

Submission No. 36

(homelessness legislation)

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# **SUBMISSION ON THE**

## **Inquiry into Homelessness Legislation**

**Prepared by Women's Legal Service Victoria to the  
House Standing Committee on Family, Community, Housing and Youth**

**August 2009**

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# Executive Summary

## Introduction

Women's Legal Service Victoria (WLSV) has been providing free legal advice, information, representation and legal education to women for over 25 years. We specialise in issues arising from relationship breakdown and violence against women. Our principal areas of work are crimes compensation, family violence (principally intervention orders) and family law.

A number of WLSV's clients have found themselves in situations where they have inadequate access to safe and secure housing and have become homeless or are at risk of becoming homeless as a result of their experience of family violence and/or relationship breakdown. A number of these clients reside in transitional accommodation provided for short periods and sometimes the cycle of homelessness is repeated several times before they find suitable and stable accommodation. While family violence and relationship breakdown are the main contributors to homelessness for our clients, there are other combined complex socio-economic factors that also heighten the problems for women and children fleeing family violence.

In our submission, we shall focus on the terms of reference of your inquiry and comment on the principles and service standards that we believe should be incorporated into any future homelessness legislation and into building the strengths of existing homelessness legislation, like the Supported Accommodation Assistance Act 1994 ("SAAA"). Our specific focus shall be on the first three terms of reference:

- **The Fundamental Principles** – The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness.
- **The Legislative Scope** – The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights.
- **The Legislative Role** – The role of legislation in improving the quality of services for people who are homeless or at risk of homelessness.

In particular, WLSV seeks to raise the issues, complexity and nexus between family violence and homelessness to the House Standing Committee when considering current or future homelessness legislation.

## Background

The statistics on homelessness in Australia are quite staggering for a country that has experienced significant economic prosperity. Women and children are particularly vulnerable for a varied number of social and economic reasons including the historical marginalisation and subjugation of women and children. Some of the relevant statistics on homelessness in relation to our clients' demographics are as follows:

- There about 105,000 people homeless in Australia on any given night.<sup>1</sup>
- While the rate of homelessness in the last 12 years has been relatively stable, the percentage of children, families and older people experiencing homelessness has actually increased.<sup>2</sup>
- The main causes of women being homeless and seeking help from specialist homelessness services was domestic and family violence.<sup>3</sup>
- Indigenous women are over represented in the SAAP domestic violence category.<sup>4</sup>
- Women make up 60% of those who used SAAP services in 2005 and many of these women are accompanied by children.<sup>5</sup>
- The other main reasons women used SAAP were family/relationship breakdown and financial difficulty<sup>6</sup> and there is a nexus between these two circumstances.<sup>7</sup>
- One in ten homeless Australians are children and the vast majority are accompanying their parents, most of these children have either witnessed or experienced family violence and sexual abuse.<sup>8</sup>

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<sup>1</sup> The Road Home: A National Approach to Reducing Homelessness, (The White Paper 2008); page viii

<sup>2</sup> ibid

<sup>3</sup> Female SAAP clients and children escaping domestic and family violence 2003-04, (Canberra: Australian Institute of Health and Welfare, Bulletin Issue 30, September 2005); page1

<sup>4</sup> ibid

<sup>5</sup> Which Way Home? A New Approach to Homelessness (The Green Paper 2008); page 20

<sup>6</sup> ibid

<sup>7</sup> Women in Australia 2009, Office for Women at <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009>

<sup>8</sup> Which Way Home? A New Approach to Homelessness (The Green Paper 2008); page 20

- Of all SAAP support episodes, 22% were provided to single parents headed by a woman and 1% was provided to a single parent headed by a man.<sup>9</sup>
- Family breakdown was the most common reason young people gave for seeking help from SAAP on their own.<sup>10</sup> Young people aged 12 – 18 have the highest rate of SAAP service usage.<sup>11</sup> Of the Young People aged 12 – 18 who were homeless, 54% were women.<sup>12</sup>
- Indigenous Australians made up 1.9% of the total population and 17% of people using SAAP across Australia in all states and Territories.<sup>13</sup>
- Older people represented 14% of the homelessness population in 2001 on census night. There is a high incidence of disability, mental illness and alcoholism in this group.<sup>14</sup>
- Australia now has the least affordable housing market in the world with rental vacancies at critically low levels.<sup>15</sup>

