

# Access to justice for children and young people in Aotearoa New Zealand

Working paper No.8 – Children and young people in poverty or socio-economic disadvantage

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# Introduction

This working paper explores the justice problems and barriers to access experienced by people in poverty or socio-economic disadvantage followed by some of the possible solutions raised in the research and literature from Aotearoa New Zealand and overseas. It forms part of an overall research project exploring the extent to which children and young people are able to access to justice in Aotearoa New Zealand. The findings of the research study are presented in three parts:

**Part One** contains my analysis of data from key informant interviews with adults with expertise in the justice system and/or working with particular groups of children and young people, as well as from a survey of children and young people aged 14 to 24.

**Part Two** discusses the meaning of access to justice and other related concepts such as legal empowerment as well as the specific meaning of access to justice for children and child-friendly justice. It then discusses the justice problems experienced by children and young people generally, as well as common barriers to accessing justice. The analysis in this report is based on my review of the research and literature in New Zealand and overseas as well as analysis of information obtained from the government and Crown entities.

This report is supported by a series of ten working papers discussing the justice problems and barriers to accessing justice experienced by particular groups of children and young people and is broken up into a series of reports relating to groups identified as likely to experience differing justice problems or barriers to access. These working papers are:

1. Children and young people in care or with care experience;
2. Disabled and neurodiverse children and young people;
3. Tamariki and rangatahi Māori;
4. Pacific children and young people;
5. Rainbow and takatāpui children and young people;
6. Girls and young women;
7. Boys and young men;
8. Poverty and socio-economic disadvantage;
9. Trauma; and
10. Intersectionality.

**Part Three** explores possible solutions or ways to close the justice gap for children and young people in Aotearoa New Zealand. This part of the study is also supported by a series of working papers in relation to possible solutions. At the time of writing these working papers consider the following topics with additional working papers likely to follow:

11. Strategic litigation;
12. Legal service delivery, non-lawyer services, and integrated services;
13. Data, evidence and measuring change;
14. Technology;
15. Training for professionals;
16. Legal education and continuing professional development for lawyers and judges; and
17. Law-related education for children and young people.

These reports and working papers are available at: <https://www.cypaccesstojusticenz.com/>

# Justice issues

## Inequities in the experience of poverty

Data from the Child Poverty Monitor 2022 Technical Report demonstrates significant and ongoing inequities in relation to children and young people's experience of socio-economic disadvantage across all three measures considered.<sup>1</sup> For children aged under 18 years:

- Overall, approximately 187,300 children (16.3%) still live in households below the first measure,<sup>2</sup> and a gap remains between European children and those identifying with other ethnic groups, and between disabled children and non-disabled children. (European children 14.1%; tamariki Māori 17.8%; Pacific children 16.3%. Disabled children 17.6%; non-disabled children 16.2%).
- European children means they were the only population group to have met the target for the second measure,<sup>3</sup> and European children also met the 2022/23 target (European children 9.7%; tamariki Māori 18.1%; Pacific children 17.2%. Disabled children 15.5%; non-disabled children 13.7%).
- Material hardship decreased for all groups of children between 2019/20 and 2020/21, but a persistent high level of disparity between population groups remained.<sup>4</sup> (European children 7.8%; tamariki Māori 20.2%; Pacific children 24%. Disabled children 20.5%; non-disabled children 9.7%).

The United Nations Committee on the Rights of the Child released its Concluding Observations on Aotearoa New Zealand's compliance with the UN Convention on the Rights of the Child in February 2023 raised concerns about the persistently high rates of child poverty stating that the Committee was:<sup>5</sup>

*[S]eriously concerned that a significant proportion of children live in poverty and experience food insecurity and severe housing deprivation, including homelessness, insecurity of tenure, and overcrowding, resulting in poorer health and education outcomes, disproportionately affecting Māori and Pasifika children.*

Although the Government has recently taken steps to increase benefit rates and index them to inflation,<sup>6</sup> child poverty campaigners described the increase as “holding pattern while we wait for much needed radical reform of our benefit and tax system”.<sup>7</sup> It is now over four years since

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<sup>1</sup> Duncanson, M., Roy, M., van Asten, H., Oben, G., Wicken, A., Tustin, K., McAnally, H., & Adams, J. (2022). *Child Poverty Monitor 2022 Technical Report*. NZ Child and Youth Epidemiology Service, University of Otago. The child poverty statistics presented in this report are based on data collection for the 2020/21 Household Economic Survey (HES) that concluded in June 2021.

<sup>2</sup> Fixed-line measure of equivalised disposable income after housing costs below 50% of the 2017/18 median.

<sup>3</sup> The measure is the percentage of children living in households with equivalised disposable income before housing costs below 50% of the contemporary median. The 2020/2021 target is 10.5% and the 2021/2022 target is 10%.

<sup>4</sup> The 2020/21 target of 10.3% of children living in households experiencing material hardship was met when the sampling error was taken into account, with 125,700 (10.0%–12.0%) experiencing a lack of six or more essentials. The target for 2027/28 is 6%.

<sup>5</sup> United Nations Committee on the Rights of the Child. (2023). *Concluding observations on the sixth periodic report of New Zealand*. The Office of the High Commissioner for Human Rights at 11.

<sup>6</sup> New Zealand Government. (2023). *Cost of living package: More bread and butter support for Kiwi families*. <https://www.beehive.govt.nz/release/cost-living-package-more-bread-and-butter-support-kiwi-families>

<sup>7</sup> Child Poverty Action Group. (2023). *Welfare rises welcome but families will still tread water* [Media release]. <https://www.cpag.org.nz/media-releases/welfare-rises-welcome-but-families-will-still-tread-water>

the Government appointed Welfare Expert Advisory Group produced its report *Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand*,<sup>8</sup> yet none of the recommendations have been fully implemented<sup>9</sup> and the country is now facing a cost of living crisis.<sup>10</sup>

Further data released by Statistics New Zealand in March 2023 from the Household Economic Survey also showed that there was no annual change in child poverty statistics in the year to June 2022.<sup>11</sup> Of significant concern is that this data was collected prior to the cost of living crisis,<sup>12</sup> and does not include many of those in greatest poverty as the families of children living in emergency housing or in cars are not interviewed as part of the household survey.<sup>13</sup> As such, the true picture of child poverty is likely to be even worse.<sup>14</sup>

