

***WACOSS Submission to the  
Department of the Attorney  
General on the Equal Treatment  
Bench Book***



**wacoss**

Western Australian  
Council of Social Service Inc

*Ways to make  
a difference*

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## **WACOSS**

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. At the heart of its activities, lies the belief that the mark of a civilised community is the support and help it gives to those most in need.

WACOSS is part of a national network consisting of ACOSS and the State and Territory Councils of Social Service, who assist low income and disadvantaged people, Australia wide.

WACOSS supports more than 290 member agencies and individuals in the provision of social and community services to disadvantaged people and low-income earners across Western Australia. In this capacity WACOSS works with and represents a range of agencies including:

- Emergency relief agencies;
- Financial counsellors;
- Neighbourhood centres;
- Community legal centres;
- Large church-based welfare organisations;
- Disability service organisations; and
- Housing and crisis accommodations services.

## **Introduction**

WACOSS commends the Western Australian Department of the Attorney General for commissioning the creation of an *Equal Treatment Bench Book* for the WA judicial system. Building the judiciary's knowledge of and sensitivity to the special needs of different sections of the community will help minimise inequity in court proceedings. The underlying philosophy of an *Equal Treatment Bench Book*; that sometimes it is actually discriminatory to treat everyone equally because different sections of the community have different needs and belief systems, sits comfortably with the State Government's policy framework for substantive equality.<sup>1</sup>

WACOSS also commends the Department of the Attorney General for consulting with individuals and community agencies during this development phase of the *WA Equal Treatment Bench Book*.

WACOSS aims to represent and advocate the interests of West Australians living on a low income and/or experiencing disadvantage. It is in this capacity that WACOSS makes this submission. WACOSS believes that a shortcoming of Bench Books produced in NSW and QLD is that they do not contain a specific chapter pertaining to people who are living on a low income and/or experiencing disadvantage. WACOSS asserts that the difficulties and discrimination faced by this section of the community warrants a "stand alone" chapter in the *WA Equal Treatment Bench Book*.

Impoverished physical, social and family environments have long been considered to be primary determinants of the development of criminal behaviour.<sup>2</sup> Developmental criminology is now widely accepted in the criminology field, reflecting the understanding that the pattern of offending by people is largely determined by social factors and emerges in association with poverty, disadvantage and marginalisation.<sup>3</sup>

This submission provides an overview of what the terms "low income" and "disadvantage" denote; the contemporary pressures which people living on a low income in Western Australia currently face and some of the common outcomes and affects of these pressures.

The concluding section of the submission identifies some of the issues and difficulties people living on a low income and/or experiencing disadvantage may face in a judicial environment and recommendations to ameliorate these.

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<sup>1</sup> Substantive Equality Unit, WA Equal Opportunity Commission (2004) *The Policy Framework for Substantive Equality*.

<sup>2</sup> ABS (2001) *Measuring Wellbeing: Frameworks for Australian Social Statistics*. Cat 4160.0 Pg 242.

<sup>3</sup> WACOSS (2005) *The Role of Non Government Organisations in diverting young people from crime*. Pg

### **Definitions: *Low Income, Disadvantage & Poverty***

As stated, WACOSS advocates on behalf of West Australians living on a low-income and/or experiencing disadvantage. ACOSS has recently adopted the following definitions or descriptors of “low income” and “disadvantage”.

The income benchmark for a family living on a low income is the maximum gross household income for the bottom 40% of households, currently about \$43, 000.<sup>4</sup> The income benchmark for a low income single person without children is set at the maximum wage for the bottom 20% of fulltime wage earners, or approximately \$30, 000.

The term “disadvantage” conveys that a person, family or community has unmet needs which would generally be regarded as ‘basic’ (e.g. income, housing, health). That is, they are seriously ‘deprived’ in a major area of their lives, according to community standards. Their unmet needs therefore warrant special attention from Governments and other agencies.

Similarly, when people lack the resources to achieve a basic standard of living which is acceptable to the general community and to participate in the life of the community, they are said to be in “poverty”.<sup>5</sup>

### **Western Australia**

In recent years, Western Australia has been experiencing an economic boom. This has resulted in increased business investment in WA, increased revenue gains for the State Government and increases in the wages paid to workers in the mining and construction sectors. However, this ‘resources boom’ has also caused the cost of living in WA to soar and the level of disadvantage and poverty to become more entrenched. The gap is widening between the high income earners and the disadvantaged.

