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House Standing Committee on Family,
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Inquiry into Homelessness Legislation
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Parliament House
Canberra ACT 2600

To whom it may concern,

INQUIRY INTO HOMELESSNESS LEGISLATION

We refer to the above matter and the Inquiry into Homelessness Legislation. Please accept our late submission to the inquiry, which is **enclosed**. We were granted an extension by Ms. Alison Clegg of your Office on 12 August 2009.

The Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) was established in 1973 and is a community based organisation that provides legal advice and representation to Aboriginal and Torres Strait Islander peoples in WA in a wide range of practice areas including criminal law, civil law, family law as well as human rights law and policy. Its service is available throughout WA via 17 regional and remote offices and one head office in Perth. ALSWA is a legal service provider solely for Aboriginal and Torres Strait Islander peoples living in WA and makes submissions on that basis.

As discussed in our submission, homelessness for Aboriginal and Torres Strait Islander peoples is complex, diverse and raises special issues that are not applicable to mainstream homelessness. In this regard, it is important that specific measures to consider and address Aboriginal and Torres Strait Islander homelessness be developed and are specifically referred to in the legislation. We urge the government to carefully consider the special needs of Aboriginal and Torres Strait Islander peoples in the development of homelessness legislation.

If you would like to discuss this further, please contact our Senior Policy Officer, Ms. Tammy Solonec on (08) 9265 6693.

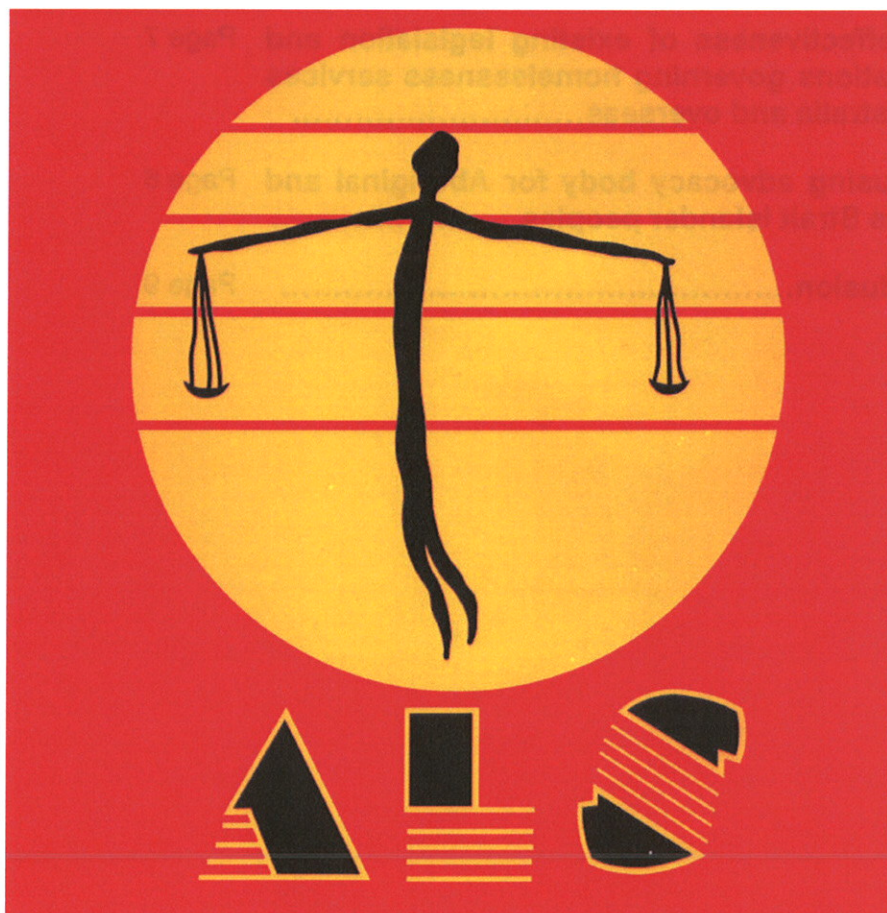
Yours faithfully,

PETER COLLINS
Director Legal Services
For the Chief Executive Officer

**ABORIGINAL LEGAL SERVICE OF
WESTERN AUSTRALIA (INC.)**

**SUBMISSION TO THE HOUSE STANDING COMMITTEE
ON FAMILY, COMMUNITY, HOUSING AND YOUTH**

**SUBMISSION FOR THE
INQUIRY INTO HOMELESSNESS LEGISLATION**



AUGUST 2009

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1. Scope of Submission

This submission was prepared by the Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) and relates to the House Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation. More details about the inquiry can be found at:

<http://www.aph.gov.au/house/committee/fchy/homelessness/index.htm>

ALSWA did not make a submission in relation to the Green Paper, "Which Way Home? A New Approach to Homelessness" and does not receive funding to provide legal services to Aboriginal and Torres Strait Islander peoples in housing law. However, we often see the impact of homelessness on our clients and Aboriginal and Torres Strait Islander communities. In this regard we have an interest in advocating for the special needs of homeless Aboriginal and Torres Strait Islander people. On this basis, this submission is written narrowly, focusing on Aboriginal and Torres Strait Islander homelessness in WA.