## Poverty and legal problems

Studies consistently show that poverty and disadvantage are closely related to the experience of legal problems.<sup>15</sup> Allison et al explain:<sup>16</sup>

*One reason this occurs is that poverty creates a dependency on welfare services, which leads to far greater scrutiny by government to ensure compliance with obligations it has imposed as a condition of receipt of such services. This has been referred to as 'welfare responsabilisation'.<sup>28</sup> In contrast, according to Sackville, the rich are able to live a much more 'secluded and spacious' life, shielding 'many of their activities from public gaze and from law enforcement machinery'.<sup>29</sup>*

The LAW survey in Australia found that participants in receipt of government benefits experience significantly different legal problems from those experienced by other participants. For example, this group were more likely to experience problems relating to family, government,

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<sup>8</sup> Kia Piki Ake - Welfare Expert Advisory Group. (2019). [Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand](#).

<sup>9</sup> Neilson, M. (2023, March 21). WEAG welfare overhaul update, Govt defends \$14.6b programme while anti-poverty campaigners say 'woefully slow'. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/politics/weag-welfare-overhaul-update-govt-defends-146b-programme-while-anti-poverty-campaigners-say-woefully-slow/HYL5CB5O7ZHFMBQDQHG2E4N34/>

<sup>10</sup> Burns, A. (2023, January 16). Cost of living pressure set to continue in 2023, say economists. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/cost-of-living-pressure-set-to-continue-in-2023-say-economists/VQW3OL3ZLJBIZONJXY2HLYKTOY/>

<sup>11</sup> Statistics New Zealand. (2023). *Child poverty statistics show no annual change in the year ended June 2022*. <https://www.stats.govt.nz/news/child-poverty-statistics-show-no-annual-change-in-the-year-ended-june-2022>

<sup>12</sup> (2023, March 23). Child poverty reduction stalls ahead of cost-of-living crisis. *Radio New Zealand*. <https://www.rnz.co.nz/news/national/486580/child-poverty-reduction-stalls-ahead-of-cost-of-living-crisis>

<sup>13</sup> Witton, B. (2023, March 23). Government's child poverty reduction plan stalls. *Stuff*. <https://www.stuff.co.nz/national/politics/131580377/governments-child-poverty-reduction-plan-stalls>

<sup>14</sup> (2023, March 24). Child poverty stats under-count problem. *Waatea News*. <https://waateanews.com/2023/03/24/child-poverty-stats-under-count-problem/>; Child Poverty Action Group. (2023, March 23). Children Languishing In Poverty Forgotten In Government Policies, Says CPAG [Media release]. *Scoop*. <https://www.scoop.co.nz/stories/PO2303/S00192/children-languishing-in-poverty-forgotten-in-government-policies-says-cpag.htm>

<sup>15</sup> Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, I. & Ramsey, S. (2012). [Legal Australia-Wide Survey: legal need in Australia](#), Law and Justice Foundation of New South Wales at 16; Pleasence, P. (2014). [Reshaping Legal Assistance Services: Building on the evidence base](#). Law and Justice Foundation of New South Wales at 5; Law Council of Australia. (2018). [The Justice Project: Final Report Part 1 People experiencing economic disadvantage](#).

<sup>16</sup> Allison, F., Cunneen, C. & Schwartz, M. (2017). The Civil and Family Law Needs of Indigenous People Forty Years after Sackville: The Findings of the Indigenous Legal Needs Project. In A. Durbach, B. Edgeworth & V. Sentas (Eds.), *Law and Poverty: 40 years after the Commission of Inquiry into Poverty* (pp.231-248). Federation Press at 237.

health, housing and rights with the high levels of government problems largely relating to issues with receipt of government payments and rights problems relating to discrimination and unfair treatment by police.<sup>17</sup> Other research has also identified similar differences.<sup>18</sup>

The research and literature also shows that the relationship between socioeconomic disadvantage and the experience of legal problems is bi-directional as Coumarelos et al explain: “not only does socioeconomic disadvantage or social exclusion increase the likelihood of experiencing legal problems, but experiencing legal problems can create, perpetuate or further entrench social exclusion (Buck et al. 2005; Currie 2007b).”<sup>19</sup> Moreover, disadvantaged groups are often grappling with a variety of non-legal needs including health, financial, employment, housing and educational needs,<sup>20</sup> with legal problems often existing “at the intersection of [law] and everyday adversity”.<sup>21</sup>

## Housing & homelessness

Research shows that the ‘severely housing deprived population’ in Aotearoa New Zealand is disproportionately young, with nearly 50 percent aged under 25 years of age and the highest rates of housing deprivation being among Pacific and Māori young people.<sup>22</sup> Paul and Ratana discuss some of the legal and non-legal issues that can lead to homelessness and this overrepresentation:<sup>23</sup>

*Because of their age, youth are less likely to have secured a steady income to afford a rental property, and are more likely to experience racial, gender and age discrimination.<sup>59</sup> This can lead to young people becoming more heavily reliant on the government to provide housing and social support. In addition Manaaki Rangatahi have anecdotally identified that youth also experience complex issues such as trauma, addiction and abuse, endure backlash from a lack of public understanding of their situations, and have often encountered a breakdown in connection to whānau, whenua and whakapapa, impacting their mental health (Manaaki Rangatahi Collective, personal communication, February 11, 2021).*

Lawyers from a legal service tailored to the needs of street homeless young people in Toronto, Canada explain homelessness is much more complicated than not being able to afford accommodation – there are a wide range of legal issues which, if not resolved, can affect young people’s housing stability.<sup>24</sup>

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<sup>17</sup> Coumarelos et al., [Legal Australia-Wide Survey: legal need in Australia](#) at 177.

<sup>18</sup> Ibid at 20.

<sup>19</sup> Ibid at 28.

<sup>20</sup> Ibid at 220.

<sup>21</sup> Sandefur, R.L. (2007). The importance of doing nothing: everyday problems and responses of inaction. In P. Pleasence, A. Buck & N.J. Balmer (Eds.), *Transforming lives: law and social process* (pp.112-132). Stationery Office at 113.