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<sup>9</sup> The Road Home: A National Approach to Reducing Homelessness (The White Paper 2008); page 5

<sup>10</sup> Which Way Home? A New Approach to Homelessness (The Green Paper 2008); page 20

<sup>11</sup> The Road Home: A National Approach to Reducing Homelessness ( the White Paper 2008); page 4

<sup>12</sup> ibid

<sup>13</sup> Which Way Home? A New Approach to Homelessness (The Green Paper 2008); page 20

<sup>14</sup> ibid

<sup>15</sup> Which Way Home? A New Approach to Homelessness (The Green Paper 2008); page 12

## Fundamental Principles

The fundamental principles that should underpin any homelessness service provision framework must identify and address the causes of homelessness. As noted in both the Green and White Papers produced by the Commonwealth Government, there are many varied and complex causes of homelessness and a number of these are inter-related.

We shall limit our focus to the fundamental principles that should underpin any homelessness service provision and legislation from the perspective of our areas of specialisation; issues for women arising out of relationship breakdown and family violence.

As noted previously, relationship breakdown and family violence are the main reasons women experience homelessness and require the use of SAAP (Supported Accommodation Assistance Program) services. Often these issues are present with a range of other complicating factors that further increase their vulnerabilities and the risks of homelessness. Such factors include isolation (cultural or geographical), being older; being disabled, being mentally ill as well as other socio-economic factors like being financially dependent and insecure.

**Recognising family violence and relationship breakdown as prime causes of homelessness for women should inform the values that underpin the principles for any homelessness legislation.**

## Family Violence - Background

Family Violence affects the emotional, psychological, physical, social and economic well being of women and their families. In 2003 – 04, about a third of all clients accessing SAAP services were women escaping family violence.<sup>16</sup> The average daily turn-away rate for agencies targeted at women escaping family violence was 48%; therefore about 1 in 2 women who approached these agencies were unable to obtain immediate accommodation on an average day compared to the turn-away rate for single men at 25%.<sup>17</sup> Agencies for other groups like families and single women had even higher turn-away rates.<sup>18</sup>

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<sup>16</sup> Female SAAP clients and children escaping domestic and family violence 2003-04, (Canberra: Australian Institute of Health and Welfare, Bulletin Issue 30, September 2005); page 1

<sup>17</sup> Ibid; page 8

<sup>18</sup> Ibid

When women experience family violence their safety in their primary relationship and primary space of security, the home, is completely compromised. As a result many women leave the home for an alternative environment to feel safe and secure. While a number of women find an

alternative environment with friends and family, a large number of women and their children do not have the support or options of these alternative environments. A number of these women will turn to SAAP services to provide the safe and secure environment for them and their children. Some of these women are either isolated because of their experience of family violence or their isolation (be it social, cultural, linguistic or geographical) and family violence experience further excludes them from the community.

A number of these women and their children will present with other issues, sometimes as a direct result of experiencing family violence; such as physical, psychological and mental illnesses and sometimes alcohol abuse issues. Family Violence is the leading contributor to death, illness and disability for women aged between 15 – 44 years old.<sup>19</sup>

**It is important that the nexus between family violence and homeless informs homelessness service provision and legislation.**

The inter-relatedness of family violence and other factors that make people at risk of homelessness, such as relationship breakdown, mental illness and disability should also inform the development of the provision of homelessness services and the underlying principles governing the delivery of such services.

