 people rough sleeping in Australia.¹ These individuals represent just seven per cent of the total 116,000 individuals experiencing homelessness in Australia, but are some of the most vulnerable people in our society, with high rates of victimisation, trauma, and poor health outcomes. Despite growing calls for concerted efforts to end rough sleeping in Australia and a host of other countries, it remains a confronting reality. A sombre spotlight has been shone on this recently in the United Kingdom (UK), where an average of 11 homeless deaths per week have been recorded over a period of 18 months (Oct 2017-Mar 2019).²

The visible presence of people sleeping on pavements and in doorways and other public places is a rising phenomenon in Australia, and has led to considerable media and public discourse over the last few years. As we discuss in this paper, there is both a legal and moral dimension to moving on people who are homeless from public places; exacerbated by the lack of accommodation options to 'move on to'. While media stories often focus on particular move-on incidents or locations, our analysis of Western Australia (WA) police data for a large cohort of rough sleepers highlights how pervasive this practice is, and in response to this we provide a number of potential policy ideas that may address some of the underlying problems.

Moral Sanctioning Around Visible Homelessness in the Public Realm

While rough sleeping is not illegal, recent public utterances and social media in our own State of WA



Figure 1: Recent WA news article headlines

highlight that moral sanctioning against rough sleeping in the public realm is sadly 'alive and well'. Social media comments from the former Lord Mayor of Perth are one example of this:

'Small businesses face enough in [the] current Perth climate without having [rough sleepers] on their doorstep.'
— Former Lord Mayor of Perth, Lisa Scaffidi [November, 2018]

More recently in Perth, Tom Percy QC called attention to the plight of rough sleepers being woken and moved on by security guards at the entrance of a major department store in Perth's central business district (CBD).³ In the same month, 17 people were asked to leave a homeless encampment they established in undeveloped bush land approximately 50km south of Perth's CBD.⁴ Many of the homelessness services and temporary accommodation options are located in the CBD, with those living in this area left with very few options of a place

to go. Simply moving people on from camps or doorways only removes them from that particular location at that specific time, hampering efforts to address underlying needs for housing and other support. Ultimately, these individuals need somewhere to go, so unless appropriate accommodation is provided, the cycle is likely to be repeated with these individuals continuing to be moved on in the public realm.

Media coverage of the plight of rough sleepers in WA has increased over the last year (see examples Figure 1). Whilst such stories have evoked many compassionate responses from the public and the homelessness sector, others have taken to social media (Facebook and Twitter) arguing that authorities should do more to move people out of public spaces (Figure 2).

One of the recurring themes in social media comments that support the 'moving on' of people who are homeless is that homelessness is a choice



Figure 2: Facebook and Twitter commenters on recent media articles

(see Figure 2), yet the weight of evidence points to trauma, poverty and adverse childhood experiences as the most common precursors of homelessness.⁵ This type of commentary also conveys a perceived moral imputation of 'wrongdoing' when someone is merely trying to sleep safely for the night is asked to move elsewhere, and this potentially reinforces the sense of marginalisation already felt by this vulnerable population group. Additionally, symbolically moving individual on through use of hostile architecture (spiked flooring, benches with armrests to prevent lying down) reinforces this notion of not being welcome.

For those who are or have been sleeping rough, the question remains, move on to where? The shortage of emergency or crisis accommodation in Australian cities and towns, lengthy public housing waitlists (>140,000 people estimated to be waiting across Australia),⁶ and the well documented lack of affordable housing, all contribute to the scarcity of places that people sleeping rough can actually move on to.

Legality of Moving People On

In WA, it is not illegal to beg or sleep rough in a public space, with rough sleeping offences repealed in 2004.⁷ However, the very nature of sleeping rough and being itinerant places people at higher risk of committing certain types of offences. Laws relating to loitering, public drunkenness or urinating in a public place are case in point — those of us living in the comfort of our own homes are at very low risk of ever committing such offences.

Additionally, police in WA are able to issue 'move on orders'^{8,9} in a range of circumstances where it is suspected that an individual is in the process of committing an offence, or is about to commit an offence in a public place. An order can be active for a maximum of 24 hours. Among the circumstances that may justify a move on order being issued are 'committing any breach of the peace' and 'hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person'.¹⁰ The wording of this law allows broad interpretation, meaning that move on orders can be issued in circumstances where no actual

offence has been committed. In the absence of an offence, officers may rely on the presence or appearance of a particular person in forming 'reasonable suspicion' that an offence may occur, or a breach of the peace or hindrance of lawful activity by another is occurring.

While move on orders are not isolated to people who are homeless, it is reasonable to propose that those sleeping rough on footpaths, in retail doorways, and in other corners of the public realm are far more likely to be moved on than any of us with a permanent roof over our heads.