<sup>22</sup> Amore, K., Viggers, H. & Howden-Chapman, P. (2020). [Severe housing deprivation in Aotearoa New Zealand, 2018](#). University of Otago & He Kainga Oranga at 4. At 5: “Severe housing deprivation is synonymous with homelessness. It refers to people living in severely inadequate housing due to a lack of access to minimally adequate housing (Amore et al, 2013). This means not being able to access a private dwelling to rent or own that has all basic amenities. Housing that lacks at least two of the three core dimensions of housing adequacy – habitability, security of tenure, and privacy and control – is deemed severely inadequate.”

<sup>23</sup> Paul, J. & Ratana, M. (2022). [Youth Homelessness in Tāmaki Makaurau, Aotearoa New Zealand](#). Ngā Wai a te Tui Māori and Indigenous Research Centre at 22.

<sup>24</sup> Chan, E. & Huys, J. (2019). [Access to justice through street youth legal services](#). *Parity*, 32(8), 53-54 at 53.



*Through 20 years of experience of service, JFCY has learnt that there are numerous legal issues — including eviction, involvement in child protection, discrimination (in housing, education, healthcare, or employment), income insecurity, and the consequences of youth criminal justice involvement — that affect a young person’s housing stability. For example, when a young person is denied social assistance because of their age, they lack the income security necessary to pay their rent and stay in school; when a young person is discriminated against on the basis of their race or sexual orientation by a potential landlord or employer, they cannot find or afford housing and spend more time in the shelter; or, when a young person is expelled from school and not informed of their right to appeal the expulsion, their schooling is disrupted and they fall behind or quit entirely. Homelessness, as we have learned, is as much the result of rights violations as it is about inequality or housing affordability. All of these legal problems have a legal solution.*

Just as a variety of legal issues can lead to homelessness, homelessness can also lead to the experience of legal issues as Borysik and Corry-Roake explain:<sup>25</sup>

*Participants with experiences of homelessness shared their experiences of being regularly moved on, fined, or banned from certain locations, or being arrested for breaches. They felt arrests were ‘dehumanising’ and left them feel ‘ignored’ or ‘abandoned’, when they clearly needed help accessing safe and secure accommodation. One participant shared how they were arrested while sleeping on the streets and screamed due to agony caused by abscesses on their legs; however, his scream was interpreted as aggression towards the police... Participants highlighted the common use of synthetic cannabinoids among people who are sleeping rough, and how the drug’s effects such as extreme anxiety, confusion, paranoia and violent behaviour might impact on their interactions with the police officers on the street. They suggested people with problematic substance use on the streets are well known to the police services, and more likely to be stopped and searched, or arrested for possession and distribution of drugs.*

## Education issues

There is a clear correlation between a school’s socio-economic status (SES), as measured by decile, and age-standardised stand-down, suspension, exclusion and expulsion rates:<sup>26</sup>

- The age-standardised stand-down rate for decile 1-2 schools and kura (38.8 per 1,000 students) and decile 3-4 schools and kura [Māori medium education] (44.5 per 1,000 students) were more than three times the age-standardised stand-down rate for decile 9-10 schools and kura (12.7 per 1,000 students).
- The age-standardised suspension rate for decile 1-2 schools and kura (5 per 1,000 students) and decile 3-4 schools and kura (4.8 per 1,000 students) were around four times the age-standardised stand-down rate for decile 9-10 schools and kura (1.2 per 1,000 students).
- The age-standardised exclusion rate for decile 1-2 schools and kura (2.0 per 1,000 students) and decile 3-4 schools and kura (1.5 per 1,000 students) were three to four

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<sup>25</sup> Borysik, B. & Corry-Roake, E. (2021). [The Knot: Lived experience perspectives on policing trauma, poverty and inequalities](#). Revolving Doors Agency & New Generation Policing at 25-26.

<sup>26</sup> Ministry of Education. (2022). [Stand-downs, suspensions exclusions and expulsions from school](#) at 8 and Time Series spreadsheets available at: <https://www.educationcounts.govt.nz/statistics/stand-downs,-suspensions,-exclusions-and-expulsions> Decile 1-2 schools and kura (low SES) were made up of students from communities with the highest degree of socio-economic disadvantage.

times the age-standardised stand-down rate for decile 9-10 schools and kura (0.4 per 1,000 students).

- The age-standardised expulsion rate for decile 1-2 schools and kura (2.1 per 1,000 students) and decile 3-4 schools and kura (1.3 per 1,000 students) were around three to four times the age-standardised stand-down rate for decile 9-10 schools and kura (0.5 per 1,000 students).

Data from PISA2018 shows significant disparities between socio-economically disadvantaged and advantaged students<sup>27</sup> across a range of measures including:

- Disadvantaged students generally perceive lower levels of teacher academic support overall than advantaged students;<sup>28</sup>
- On average, disadvantaged students feel a lower overall sense of belonging at school than those from advantaged backgrounds;<sup>29</sup>
- Disadvantaged students are significantly more likely to report that behavioural issues happen more frequently in their classes. The difference between the behavioural climate reported by disadvantaged and advantaged students in New Zealand is almost double the advantaged-disadvantaged gap on average across OECD countries;<sup>30</sup>
- Advantaged students are significantly more likely than disadvantaged students to arrive on time and to never skip school;<sup>31</sup>
- Disadvantaged students feel lower self-efficacy but also lower fear of failure than advantaged students;<sup>32</sup>
- The average reading score for disadvantaged students (462 points) was well below and the advantaged group had an average score (558 points) well above the New Zealand and OECD averages for all students;<sup>33</sup>
- Access to quality resources was not equitably distributed with advantaged schools' principals (-.74) reporting much higher access than disadvantaged (-.15); and<sup>34</sup>
- 54% of principals of students in disadvantaged schools agreed 'the number of digital devices for instruction is sufficient', as compared with the 92% of principals of students in advantaged schools.<sup>35</sup>

Child Poverty Action Group identify a range of poverty related factors that can impact on children's school engagement and attendance:<sup>36</sup>

*A 2014 CPAG study of housing insecurity reported high levels of school transience linked to involuntary household mobility.<sup>3</sup> In poorer areas, attendance may also be affected by illnesses associated with income poverty and material hardship,*

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<sup>27</sup> Students' socio-economic status is estimated by the PISA index of Economic, Social and Cultural Status (ESCS). Students are classified as socio-economically 'advantaged' if they are among the top quarter of the ESCS index in New Zealand, and socio-economically 'disadvantaged' if they are among the bottom quarter. See Jang-Jones, A. & McGregor, A. (2019). [PISA2018 New Zealand Students' Wellbeing School climate & student mindsets of 15-year-olds](#). Ministry of Education at 5.