## **Relationship Breakdown – Background**

Almost half of all marriages will end in divorce. Relationship breakdown is the second most common reason people seek help from specialist homelessness services.<sup>20</sup> Women are disproportionately economically worse off after relationships break down, therefore they are likely to rely on social security for parenting payments. As 83 percent of sole parents in Australia are women, the inadequacy of parenting payments disproportionately affects women the most.<sup>21</sup>

The overall income of those reliant on social security is close, but often below the poverty line estimates. Women have accrued less superannuation than men because they take more time out of the paid labour force due to their carer role and when they return, they are more likely to have casual or part time jobs. Women also tend to be in jobs that have traditionally lower rates of pay. This lack of equitable economic opportunity, economic independence and/or economic

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<sup>19</sup> VicHealth (2004), The health costs of violence; Measuring the burden of disease caused by intimate partner violence: A summary of findings; Victorian Government.

<sup>20</sup> Australian Institute of Health and Welfare (AIHW) Homeless people in SAAP: SAAP national Data Collection annual report, SAAP NDCA report series 12, Canberra 2008

<sup>21</sup> Women in Australia 2009, Office for Women at <http://www.fahcsia.gov.au/sa/women/pubs/general/womeninaustralia/2009>

literacy creates vulnerability and an inequity in negotiating equality within the relationship as well as when the relationship breaks down.

**Relationship breakdown therefore usually leaves a significant number of women poor and therefore unable to rent or buy their home.**

The lack of affordable housing for lower to middle income earners, and especially the more vulnerable lower income single parent homes is a significant contributor to homelessness after relationship breakdown.

We commend the government for its proposals in the White Paper and through agreements and initiatives like NAHA (National Affordable Housing Agreement) and the National Partnership on Social Housing to address the issue of affordable housing for lower income families. However we reiterate that such initiatives specifically address the economic inequities that increases the risks of homelessness for women and their children after a relationship breakdown.

**Barriers to justice are also an aspect of relationship breakdowns that contribute to women being homeless or at risk of homelessness.**

In many instances women are left poor if they are unable to access justice through the courts to get a fair property settlement post separation.

Several women from lower income families post separation may seek legal advice in relation to a property settlement. In a lot of instances they would have been the primary carer of the children and household and also financially dependent. Sometimes she may have signed documents where she may be solely liable for debts accrued by her partner. After the relationship breaks down, she may apply for Legal Aid to assist her with her children's matters and property matters. In Victoria, she would be denied Legal Aid as she is seeking a property settlement and Legal Aid no longer assists with property settlements, even if the value of the assets is very low and/or their main property issues are debts.

If she cannot afford a private practitioner and she cannot get Legal Aid, she has limited to no options for seeking redress legally to get a settlement to assist her in getting a home. If she also has a poor credit rating accrued through her husbands' debts, she may not be able to get a suitable rental property. Several women who contact our service, find themselves in such precarious situations; at risk of being homeless with no avenue for legal redress.

For some women who cannot be helped by women's legal services like ours, they borrow money or pay exorbitant legal fees from the proceeds of their property settlement. The exorbitant cost of litigation, which is also a barrier to justice, can also sometimes bankrupt a person into homelessness. In cases where family violence is a factor it can further exacerbate the situation as the perpetrator may use the legal system to further delay the process of settlement, and/or spousal maintenance as a means of exerting further control of the family.



We therefore recommend the fundamental principles underpinning the provision of homelessness services for women experiencing family violence and/or relationship breakdown should:

- **be consistent with the preventative and early intervention models** for addressing family violence as homelessness and family violence are often inter-related;
- **be addressed with a national integrated approach** that includes addressing family violence and other related issues with a consistent and coordinated referral, risk assessment and risk management system;
- **have safety, protection and a link into long term sustainable housing as paramount objectives** to meet the crucial needs for women and their children escaping family violence;
- **include stability, and economic independence as key objectives** for women experiencing relationship breakdown;
- **create a nationally coordinated linking system to link women and their children back into the community;** into long terms stable housing, education, employment, health services and any other appropriate services and support to address homelessness and the risks at the earliest possible stages;
- **have the Social Inclusion Principles** as outlined by the Social Inclusion Board incorporated into all service delivery;
- **be supported by corresponding legislation** to better strengthen the service delivery frameworks, such a national human rights charter, remove barriers to justice by guaranteeing legal aid funding for matters where women are disproportionately affected such as family law matters including property settlements;<sup>22</sup>
- **expand women's housing options** so that they do not have to leave the home in the first place, if they choose, or have the opportunity to have affordable housing.