#### ***Incomes***

For example, those working in WA’s hospitality industry received average wage rises of only 2.4% in the 12 months to September 2006, less than half the rate of growth in the mining and construction industry and significantly less than the rate of inflation.<sup>6</sup> Many people working and trying to support a family on a low wage struggle to meet basic costs of living each week. Despite lowering official unemployment rates, there remain a significant number of people who are out of work and reliant on income support payments.

There are 1.159 million Australians of workforce age reliant on unemployment payments.<sup>7</sup> Comparisons have shown Centrelink payments (including the parenting pension and disability support pension) consistently fall below an accepted poverty

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<sup>4</sup> Thus includes wages, family payments (ie FTB) and other forms of income. In terms of *individual* income, this is roughly equal to the median (middle) fulltime wage, currently approximately \$45 000, but it is a low income for a *family*.

<sup>5</sup> International Year for the Eradication of Poverty Taskforce (1998) *Community Choices-Individual Lives*

<sup>6</sup> Denniss, R (2007) *The Boom for Whom? Who benefits from the WA resources boom*. Produced for the office of Senator Rachel Siewert. Pg 4.

<sup>7</sup> Department of Employment and Workplace Relations (2006) *Compliance data for September quarter 2006*.

<http://www.workplace.gov.au/workplace/Category/ResearchStats/Participation+and+compliance+data/Curent+quarter+data/>

measurement, the Henderson Poverty Line.<sup>8</sup> Currently, an unemployed single person on Newstart Allowance receives \$212 a week in payments. Young people on Austudy and Youth Allowance receive even lower levels of payment and have as little as \$25 per day to cover all of their living and studying expenses.<sup>9</sup>

### **Cost of Living**

For low income earners and people experiencing disadvantage, it is important to differentiate between luxury items and the rise in the cost of essentials; such as public transport, petrol, utilities, housing and basic staple foods. Recent research has shown that falls in the price of luxury items (such as white goods, motor vehicles and electronic equipment) have caused a fall in the Consumer Price Index (CPI), giving a false sense of the cost of living for low income earners<sup>10</sup>. In reality, a large number of Western Australian families cannot afford to buy their own home or run a car, and must use private rental and public transport, for these people, the cost of living has risen much more sharply than the CPI.

In the 12 months to the December quarter 2006, Perth recorded the second biggest increase in the CPI (4%) with a rise in housing costs (7.7%) which was well above the national average.<sup>11</sup> Many individuals and families living on a low income are struggling to make ends meet.

Agencies represented by WACOSS consistently report a number of issues in relation to people living in poverty in Western Australia' including:

- The number of people seeking assistance with poverty-related issues is growing;
- There has been a significant increase in the numbers of people seeking but not receiving services, because demand outstrips supply. This is particularly the case in the areas of community legal centres, housing assistance and financial and material support;
- There is an increase in new groups of clients, i.e. people seeking assistance who have not previously sought assistance, and in particular a growth in the number of 'working poor' approaching agencies for assistance;
- People living in rural, regional and remote areas of Western Australia are 'doubly disadvantaged' as a result of higher living costs and reduced access to services; and
- Interventions attempted by social service organisations to assist people in poverty, particularly with regards to the provision of housing or crisis accommodation, can be thwarted by negative community attitudes towards those in poverty, particularly youth, Aboriginal people, women escaping domestic violence and people with mental and/or drug and alcohol related issues.

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<sup>8</sup> Brotherhood of St Lawrence (2005) *Facts, figures and suggestions for the future: Income support and poverty*

<sup>9</sup> Centrelink Factsheets (2007)

[http://www.centrelink.gov.au/internet/internet.nsf/payments/pay\\_how\\_yal.htm](http://www.centrelink.gov.au/internet/internet.nsf/payments/pay_how_yal.htm)

<sup>10</sup> Duffy, G (2005) *Winners and Losers: the story of costs*, Social Policy Issues Paper 2, St Vincent de Paul Society. Pg 2

<sup>11</sup> ABS (2006) *Consumer Price Index, Australia, December 2006*. pg 4

The 2007 *Community Sector Survey* demonstrates that the situation continues to go backwards. From 2005 to 2006 there was a 54% increase in the number of people in need that agencies had to turn away.<sup>12</sup>

### **The Effects of Poverty**

Poverty and social exclusion are closely linked to a variety of adverse outcomes, both to the individuals and families experiencing it as well as to the wider community and the economy. These outcomes include; engagement in health risk behaviours, child abuse, homelessness, mental health problems, educational exclusion or under achievement, barriers to employment and criminal behaviour including domestic violence.

People living on low incomes also report poor health and the incidence of illness at much higher rates than people on high incomes. This can be due to stress, crowded housing and poor nutrition.