<sup>28</sup> Jang-Jones & McGregor, [PISA2018 New Zealand Students' Wellbeing School climate & student mindsets of 15-year-olds](#) at 11.

<sup>29</sup> Ibid at 15.

<sup>30</sup> Ibid at 41.

<sup>31</sup> Ibid at 46.

<sup>32</sup> Ibid at 55.

<sup>33</sup> May, S., Jang-Jones, A. & McGregor, A. (2019). [PISA2018 New Zealand Summary Report System Performance & Equity](#). Ministry of Education at 24.

<sup>34</sup> Medina, E. (2020). [PISA 2018 Reading experiences of 15 year olds Resources for Learning: Access, quality and capacity](#). Ministry of Education at 2.

<sup>35</sup> Ibid at 5.

<sup>36</sup> Child Poverty Action Group. (2021). [Submission on the Inquiry into school attendance](#) at 3.



*inclement weather, transport difficulties, inadequate or inappropriate clothing, lack of food, equipment, the need to care for family members, to contribute to household income, unhealthy housing, and so on.*

Other authors have identify other poverty related factors such as lack of access to a quiet study space,<sup>37</sup> and diagnostic overshadowing where children “from lower socio-economic groups are more likely to get a diagnosis of social, emotional and mental health (SEMH) needs, rather than autism or speech, language and communication challenges.”<sup>38</sup>

## Victimisation

There is also clear evidence of a correlation between poverty and an increased risk of criminal victimisation.<sup>39</sup> The 2020/2021 New Zealand Crime and Safety Survey (NZCASS) published by the Ministry of Justice in 2022 surveyed 6,244 respondents aged over 15 years. Its key findings included that economic and household factors including “not [being] employed and not actively seeking work; living in a one-parent-with-child(ren) household or multi-person household; renting government accommodation; being under high levels of financial pressure” were associated with a higher level of victimisation.<sup>40</sup> This includes being more vulnerable to sexual assault<sup>41</sup> and offending by family members.<sup>42</sup>

Fanslow et al.’s population based study using data from the 2019 Family Violence Survey which produced prevalence estimates of measured adverse childhood experience (ACE) types by socio-demographic characteristics found that those who were in low socio-economic groups bore a disproportionately high burden of ACEs.<sup>43</sup> **Table 1** below which sets out prevalence of different types of ACES by area deprivation demonstrates this relationship.

**Table 1 Prevalence of Adverse Childhood Experiences<sup>44</sup>**

Area deprivation	Emotional abuse	Physical abuse	Sexual abuse	Witnessing IPV <sup>45</sup>	Household Substance abuse	Household mental illness
Least deprived	22.5%	15.6%	16.8%	11.5%	19.2%	20.1%
Moderately deprived	30.4%	16.7%	15.9%	15.5%	19.2%	18.9%
Most deprived	33.8%	21.7%	23.4%	20.2%	21.9%	18.5%

<sup>37</sup> Hill, L.A. (2017). [Disrupting The Trajectory: Representing Disabled African American Boys In A System Designed To Send Them To Prison](#). *The Fordham Urban Law Journal*, 45(1), 201-239 at 209-210.

<sup>38</sup> Kirby, A. (2021). [Neurodiversity – a whole-child approach for youth justice](#). HM Inspectorate of Probation at 6.

<sup>39</sup> Expert Advisory Group on Solutions to Child Poverty. (2012). [Working Paper no.23: Justice Solutions to Mitigate Child Poverty](#). Office of the Children’s Commissioner at 2-3.

<sup>40</sup> Ministry of Justice. (2022). [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#). Ministry of Justice at 56.

<sup>41</sup> Ibid at 108.

<sup>42</sup> Ibid at 121.

<sup>43</sup> Fanslow, J., Hashemi, L., Gulliver, P., & McIntosh, T. (2021). Adverse childhood experiences in New Zealand and subsequent victimization in adulthood: Findings from a population-based study. *Child Abuse & Neglect*, 117, 105067 at 12.

<sup>44</sup> The full table of prevalence estimates is in Fanslow et al., Adverse childhood experiences in New Zealand and subsequent victimization in adulthood: Findings from a population-based study at 6-7. I have not included the ACEs relating to parental separation or divorce and incarcerated household member on the basis that they are potentially discriminatory.

<sup>45</sup> Intimate partner violence.

## Child protection system involvement

There is also a significant relationship between poverty and care system contact in New Zealand. For example, 36% of all substantiated findings, and 28% of all children placed in care, occurred in the most deprived decile (the poorest 10% of areas in Aotearoa).<sup>46</sup> A report by the Oranga Tamariki Evidence Centre outlining key findings from recent experimental and quasiexperimental welfare and tax policy studies examining the link between income and child maltreatment found that a number of the studies reviewed found “a significant relationship between low income and neglect, but the link with physical abuse or other types of abuse is less clear”.<sup>47</sup>

The nature of the relationship between poverty and care system involvement is less clear including whether, and if so how, poverty causes child maltreatment. A report by the Oranga Tamariki Evidence Centre outlining key findings from recent research identifies two main theories - the ‘what money can buy’ and the ‘parental stress’ models.<sup>48</sup> The first model argues that higher income enables parents to obtain better quality housing, food, education, live in ‘better’ neighbourhoods, and afford extra-curricular activities, which contribute to improved outcomes for children. In contrast, an insufficient income limits parents’ ability to meet their child’s basic needs increasing the likelihood of indicators of neglect e.g. inadequate food, clothing and healthcare. The parental stress theory suggests that low income increases parental stress which in turn has an impact on how parents treat their children. Stress can also trigger or exacerbate other factors such as mental health problems, substance misuse issues, and parental conflict.<sup>49</sup>