ALSWA consulted Daydawn to assist in preparing this submission. Daydawn is an advocacy centre, which specialises in providing housing advice to Aboriginal and Torres Strait Islander people in the Perth metropolitan area, including those who are homeless or facing homelessness. ALSWA gratefully acknowledges Daydawn and in particular, Ms. Mary McCommish for their assistance in preparing this submission.

2. The Aboriginal Legal Service of WA (Inc.)

ALSWA was established in 1973 and is a community based organisation that provides legal advice and representation to Aboriginal and Torres Strait Islander peoples and groups in a wide range of practice areas including criminal law, civil law, family law as well as human rights law and policy. Its service is available throughout WA via 17 regional and remote offices and one head office in Perth.

ALSWA is a legal service provider solely for Aboriginal and Torres Strait Islander peoples living in WA and makes submissions on that basis. ALSWA has an established WA Aboriginal Advisory Committee ("WAAAC") to advise governments and other bodies about law and justice issues affecting Aboriginal and Torres Strait Islander peoples living in WA. Members include ALSWA's Chief Executive Officer, the Manager of ALSWA's Court Officers Unit and 16 executive officers¹ elected by Aboriginal and Torres Strait Islander people from their local regions to speak for them on law and justice issues. WAAAC members and their support staff are responsible for consulting with Aboriginal and Torres Strait Islander communities to ensure that those views are made available to ALSWA Executive Committee and senior management.

ALSWA's Lawyers and Court Officers contribute invaluable information to submissions. All Court Officers are Aboriginal or Torres Strait Islander and represent Aboriginal or Torres Strait Islander people in the Magistrates Courts and the Children's Court under section 48 of the *Aboriginal Affairs Planning Authority Act 1972* (WA). Each regional office also has a Court Officer who provides an understanding of local issues. In more remote areas, Court Officers are often the only local permanent legal service dealing with all aspects of the legal system.

¹ There are two Executive Officers for each of the former 8 ATSIC regions (Metropolitan, Central Desert Region, Murchison/Gascoyne Region, Southern Region, Pilbara Region, Goldfields Region, West Kimberley Region and East Kimberley Region). They are elected by the Indigenous public every three years.

3. Daydawn

Daydawn is an advocacy service specialising in Aboriginal and Torres Strait Islander housing issues in metropolitan Perth. It was established in 2007 as an agency of the Catholic Church to address the serious needs of Aboriginal and Torres Strait Islander peoples in relation to housing, homelessness and other related issues. It comprises of lawyers and volunteer advocates and has developed a range of services based on the experiences of its clients. Daydawn also lobbies for reform and addresses matters of policy in relation to Aboriginal and Torres Strait Islander peoples in Perth.

4. The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness

The following principles should underpin the provision of services to Australians who are homeless or at risk of homelessness.

1. Access to safe and secure housing is a human right which is fundamental to the principles of social inclusion.
2. International human rights instruments which entrench this right should underpin any homelessness legislation. We acknowledge that the current *Supported Accommodation Assistance Act 1994 (Cth)* already acknowledges a number of international instruments in the preamble including:
 - (a) the ratification of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights;
 - (b) the ratification of the Conventions on the Elimination of all Forms of Racial Discrimination, on the Elimination of all Forms of Discrimination against Women and on the Rights of the Child;
 - (c) the acceptance of the Universal Declaration of Human Rights and of the Declaration on the Elimination of Violence Against Women; and
 - (d) the enactment of legislation such as the *Australian Human Rights Commission Act 1986*.

In addition to this, we recommend that specific articles which articulate housing as a human right be noted including:

- Article 24 of the Universal Declaration of Human Rights (UDHR);
- Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Article 27(3) of the Convention of the Rights of a Child (CROC);
- Article 5(e)(iii) of the International Convention on Elimination of All Forms of Racial Discrimination (ICERD); and
- Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

We further recommend that Articles 21 and 23 of the Declaration on the Rights of Indigenous People be specifically referred to, including the need for culturally appropriate housing.

3. The right to housing for homeless people should be complimented with, but not conditional upon compliance with other support programs.