A move on order is not an offence itself, however not complying with it brings a maximum penalty of a \$12,000 fine or 12 months imprisonment.¹¹ Continued non-payment of a fine will eventually result in a custodial sentence, this is of particular relevance to homeless people who may have few material resources to pay a fine.¹²

Burden on the Justice System

As part of a suite of homelessness research being undertaken by our team at the University of Western Australia, we have been provided with police data on 2,792 homeless or previously homeless individuals. Of these individuals, they amassed a total of 14,240 move on orders in a five-year period between 2011–2015. This is equivalent to nearly 3,000 move on orders issued every year to individuals experiencing homelessness; however, it should be noted that this underestimates the total burden on police as data pertains to our current evaluation populations in Perth and not the entire homeless population in WA.

Overall 42 per cent (n=1,162) of individuals had been issued a move on order between 2011–2015, with 26 individuals receiving more than 100 orders, and of which, one individual accrued a total of 412 move on orders in this period (Figure 3). Issuing an individual this many move on orders is futile and only creates more opportunity for them to commit an offence through breaching order conditions, further trapping them in a revolving door of homelessness and the justice system.

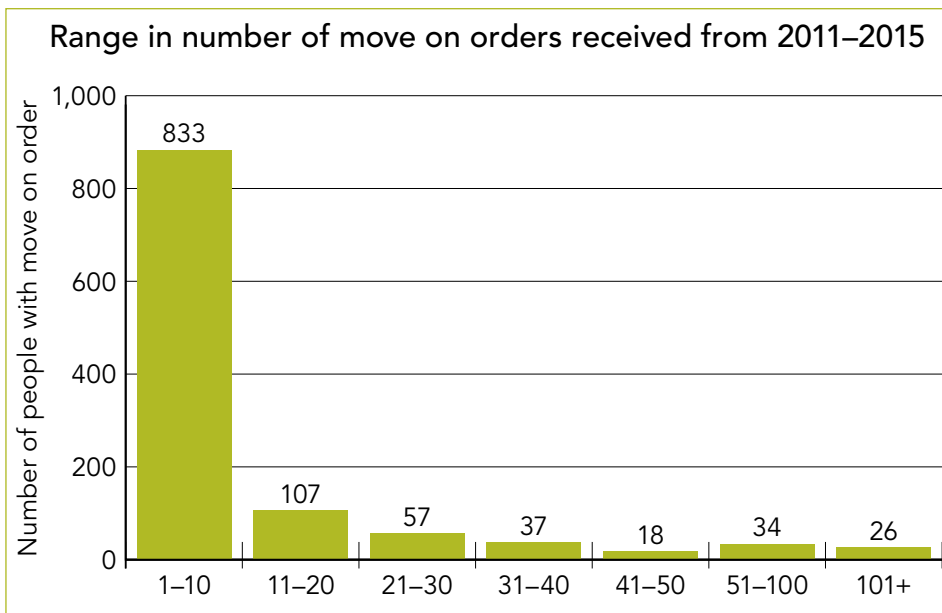


Figure 3: Number of move on orders per person in a five year period (2011–2015)

While sobering just how much contact an individual experiencing homelessness may have with police; these numbers reflect only formal move on orders. They do not capture the volume of requests by security guards employed by retail stores or to surveil public areas, nor requests by local council rangers asking for people to relocate. As articulated by Justice Connect lawyer Lucy Adams in 2017,¹³ there are a raft of factors that underlie enforcement-based responses to rough sleeping, including:

‘public pressure on government decision-makers and law enforcement, often stemming from: community discomfort with visible poverty, including concerns about “aggressive” activity... and retail concerns about the commercial impact of people begging or sleeping rough near their premises’

In interviews undertaken as part of the 50 Lives 50 Homes (50 Lives) evaluation, one couple spoke about their experiences of being moved on for ‘doing nothing’.

‘We just want to sit somewhere out of the rain or whatever, and the let the world go by so to speak. But the police always felt the necessity to give you a move on notice. Or you might have been up for two days because you haven’t been able to find somewhere to sleep properly. You fall asleep in front of the

library, and then you’re getting a kick in the shin by a security guard and a move on... It’s just an existence, it’s not really fair on any one... when you’re doing nothing except sitting...’
— 50 Lives Client

Housing as a More Upstream Response to Rough Sleeping in Public Places

Traditionally homelessness services have taken more linear approaches to housing people experiencing homelessness, whereby they needed to be ‘housing ready’ before they are able to access independent housing. Housing First is a strategic response to homelessness that began in the United States (US) in the 1990s, that prescribes safe and permanent housing with wrap-around support to highly vulnerable rough sleepers with no preconditions.¹⁴ The model is based on the underlying principle that individuals need stable housing before underlying issues (that is, health, psychosocial, legal) can be addressed.¹⁵ The model has been adopted widely across the US, Canada, Europe, New Zealand, and Australia; including the 50 Lives program here in WA.