Keddell and Davie identify other possible explanations for increased system involvement: “the impact of other services available to less deprived people outside of the child welfare system; differences in demand and supply of child welfare services; the heightened surveillance more deprived people are exposed to; and the role of bias within the systems that respond to them, of both referrers, and decision-makers within the child protection system (Boyd 2014; Detlaff 2014; Drake et al. 2009; Johnson-Reid et al. 2009; Wells et al. 2009; Widom et al. 2015).”<sup>50</sup> Keddell and Cleaver expanded on these issues in their joint brief of evidence for the Waitangi Tribunal’s Oranga Tamariki Inquiry.<sup>51</sup> In particular, they explain that disparities in child protection system contact are caused by both heightened needs amongst some populations, and biases in the systems that respond to them:<sup>52</sup>

*Instead, a both / and approach to disparities is needed in order to have a reasoned strategy to respond to both disproportionate need within some Māori whanau as well as address biases within the systems that respond. Both need and bias, as*

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<sup>46</sup> Keddell, E., Davie, G. & Barson, D. (2019). Child protection inequalities in Aotearoa New Zealand: Social gradient and the ‘inverse intervention law’, *Children and Youth Services Review*, 104, 104383, <https://doi.org/10.1016/j.childyouth.2019.06.018> at 6: “The size of the differences between quintiles [all areas split into fifths] of NZDep were particularly marked for substantiations and family group conferences although a rate more than six times higher was still observed for placement of children in the most deprived quintile [poorest 20% of areas] compared to the least deprived quintile [richest 20% of areas].”

<sup>47</sup> Oranga Tamariki Evidence Centre. (2018). [How do welfare and tax settings affect children’s involvement with child protective services?](#) Oranga Tamariki— Ministry for Children at 13.

<sup>48</sup> Ibid at 6.

<sup>49</sup> Ibid.

<sup>50</sup> Keddell, E.& Davie, G. (2018). [Inequalities and Child Protection System Contact in Aotearoa New Zealand: Developing a Conceptual Framework and Research Agenda](#). *Social Sciences*. 7(6) 89 at 4-5.

<sup>51</sup> [Joint brief of evidence of Emily Keddell and Kerri Cleaver](#) (Wai 2915, #A90)

<sup>52</sup> Ibid at 8-9.

*sources of disparities, can be related to patterns of racism, colonisation, and class inequity through history.*

In terms of the focus of this research, if we are focused solely on the experience of legal issues, it may matter less what the nature of the relationship between poverty and child protection system involvement is – either way, children in poverty are more likely to experience legal issues relating to child protection system involvement. However, if our concern is justice in a broader sense, the nature of the connection becomes much more important. That is, the nature of the justice issue will vary depending on whether a child is a victim of abuse or has simply been drawn into the system due to bias and prejudice. It also matters when both need and bias are related to racism, colonisation and inequity as Keddell and Cleaver explain.

Other research in the United States considered the relationship between experiences of emergency or transitional housing, child protection system involvement and school mobility and attendance.<sup>53</sup> The authors found that there was an increased risk of child protection system involvement if someone also experienced emergency or transitional housing suggesting that the experience of one adversity increased the likelihood of experiencing others and that addressing housing issues could be a key lever to reduce or improve children's experiences with the child protection system.<sup>54</sup>

## **Involvement in criminal justice system**

The Expert Advisory Group on Solutions to Child Poverty argued that the relationship between child poverty, crime and socioeconomic disadvantage can be inferred from data across a range of related social indicators. In particular:<sup>55</sup>

*One compelling correlation is the significant spike in youth offending apprehensions that occurred from 1991-1996, where the number of annual apprehensions jumped from just over 20,000 in 1991 to over 30,000 in 1996 (Ministry of Social Development, 2008). This spike coincided with a large increase in the proportion of children living in households with incomes below 60 percent of the national median – from around 15 percent in 1990 to over 35 percent by 1994 (Perry, 2008).*

The Expert Advisory Group also identified associations with education data including disparities between students in the lowest and highest decile schools in relation to rates of disciplinary action and attendance.<sup>56</sup> As set out above, these disparities remain.

Gordon also discusses the association between poverty, educational attainment, school disciplinary and youth / criminal justice system involvement identifying what she terms the 'school to prison pipeline'<sup>57</sup> although her analysis suggests it may be more accurate to call it a poverty to prison pipeline. She also identifies the differential operation of this pipeline:<sup>58</sup>

*[T]here is a strong association between those living below the poverty line, having very low educational attainment and being likely to be detained within the youth or adult justice systems. This is a highly segmented, but intersecting, set of*

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<sup>53</sup> Palmer, A.R., Piescher, K., Berry, D., Dupuis, D., Heinz-Amborn, B. & Masten, A.S. (2023). [Homelessness and child protection involvement: Temporal links and risks to student attendance and school mobility](#), *Child Abuse & Neglect*, 135, 105972.

<sup>54</sup> Ibid at 8.

<sup>55</sup> Expert Advisory Group on Solutions to Child Poverty, [Working Paper no.23: Justice Solutions to Mitigate Child Poverty](#) at 2.

<sup>56</sup> Ibid.

<sup>57</sup> Gordon, L. (2015). Teaching the 'Poor' a Lesson: Beyond Punitive Discipline in Schools. *New Zealand Journal of Educational Studies*, 50(2), 211-222 at 216.

<sup>58</sup> Gordon, Teaching the 'Poor' a Lesson: Beyond Punitive Discipline in Schools at 214.