4. Aboriginal and Torres Strait Islander peoples should be acknowledged in the preamble as the traditional owners of Australia.
5. There should also be an acknowledgement in the preamble that dispossession and successive governmental policy has contributed to Aboriginal and Torres Strait Islander homelessness and that due to Aboriginal and Torres Strait Islander diversity, Aboriginal and Torres Strait Islander homelessness is complex and unique.
6. A broad definition of Aboriginal and Torres Strait Islander homelessness in the interpretation section should be included which considers spiritual homelessness and other contributing factors such as overcrowding and the cultural obligation to house immediate and extended family members.
7. Eviction of people who are homeless or face homelessness should only ever be a last resort for homelessness service providers and that as part of their funding, they should be required to satisfactorily explain all evictions and that this information should be regularly reviewed and monitored with a view of addressing identified gaps and issues.

5. The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights

If Australia adopts a Commonwealth Human Rights Act, then housing as a human right should be included, including access to dispute resolution and, where appropriate, remedies.

The current SAAP legislation is merely an arrangement for funding between the Commonwealth, State and Territory homelessness service providers. The result has been that there is a large divergence in the services offered by these providers and often the providers are not properly resourced to deal with the many interconnected issues that homeless people face. Most of the service providers do not have the proper cultural understandings of Aboriginal and Torres Strait Islander peoples to be able to deliver a service that is appropriate for Aboriginal and Torres Strait Islander homelessness.

We recommend that the scope of new legislation be extended to:

1. Include the principles and international instruments noted above in the introduction / objectives of the legislation.
2. Set out funding arrangements with State and Territory governments and service providers and develop, in consultation with Aboriginal and Torres Strait Islander peoples, guidelines as to how the funds are spent.
3. Create a Central Commonwealth Government Agency which is responsible for administering the Act, providing guidance, support and expertise for homelessness service providers including training, networking and collaborative project opportunities and to encourage and foster research and innovation in the homelessness sector. We recommend that within this agency, a special unit for Aboriginal and Torres Strait Islander homelessness issues be developed. We note that although a National Council on Homelessness has recently been created, our submission is that this agency be in addition to the Council.

4. Provide accessible and culturally appropriate dispute resolution services, which provide remedies for clients of homelessness service providers who are unhappy with decisions made.
5. Set out minimum standards (including monitoring and evaluation) that are required for homelessness service providers to administer homelessness housing programs.
6. Provide legislative funding and entrenchment for Aboriginal and Torres Strait Islander specific homelessness service providers that cover metropolitan, regional and remote areas of each State and Territory and provide opportunities for these providers to work in collaboration with each other to encourage culturally appropriate housing options for Aboriginal and Torres Strait Islander peoples.

6. The role of legislation with respect to related government initiatives in the areas of social inclusion and rights.

For Aboriginal and Torres Strait Islander homelessness, it is important to acknowledge that the severity of the problem is on the outside at least, masked by the high levels of overcrowding, a result of the cultural obligation to house immediate and extended family members.

In this regard, there are a number of initiatives currently occurring which will have direct and indirect impacts on Aboriginal and Torres Strait Islander homelessness such as the National Indigenous Law and Justice Framework and the National Partnership Agreement of Remote Indigenous Housing.

It is important that any new legislation compliments, rather than duplicates existing legislation or policies.

Under the National Partnership Agreement of Remote Indigenous Housing, a number of changes are occurring in remote and regional WA which will have a direct impact on the situation of Aboriginal and Torres Strait Islander homelessness.

As part of the agreement, the housing management in remote communities is being taken from the communities and handed to the Department of Housing. They will be responsible for matters including rent collection and maintenance of the houses. In return for this, millions of dollars will be made available to upgrade existing houses and build new houses in remote and regional communities of WA. It is hoped that these measures will reduce the severe overcrowding occurring in remote and regional Western Australia.

In order to facilitate this change in housing management, a number of amendments are currently being pushed through including to the *Aboriginal Affairs Planning Authority Act 1972 (WA)*, the *Housing Act 1980 (WA)*, the *Residential Tenancies Act 1987 (WA)* and the *Native Title Act 1993 (Cth)*.

We recommend that the development of any homelessness legislation consider these changes in law and the specific measures that are currently being taken to address overcrowding and poor housing standards in remote and regional WA.

7. The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas.

The current SAAP regime is often not effective for Aboriginal and Torres Strait Islander peoples because in order to remain in SAAP housing, clients must attend regular programs and meetings regarding other areas of their lives. Often, the programs are not culturally appropriate or not easily accessible to Aboriginal and Torres Strait Islander peoples. If they do not comply with the programs, then they can be evicted from SAAP housing. Once a person is evicted from SAAP housing, they are no longer eligible for public housing.