The 50 Lives program is a collective impact program involving 28 different organisations from across various sectors in Perth (homelessness services, housing providers, health and mental health providers, community services) that aims to house some of the

most vulnerable and chronic rough sleepers. To date, 206 people have been housed in 161 homes with an 86 per cent retention rate.

In the five years prior to being housed by 50 Lives, the 89 clients we have police administrative data for amassed a total of 1,021 move on orders. This comes at a substantial impact to the individual recipients, and contributes to a large administrative burden on the police issuing these orders, in addition to the burden on the courts that have to deal with any breaches arising from these orders.

For the 49 clients housed for at least 12 months, there had been 104 move on orders issued in the 12 months prior to housing; this reduced by 82 per cent to just 19 in the 12 months after being housed. Further evidencing the role that long-term housing (with support) could play in reducing police burden for those experiencing homelessness.

Move on to Where?

While there has been an ongoing surge of media attention to the number of individuals that are visibly rough sleeping in the Perth CBD and outcries of the need to do more to help, much of this attention fails to address the underlying concern of ‘where do these individuals actually go?’ Day centres provide one option for individuals to shower and get a meal during the day, but there are a limited number of these services available, they can be somewhat chaotic due to high traffic of individuals requiring support, and they only provide a place to go until around midday.

Without a significant boost homelessness-related expenditure, rough sleeping is likely to continue to increase in WA and nationally. Currently there is a desperate need for more crisis accommodation (to relieve immediate need), more affordable, low density housing options, and more wrap-around support services for people placed in housing to help them maintain their current tenancies.

The harsh reality is that the solution to homelessness is not a phone

call to the Police; it is providing housing that people can afford, and offering support to people to sustain it. In the absence of this, here are a number of thoughts on what else can be done:

Creating public spaces where people are welcomed. There are many subtle nuances that reinforce that public spaces aren't really for 'everyone'. Ways to increase inclusivity are preventing the use of hostile architecture measures, and ensuring ample accessible public toilets, showers and water fountains. Additionally providing lockers and storage facilities would reduce the 'physical presence' of homelessness on the streets by removing some belongings, but more importantly, it would prevent people's possessions and important documentation from being damaged or stolen.

Forming partnerships between police and homelessness services. Police are expected to respond in certain circumstances, but are not necessarily the best equipped to deal with such situations and for some individuals a police presence can increase anxiety and lead to escalated responses. Forming partnerships between police and local outreach-based services (such as the Street to Home or Housing First programs) may assist in diverting individuals from police by linking them in with appropriate services and individuals who have been trained and have experience within the sector. Additionally this could reduce the strain on already stretched judicial services.

Opening services at night to create safe places for people to go. Expanding the capacity of services to provide safe spaces overnight. One innovative idea in Melbourne was opening Hamodava Café overnight in the winter period to provide a place for people to escape the cold, get a warm meal and link in with services (such as nurses). This could be replicated locally through similar services or through opening of churches overnight.

Educating the community of homelessness and its causes. As reflected in some of the

commentary earlier in this article, there is a general misconception that homelessness is an individual's fault due to poor choices made. By 'myth-busting' some of the common misconceptions around the causes and costs of homelessness we can better respond at the community level.

Use innovative solutions to prevent discharge into homelessness. Rough sleepers are among frequent Emergency Department (ED) presenters, and when discharged back to the street, their health can further deteriorate and they can be at risk of having their medications stolen. An alternative is for EDs to have brokerage funding to secure short-term accommodation to avert discharges to homelessness; this has been piloted by Royal Perth Hospital during the 2018 and 2019 winter periods. Another alternative is the establishment of respite care facilities such as St Vincent's Tierney House in Sydney and The Cottage in Melbourne, which allow for short-term reprieve away from the streets to enable medical recovery.

Diversion program to address underlying social determinants of homelessness. Creating a mechanism that leads to a 'homelessness' diversion program (similar to Drug/Start Court) to address an individual's homelessness rather than issuing a fine for breaching an order may be one way to reduce overall burden on the judicial system. For example, engaging with services that house people, in conjunction with other support agencies (depending on client need) such as the Salvation Army's Employment Plus.

The Perth CBD is not the safest place for individuals experiencing homelessness to sleep due to high rates of alcohol and drug-related violence from Northbridge, but the physical presence of the public, well-lit streets and high density of security cameras enable some individuals to feel safe. Additionally, the proximity to available homelessness support services and food outreach services can make it a convenient

place to stay. In a harsh housing and accommodation climate characterised by a dearth of affordable options individuals will continue to congregate in the CBD where they can access these services. More upstream solutions are needed to ease both the personal risk to vulnerable individuals and administrative burden on the justice system, by decreasing the criminalisation of homelessness.

Endnotes

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