*populations. Even within them, the pipeline is further constricted, so that males rather than females and Māori rather than non-Māori are most likely to end up in prison (Department of Corrections 2007).*

Reil et al.'s research using Integrated Data Infrastructure (IDI) data on 48,989 children from their birth in 2000 until 30 June 2019 to explore associations between different offending groups and a range of background factors provides additional evidence of this association. In particular, lower school decile and benefit entitlement of a parent (as indicators of socioeconomic deprivation) were associated with increased offending.<sup>59</sup>

International research and literature also identifies the connections between poverty or socio-economic disadvantage and criminal justice system involvement.<sup>60</sup> Writing the United Kingdom, Haines et al argue:<sup>61</sup>

*The overriding problem for children in conflict with the law is not offending but social disadvantage. Such children have experienced high levels of socio-economic deprivation in every aspect of their personal and social life (Jacobson et al, 2010) and contact with youth justice systems simply reinforces the damage (McAra and McVie, 2010). The research evidencing their vulnerabilities and experience of deprivation is not new and has been known by policymakers and practitioners for many years. Yet little has changed. Underpinned until recently by the RFPP, youth justice policy and practice remain deficit focussed, intent on criminalising children for their social welfare difficulties by conflating need with risk of reoffending (Gray, 2016).*

However, new data from the Edinburgh Study raises vitally important question – whether the disparity in youth offending statistics between children and young people from different socio-economic groups reflects differences in actual offending rates, or differences in arrest / other action by the police and the court system. In particular, they found that only around a fifth of participants who reported involvement in serious offending during their teenage years “had ever been referred to the children’s hearing system on offence grounds by age 16, and two fifths had ever been convicted in the criminal courts by age 34.”<sup>62</sup> When data relating to self-reported offending is considered by demographic characteristics, their findings suggested that “those who had the most prolific and chronic conviction pathways were the most disadvantaged, vulnerable, troublesome, and victimised children”<sup>63</sup> and that “growing up in poverty may have a significant impact on the longer-term justice outcomes of children, over and above involvement in serious offending and a number of other risk factors, even years later.”<sup>64</sup> McAra et al also reported other findings that could suggest one explanation for the connection between poverty and conviction rates.<sup>65</sup>

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<sup>59</sup> Reil, J., Lambie, I., Becroft, A., & Allen, R. (2022). [How we fail children who offend and what to do about it: 'A breakdown across the whole system'. Research and recommendations](#). The Michael and Suzanne Borrin Foundation, the New Zealand Law Foundation & the University of Auckland at 8.

<sup>60</sup> Snow, P. C. (2019). [Speech-Language Pathology and the Youth Offender: Epidemiological Overview and Roadmap for Future Speech-Language Pathology Research and Scope of Practice](#). *Language, Speech & Hearing Services in Schools*, 50(2), 324-339 at 326; Haines, K., Case, S., Smith, R., Joe Laidler, K., Hughes, N., Webster, C., Goddard, T., Deakin, J., Johns, D., Richards, K., & Gray, P. (2021). Children and Crime: In the Moment. *Youth Justice*, 21(3), 275–298 at 291.

<sup>61</sup> Haines et al., Children and Crime: In the Moment at 291.

<sup>62</sup> McAra, L. & McVie, S. (2022). [Causes and Impacts of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35](#) The University of Edinburgh at 14.

<sup>63</sup> Ibid at 18.

<sup>64</sup> Ibid at 22.

<sup>65</sup> Ibid at 29.

*Most of those interviewed reported having had adversarial contact with the police, often from a young age. Partly this was due to their own routine activities in the early to mid-teenage years, especially as a result of hanging out in public places as part of large groups. Highly visible to the police, these groups were often involved in graffiti, minor vandalism and fighting.*

This raises an important issue of justice and equity. That is, if criminal justice system involvement is not determined by whether or not children and young people are involved in offending behaviour, but by whether they do so in public and/or get caught together with how police respond, this raises significant issues of fairness and justice as the reality is that it is much easier for the wealthy to hide their offending from public view. Concerns arise as to whether that other issues of class and privilege operate to protect the advantaged from system involvement.<sup>66</sup>

McNamara et al. describe a similar pathway from homelessness to criminalisation through laws that operate to criminalise publicly visible poverty including public order offences such as vagrancy, begging and public intoxication. They explain:<sup>67</sup>

*People sleeping rough are exposed to high levels of policing because they live their lives outdoors, and they engage in behaviours that most people have the 'luxury' of carrying out in the privacy of their own homes... These examples evoke what Young and Petty (2019: 447) have described as indirect criminalisation: 'when homeless persons become subject to criminal regulation for conduct that is shared by all citizens ... what is rendered criminal is their performance of these ordinary activities in particular locations.'*

McNamara et al argue that decriminalisation of this sort of conduct often leads to other rules authorising police intervention such as being drunk in public and while this type of law does not create a criminal offence, they can empower the police to act in a way that makes those "on the receiving end feel very much like a criminalised subject."<sup>68</sup> Similar provisions in the Oranga Tamariki Act give the police the power to use reasonable force to take a child or young person found unaccompanied by a parent or guardian in a situation where their physical or mental health is likely to be impaired.<sup>69</sup> It would be worthwhile exploring the use of this provision and how it is experienced by children and young people.

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<sup>66</sup> Te Wake, W. (2022, August 9). Uffindell remorseful but political commentator calls out 'white privilege'. *Te Ao Māori News*. <https://www.teaomaori.news/uffindell-remorseful-political-commentator-calls-out-white-privilege>; Hurihanganui, T. (2021, September 17). Revealed: Who is being discharged without conviction. *Radio New Zealand*. <https://www.rnz.co.nz/news/in-depth/451657/revealed-who-is-being-discharged-without-conviction>

<sup>67</sup> McNamara, L., Quilter, J., Walsh, T., & Anthony, T. (2021). [Homelessness and Contact with the Criminal Justice System: Insights from Specialist Lawyers and Allied Professionals in Australia](#). *International Journal for Crime, Justice and Social Democracy*, 10(1), 111-129 at 114.

<sup>68</sup> Ibid at 115-116.

<sup>69</sup> [Oranga Tamariki Act 1989, s48](#). S48 gives the police the power to use reasonable force to take the child and return them to their parent or guardian (with the child's consent) or place them in Oranga Tamariki custody.



## Welfare and benefits issues

Research in relation to access to justice for beneficiaries by Community Law Canterbury identified a range of legal needs relating to welfare law:<sup>70</sup>

*Our research has shown that beneficiaries' legal needs with welfare law can be viewed on a continuum. At one end the lowest level of legal needs involve legal information about welfare entitlements, followed by legal advice and legal assistance, through to the most intensive legal support: representation. This research has shown the importance of beneficiaries' having access to legal assistance and representation for cases at MABs, BRCs and the SSAA, for appeals to the High Court against decisions of the SSAA, and judicial review. The research also highlighted the need for legal advice and representation during fraud investigations and in respect of the criminal and civil outcomes of investigations.*

*...In addition to legal help to individuals, the research emphasised the importance of community legal education, advocacy and law reform reflecting beneficiaries' experience receiving entitlements and using review and appeal processes.*

Morton et al also found that beneficiaries experience a range of other legal problems including “criminal offences (particularly shoplifting), child support, removal of children from parents' care, relationship separation and debt.”<sup>71</sup> They also identified common clusters of problems:<sup>72</sup>

*The most common clusters we saw were around housing, benefits and debt and relationship breakdown. As important as the clusters themselves, however, was the tendency for a broad range of different problems to occur for clients in unpredictable ways. Problems that involved relationship breakdown/children, home ownership, mental health, domestic violence, employment and homelessness problems gave*

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<sup>70</sup> Morton, K., Gray, C., Heins, A., & Carswell, S. (2014). [\*Access to Justice for Beneficiaries: A Community Law Response\*](#). Community Law Canterbury at 131-132.