Poverty can also lead to homelessness. The 2006 Shelter WA *Profile of Homelessness* found that approximately 9 out of 10 households requesting assistance from emergency accommodation service providers fell within the lowest income quintile (household income less than \$399 per week). These households are simply unable to cope with the rapid increase in Perth's median rent, up from \$189 in June 2005 to \$240 in June 2006, an increase of 27%.<sup>13</sup>

Members of families with low incomes often have limited educational opportunities, leading to much narrower employment options. For example, 60% of single parents on payments have no more than Year 10 education<sup>14</sup>. This can also contribute to poor self-esteem and less participation in society. In this way poverty and social exclusion can affect successive generations.

### **The role of Non Government Organisations in diverting crime**

In 2005, WACOSS conducted a research project investigating the role of Non Government Organisations (NGOs) in diverting young people from crime. Findings of the research concluded:

- Young people coming from life circumstances characterised by poverty and social exclusion are more at risk of offending than other groups of young people in the community;
- Given these circumstances, it is more effective preventing criminal activity through early intervention and developmental approaches that focus on addressing the causes of offending rather than other responses, such as criminal justice strategies; and
- NGOs have the capacity to play an integral and effective role in diverting young people from engaging in criminal behaviour through connecting with young people who may be at-risk of offending and delivering a variety of services often indirectly related to offending behaviour.<sup>15</sup>

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<sup>12</sup> ACOSS (2007) *Community Sector Survey*. Pg 68

<sup>13</sup> Shelter WA (2006) *The State of Affordable Housing in WA*. Occasional Paper 2006-1. Pg 3

<sup>14</sup> WACOSS (2006) *Identifying impacts of Welfare to Work reforms*. (speech) Pg 3

<sup>15</sup> WACOSS (2005) *The Role of Non Government Organisations in diverting young people from crime*. Pg 129

## **Courts**

### **Stereotypes**

The Equal Treatment Benchbook project's *Questions for Community Organisations and Government/NGO Agencies* asks 'Are your members/client subject to stereotypes, myths or false assumptions?'

The 2006 *Voices of low income Australians* study identified discrimination as a major problem experienced by those interviewed. Discrimination was especially relevant for young people, those with mental health problems, people living in remote or isolated areas, or those with a criminal record. Despite their different experiences, all participants agreed that discrimination based on employment status (i.e. being unemployed) was perhaps the most significant problem that caused people to suffer, for example missing out on decent private housing.<sup>16</sup>

There is a tendency in our society to attribute the responsibility of poverty onto those experiencing it. This is particularly prevalent when it comes to the unemployed as is illustrated from time to time in comments made by people in public life. Referring to the unemployed in 2006, the federal Minister for Human Services Mr. Joe Hockey made the following comments "there is a class of people out there who are job snobs, but there are also people that find every opportunity to avoid a job at all"<sup>17</sup>. Other commentators disagree, arguing that for a myriad of reasons a number of the unemployed, particularly the long term unemployed, have significant difficulty finding a job. For example, more than half of jobless people affected by the Welfare to Work policy have Year 10 qualification or less. This greatly disadvantages them in the jobs market.<sup>18</sup> Often it is a multitude of many interconnecting factors that cause people to miss out on decent employment and consequently be excluded from a decent standard of living:

"For instance I can only speak for myself, I'm 48 years old, I have nothing, no car, no qualifications, no recent experience of any work and I have a slight disability...I'm not on disability benefits because I'm not disabled enough, so I have to be on the dole [and] a lot of employers don't want to know you."<sup>19</sup>

As the NSW *Equality before the Law Bench Book* observes: 'Everyone who comes into contact with the court system...must not only be treated fairly and without discrimination but also *believe* they are being treated fairly and without any form of discrimination.'<sup>20</sup> WACOSS recommends that the WA Equal Treatment Bench Book includes a "stand alone" chapter about people living on low income and/or experiencing disadvantage. Such a chapter will help educate judicial officers about the incorrectness of the "dole bludger" stereotype of people living on a low income and/or experiencing disadvantage. It would also help raise awareness about how individuals experiencing economic disadvantage often feel a loss of any real sense of choice and movement towards a future.<sup>21</sup>

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<sup>16</sup> Social Policy Research Centre (2006) *Voices of low income Australians*. Pg 22

<sup>17</sup> Adele Horin (2006) *Boot is aimed at the wrong target*. The Sydney Morning Herald October 28 2006.

<sup>18</sup> ACOSS (2007) *The role of Further Education and Training in Welfare to Work policies*. Pg 1.