To illustrate some of the issues with the current regime, the following case studies have been provided by Daydawn.

Case Study One:

An Aboriginal woman with seven children ranging from 18 months to 15 years was evicted from her home by a charitable SAAP provider after a 10 month tenancy. The woman had been advised by the WA Department of Housing that due to her poor tenancy record with the Department she would not be considered for further State Housing until she had completed a successful 12 month SAAP tenancy. The woman objected to this condition at the time but was obliged to comply with it. Her poor tenancy record was entirely due to a violent partner whose violence towards her and the children had resulted in at least two hospitalisations. On more than one occasion she had been forced to flee a house and was unable to return to clean it.

After 10 months in the SAAP house, relations with the SAAP provider and its workers deteriorated and she and the children were evicted with no alternative accommodation provided. The SAAP provider gave the following information to explain the eviction:

"There were no rent arrears only lack of participation and refusal to connect or stay connected to services. The family have multiple issues and need intensive family support. ... This family is not ready for mainstream Homeswest accommodation and needs intensive family support. X Organisation provides support in combination with short term tenancy. X Organisation does not provide intensive family support given the limited resources available."

The woman denies refusing to participate but does say that the workers were not Aboriginal and Torres Strait Islander people and did not provide her with much help with her family issues.

Since the eviction the woman and her family have been effectively homeless. They have spent some time in a refuge and have gone from family to family but these stays have always been short and resulted in overcrowding and threats of eviction to the host family.

Case Study 2

An Aboriginal woman with nine children ranging from 1 month to 15 years was evicted from her home by a charitable SAAP provider after an 11 month tenancy. The woman has a history of severe domestic violence and is extremely frightened of her ex-partner who continues to terrorise her and the children. She has been assessed by a clinical psychologist as having serious depression and moderate to severe Post Traumatic Stress Syndrome.

The main reason given for the eviction was that *"Ms B actively disengaged with the Indigenous Family Program"* and *"Ms B has a history of disengaging from support service despite the efforts of service providers to provide ongoing support..."*

There was also an issue with property standards and damage.

The woman denies disengaging with the workers but does not deny that her property maintenance standards had slipped just before the eviction due to the fact that she was 8 months pregnant and unable to do the heavy cleaning and gardening being required of her within the 14 day time period. She was also being terrorised and stalked by her violent ex-partner to the extent that the local police were about to install an emergency alarm in the house just before her eviction.

Since the eviction the family has been homeless and spent some time camping down by the river (including with the new-born baby). When the weather got cold the family started to stay with a relative in a two bedroom senior's flat, but with 10 extra people the conditions were impossible and the tenant, an elderly Aunt, is now being threatened with eviction.

8. A housing advocacy body for Aboriginal and Torres Strait Islander peoples

In preparing this submission, it has become apparent that although there are a number of Aboriginal and Torres Strait Islander housing bodies, there are currently no housing advocacy bodies in Western Australia who are resourced to provide expert legal advice or write submissions about Aboriginal and Torres Strait Islander housing issues, including homelessness.

The situation of Aboriginal and Torres Strait Islander housing around Australia has many interconnected and complex issues including native title, land tenure, public housing, community housing, private rental, home ownership, overcrowding and homelessness.

Whilst organisations such as the Tenants Advice Service of WA, Shelter WA, Jacaranda house and Anglicare all provide limited assistance to Aboriginal and Torres Strait Islander people in regards housing issues (mainly tenancy), they are non-Indigenous organisations and their services are not solely dedicated to the complex needs of Aboriginal and Torres Strait Islander peoples.

We recommend that consideration be given to create and fund a peak Aboriginal and Torres Strait Islander housing advocacy body, either centrally or one for each State and Territory, so that the special needs of Aboriginal and Torres Strait Islander peoples are met and considered. This body will provide expert advice to individuals, organisations and service providers in relation to housing for Aboriginal and Torres Strait Islander peoples.

9. Conclusion

Housing is a human right which is interconnected with a person's standard of living and enjoyment of life. It is important that international instruments which refer to these rights are entrenched in the underlying principles of any legislation about homelessness. Homelessness for Aboriginal and Torres Strait Islander peoples in Australia is complex, diverse and raises special issues that are not applicable to mainstream homelessness. In this regard, it is important that specific measures to consider and address Aboriginal and Torres Strait Islander homelessness be developed and are specifically referred to in the legislation. We recommend that an independent housing advocacy body solely for Aboriginal and Torres Strait Islander peoples be developed immediately so that expert advice and consideration of the special needs can properly occur, in consultation with Aboriginal and Torres Strait Islander peoples and communities.