<sup>71</sup> Ibid at 146.

<sup>72</sup> Ibid.



# Barriers

## Attitudinal Barriers

Perry-Hazan's review of the literature in relation to students' perceptions of their rights identified differences in students' perceptions of their rights across demographic groups, in particular, "that students' race may also carry implications for their perception of rights".<sup>73</sup> She also advocates for further research in relation to "whether and how students' SES, which is often intertwined with their minority status, affects their rights consciousness" citing other studies which have shown that high-SES students "carry a sense of entitlement" and that inequalities in treatment of high and low SES students can be "generated not only by teacher bias but also by middle-class children's efforts to secure advantages for themselves and their relative ease with authority figures".<sup>74</sup>

Chan and Huys also identify attitudinal barriers to seeking legal help noting that "[y]oung people experiencing homelessness were rarely going to attend at a lawyer's office and were even hesitant to access their local community legal aid clinic."<sup>75</sup>

## Structural / Systemic Barriers

### Power imbalances

Morton et al identified the power imbalance between MSD and its clients as a key barrier for beneficiaries' access to justice.<sup>76</sup> They cite international research highlighting "a sense of powerlessness amongst beneficiaries who perceive they are at the mercy of people with the authority to deny essential resources (Sarat, 1990; Seccombe, 2007)."<sup>77</sup> Legal help was identified as one mechanism to address this power imbalance.<sup>78</sup>

### Systems not designed for them

Research in Aotearoa and overseas has identified a lack of services for homeless young people. For example, McAllister et al raise concerns that 16 and 17 year olds are "specifically excluded from emergency accommodation, forcing some to stay in situations of sexual exploitation".<sup>79</sup> Noble-Carr and Trew's research investigating the homelessness experiences of 12-15 years olds in the Australian Capital Territory identified the same issue with no formal services being available to provide safe and secure housing, steady income or food to homeless young people under 15 years of age leaving youth to rely on family and friends (if indeed this was even an option).<sup>80</sup>

A separate issue raised by Wood is that justice system processes including restorative justice conferences can "privilege middle-class forms of communication" with participants from

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<sup>73</sup> Perry-Hazan, L. (2021). [Students' Perceptions of Their Rights in School: A Systematic Review of the International Literature](#). *Review of Educational Research*, 91(6), 919-957 at 938-939.

<sup>74</sup> Ibid at 940.

<sup>75</sup> Chan & Huys, [Access to justice through street youth legal Services](#) at 53.

<sup>76</sup> Morton et al., [Access to Justice for Beneficiaries: A Community Law Response](#) at 126.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid at 131-132.

<sup>79</sup> McAllister, J., Neuwelt-Kearns, C., Bain, L., Turner, N., & Wynd, D. (2021). [The Most Important Task: Outcomes of our collective care for low-income children in Aotearoa New Zealand in the first year of Covid-19](#). Child Poverty Action Group at 8.

<sup>80</sup> Noble-Carr, D., & Trew, S. (2018). ["Nowhere to go": Investigating homelessness experiences of 12-15 years olds in the Australian Capital Territory](#). Institute of Child Protection Studies, Australian Catholic University at 43.

disadvantaged backgrounds being more likely to be judged as insincere and more likely to reoffend.<sup>81</sup>

## Practical Barriers

Other research identifies a range of practical barriers to justice for homeless people “from turning up to court, applying for bail and at sentencing. People experiencing homelessness can find it hard to meet the basic requirements of attending court, including where to go and when to go (day and time)”.<sup>82</sup> Homelessness can also reduce the chance of being granted bail and if bail is granted, to comply with conditions.<sup>83</sup>

### Limited knowledge & capacity

Morton et al, also identifies a lack of knowledge about the law, including not identifying problems as legal, as another barrier to access. They explain:<sup>84</sup>

*Our research indicated that for many beneficiaries, welfare and law are not linked. There is a widely held perception that benefit problems are not legal problems and that they therefore do not potentially have a legal solution.*

Morton et al also found that both beneficiaries and some agencies supporting them had a low level of knowledge about community law centres as a potential source of free legal help.<sup>85</sup>

### Lawyers’ lack of knowledge

On the other side, Morton et al also identified a concern that many lawyers who work with beneficiaries may not have an adequate knowledge of the law.<sup>86</sup>

*A very strong concern to emerge from interviews with advocates and community agencies, however, was in relation to the knowledge base of many lawyers who work with beneficiaries. Inadequate knowledge by lawyers of the benefit system and welfare law was reported to have had a significant impact on beneficiaries they represented.*

If so, this is a pressing concern given that “the quality of legal services provided to beneficiaries in relation to entitlements can impact on their capacity to fulfil essential daily needs.”<sup>87</sup>

### Cost of legal services

Unsurprisingly, Morton et al also identify the cost of legal services as a barrier.<sup>88</sup>

*For those who do seek help for welfare law problems, cost is a significant barrier. One beneficiary described beneficiaries as “easy targets” without the means to go to lawyers and challenge decisions.*

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<sup>81</sup> Wood, W.R. (2020). [The indecent demands of accountability: trauma, marginalisation and moral agency in youth restorative conferencing](#). *The International Journal of Restorative Justice*, 3(2), 168-193 at 183.

<sup>82</sup> McNamara et al., [Homelessness and Contact with the Criminal Justice System: Insights from Specialist Lawyers and Allied Professionals in Australia](#) at 118.

<sup>83</sup> Ibid at 120.

<sup>84</sup> Morton et al., [Access to Justice for Beneficiaries: A Community Law Response](#) at 134.