<sup>19</sup> Social Policy Research Centre (2006) *Voices of low income Australians*. Pg 12.

<sup>20</sup> NSW Government *Equality Before the Law Bench Book*. Pg 1104

<sup>21</sup> Peel, M (2003) *The Lowest Rung: Voices of Australian poverty*. Pg 69.

### ***Legal assistance***

Another consideration that the *Equal Treatment Bench Book* should address is the fact that many people living on a low income and/or experiencing disadvantage have difficulty accessing affordable legal assistance. The Legal Aid and community legal assistance systems in WA are significantly overstretched and under funded.

Despite the injection of funds by the WA State Government in 2006 to provide legal aid for people facing serious charges in the Magistrates Court some people living on a low income and/or experiencing disadvantage are not eligible and those who face lesser charges are still left with limited legal representation or none at all.

Whilst improvements have been made, the means test for Legal Aid precludes all but the most severely disadvantaged from assistance.<sup>22</sup> Only those on extremely low incomes are eligible for a grant and those that do not strictly meet the criteria are required to make some financial contribution which may be beyond their means. Furthermore, people facing 'minor' charges in courts without the possibility of incarceration are given limited assistance by Legal Aid duty lawyers. 'Minor' charges in the magistrates court can still carry significant punishments, particularly for those living on a low income and/or experiencing disadvantage, such as monetary fines and loss of driver's license.

Community legal assistance is similarly overstretched and under funded. In 2006, 2,365 eligible people were turned away (1 eligible person was turned away for every 2 people who received a service) from WA's Community Legal Centres.<sup>23</sup>

### ***Practical issues***

There is a general lack of child care facilities in courts. Whilst the WA Family Court has a crèche, the majority of courts do not. Single parent families are overrepresented amongst those living on a low income and/or experiencing disadvantage and can have difficulty accessing affordable child care services.<sup>24</sup> More than 10 million Australians have caring responsibilities (for children, elderly and people with a disability). In 2006 the cost of caring rose 10%, well above the rate of inflation and the Consumer Price Index.<sup>25</sup> WACOSS recommends that the courts take these factors into consideration when scheduling dates for hearings, start and finish times and adjournment breaks.

## **Conclusion**

Like the rest of Australia, the face of poverty has been changing dramatically in Western Australia in recent years. Community services such as emergency relief providers and community legal centres have witnessed a massive increase in demand.<sup>26</sup> Further, changes to the nature of employment have led to a dramatic growth in the number of 'working poor'.<sup>27</sup> The benefits of Western Australia's economic boom have not filtered down to people living on a low income and/or experiencing disadvantage. In fact, the economic boom has caused the cost of living to rise sharply, placing many of these people under further financial stress.

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<sup>22</sup> ACOSS (2003) *Access to Justice and Legal Aid*. Submission to the Senate Legal and Constitutional Committee. Pg 4.

<sup>23</sup> ACOSS (2007) Community Sector Survey. Pg 69

<sup>24</sup> ACOSS (2005) Facts about Single Parent Families and Welfare.

<sup>25</sup> Taskforce on Care Costs <http://www.tocc.org.au/reports.html>

<sup>26</sup> ACOSS (2007) Community Sector Survey. Pg 68

<sup>27</sup> WACOSS (2006) Submission to the WAIRC State Wage Case. Pg 2

Related to the problem of poverty, is the increased risk of those in this situation becoming caught up in the justice system.<sup>28</sup> Once adverse contact with the justice system occurs, poverty again becomes a factor in terms of affordable access to legal assistance and just court proceedings. Poverty is also a predictor of the greater likelihood of incarceration as there is a greater inability to pay bonds and fines among those living on a low income and/or experiencing disadvantage.<sup>29</sup>

People living on a low income and/or experiencing disadvantage are often disempowered in decision making process that affect their lives. This is coupled with negative community attitudes about their situation. It is important that people living on a low income and/or experiencing disadvantage are not discriminated against in the judicial system. Practical considerations, as well as attitudinal, should be taken into account by judicial officers; such as limited public transport in regional areas which can affect a person's ability to attend court on time.

The difficulties and discrimination faced by people living on a low income and/or experiencing disadvantage should be addressed by a stand alone chapter in the *WA Equal Treatment Bench Book*.

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<sup>28</sup> WACOSS (2005) *The Role of Non Government Organisations in diverting young people from crime*. Pg 15

<sup>29</sup> ATSI (2003) *Submission to the Senate Community Affairs Reference Committee – Inquiry into Poverty and Financial Hardship in Australia*. Pg 24