<sup>85</sup> Ibid at 136.

<sup>86</sup> Ibid at 125.

<sup>87</sup> Ibid at 125-126.

<sup>88</sup> Ibid at 125.

## **Lack of data**

The lack of data also presents a barrier to understanding the nature and extent of some challenges for example, the lack of data in relation to youth homelessness.<sup>89</sup>

*The limited data and literature pertaining to young people and homelessness makes it challenging to precisely ascertain the extent to which homelessness affects youth, particularly in Tāmaki Makaurau. While the data and literature available give a glimpse into the issue, it is feared that youth homelessness is far more severe than indicated by current studies.*

Without an understanding of the nature and extent of the problem it is difficult to develop effective solutions.

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<sup>89</sup> Paul & Ratana, [Youth Homelessness in Tāmaki Makaurau, Aotearoa New Zealand](#) at 22.

# Possible solutions

## Introduction

In this section I discuss some possible solutions or ways of addressing some of the barriers to access raised in the research and literature from Aotearoa New Zealand and overseas. It is not a complete analysis, nor an attempt to identify ways to resolve all the access to justice challenges experienced by people in poverty or socio-economic disadvantage and should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.<sup>90</sup>

## Legal services

Other than obvious solutions to cost related practical barriers such as increased access to free or low cost legal services, two key issues that need to be addressed for children and young people in poverty are that this cohort of young people's legal needs are often inextricably linked with their other needs and that they are unlikely to come to services so services need to go where they are. The following two case studies demonstrate how services can be tailored to meet the needs of homeless young people including by addressing these specific issues as well as barriers around a lack of knowledge through offering legal education to both young people and other professionals working with them.

### Case Study – Street Youth Legal Services

Street Youth Legal Services ('SYLS'), is a legal outreach program in Toronto, Canada focussed on 16 to 24-year-old street-involved young people developed by Justice for Children and Youth (JFCY), a children's rights legal aid clinic.<sup>91</sup> SYLS provides legal education, advice, and representation to this cohort of young people by connecting with them where they spend their time — at drop-ins, shelters and health clinics.

The development of the SYLS model involved focus groups with young people who experienced homelessness in order to get an understanding of what would be accessible legal services would look like for this group. They found that the traditional lawyer-client model would not be effective and that young people young people needed simple, direct access to a lawyer without wait times or lengthy intake processes. This led to the creation of the SYLS lawyer role, "a lawyer dedicated to meet young people where they spend their time, be a familiar, trusting face, dress informally and be accessible to young people by cell phone".<sup>92</sup>

SYLS is a four part programme involving:<sup>93</sup>

- Individual advocacy – The SYLS lawyer provides legal advice, representation and referrals to at least 350 young people at drop-in sessions at partner agencies.
- Education – The SYLS lawyer provides training workshops and materials to young people and agency staff at shelters, drop-in centres and other street youth serving agencies including an annual 'Street Law Smarts' Training Day for staff at homeless youth serving agencies.

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<sup>90</sup> Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

<sup>91</sup> Chan & Huys, [Access to justice through street youth legal Services](#) at 53.

<sup>92</sup> Ibid.

<sup>93</sup> Canadian Homelessness Research Network. (n.d.). [Street Youth Legal Service: A Program of Justice for Children and Youth](#). The Homeless Hub at 3.

- Community Development – SYLS is involved in community development projects including participating in community advocacy groups, hosting research forums, and contributing to projects led by youth and community members.
- Addressing Systems Change – SYLS undertakes law reform and advocacy work e.g. challenging legislation that criminalized begging and creates barriers for getting off the street.

For more information see:

- Justice for Children and Youth (n.d.) *Street Youth Legal Services (SYLS)*. <https://jfcy.org/en/community-partnerships/street-youth-legal-services/>
- Canadian Homelessness Research Network (n.d.) *Street Youth Legal Service: A Program of Justice for Children and Youth*. The Homeless Hub.
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- Chan, E. & Huys, J. (2019). *Access to justice through street youth legal Services*. *Parity*, 32(8), 53-54.

## Case Study - The Shopfront

The Shopfront is another legal service tailored to the legal needs of homeless youth based in inner Sydney, New South Wales. The Shopfront was established in 1993 and is operated jointly by Herbert Smith Freehills, Mission Australia and The Salvation Army.<sup>94</sup> The Shopfront provides:

- Legal representation and advice to homeless and disadvantaged young people aged 25 and under;
- Legal education for young people and youth services; and
- Campaigning and law reform for better laws and policies for disadvantaged young people.

A key aspect of the Shopfront’s service is the integration of legal and case work services. The Shopfront website describes how this works:<sup>95</sup>

*Many of our clients have complex needs which are inextricably linked to their legal problems. The Shopfront’s two case workers collaborate with our solicitors to ensure that our clients receive a truly holistic service.*

*Our case workers provide long-term intensive case management for clients with particularly high and complex needs (for example, a serious mental illness or intellectual disability coupled with substance misuse problems and chronic homelessness).*

*For other clients, they provide short-term therapeutic interventions, crisis management, general social and emotional support, and referral to other services.*

The Shopfront also provides legal services in relation to a range of legal issues commonly experienced by homeless young people including:<sup>96</sup>

<sup>94</sup> Shopfront Youth Legal Centre. (2018). *About the Shopfront*. <https://www.theshopfront.org/>

<sup>95</sup> The Shopfront Youth Legal Centre. (2014). *The Shopfront Youth Legal Centre: Celebrating 21 Years 1993-2014* at 10.

<sup>96</sup> *Ibid* at 8.

- Court representation in criminal matters including offences relating to poverty, street offences relating to interaction with the police, apprehended violence orders, offences relating to mental health or substance misuse, and traffic offences.
- Legal advice on a range of criminal law issues including police interviews, rights and obligations of witnesses, traffic and licensing issues, and the effect of criminal records.
- Assistance with outstanding fines including reviewing fines or converting them to Work and Development Orders.
- Legal advice and seeking compensation for young people who have experienced sexual assault, child abuse and other forms of violence.
- Legal advice (and occasionally representation) on a range of other issues including family law, care and protection, civil and administrative matters.
- Referrals to other legal services where we lack the capacity or expertise to assist.



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