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<sup>22</sup> Senate Legal Constitutional Affairs Committee, Inquiry into Legal Aid and Access to Justice 2004, pg42-46.

- **be consistent with respect, dignity and opportunity to participate** in the civil, cultural, economic, social community in line with all of Australia's international human rights treaty obligations.

## Legislative Scope

The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights should be as broad and as inclusive as possible. We believe it should include the following objectives:

- setting out a national framework and consistent standard that can be implemented nationally so that service provision is not fragmented and can thus be easily monitored and evaluated against criteria based on community consultation and set out in the legislation;
- closing the gap between the intention and implementation;
- investing in primary prevention and early intervention;
- creating efficient, well resourced and sustainable funding models with expert and community consultations to determine best practice models and strengthen models already in existence within the community and/or overseas;
- creating well tailored, targeted and linked services to better reflect the needs of women and children experiencing family violence and relationship breakdown, especially those with other complicating factors such as mental health, cultural and language barriers and desperate economic needs;
- creating better transitioning services with Social Inclusion Principles as fundamental aims to better integrate women into long term, sustainable housing options;
- creating a collaborative system among all levels of government; Federal, State and Local governments;
- having all homelessness legislation and the provision of services measured against all of Australia's International treaty obligations especially rights that can be used to advocate for improved service provision, including but not limited to, the rights contained in the International Covenant of Economic, Social and Cultural Rights (ICESCR). In that regard a National Charter of Human Rights would be used as the measure to determine best practice and service provision when drafting relevant homelessness legislation.

## Legislative Role

Legislation has an important role in improving the quality of services for people who are homeless or at risk of homelessness.

We believe the role of legislation in improving the quality of services should:

- **Set out a national regulatory framework** as well as best practice standards for which services are delivered to people experiencing homelessness or who are at risk of homelessness.
- **Have an all of government approach** across all levels of government; federal, state and local government. It can be used to set up funding and service standards agreements between the federal and state governments.
- **Have an integrated approach** by taking into account all other relevant and inter-related policy and legislation, including but not limited to:
  - the National Plan to Reduce Violence Against Women and their Children;
  - the Australian Government's Social Inclusion Principles;
  - removing barriers to justice with corresponding increases to Legal Aid and the community sector funding as the legal system is part of an effective and wholistic system to prevent or intervene when women are at risk at risk of homelessness due to poverty post separation or due to family violence; and
  - the proposed reforms such as Closing the Gap for Indigenous Australians, the National Mental Health and Disability Employment Strategy and the Proposed National Child Protection Framework

**Besides improving and standardising the quality of homelessness services, legislation can also be used as a primary prevention and early intervention tool to prevent and minimise the risks of homelessness.**

## Conclusion

### Summary of Recommendations

In summary WLSV Victoria recommends that:

1. The fundamental principles and the role and scope of any homelessness legislation about the provision of services to Australians who are homeless or at risk of homelessness should:
  - a. include and be measured against all the Commonwealth Government's Social Inclusion Principles;
  - b. include and be measured against all Australia's International Human Rights Treaty obligations with particular reference to ICCPR and IESCR;
  - c. note the main causes of homelessness including family violence, relationship breakdown and barriers to justice as being among main contributors and ensure services meet the needs of women and their children experiencing family violence or relationship breakdown;
  - d. ensure services meet the needs of women and their children with multiple needs and barriers;
  - e. ensure systems work together effectively across the federal, state and local governments to develop consistent, appropriate, effective and sustainable policy, planning and service delivery responses;
  - f. have a focus on prevention and early intervention;
  - g. establish a consistent evaluation system to test, determine and refine best practice models already in existence;

- h. establish an appropriate integrated system to close the gaps as a means to catch all people at risk of homelessness and refer them to appropriate services;
- i. establish a model to appropriately transition people efficiently from SAAP services into stable, sustainable long term housing;
- j. have an all of government approach across all levels of government that informs the setting up of funding and service standard agreements between the federal and state governments;
- k. setting out a national regulatory framework and best practice standards for the provision of services;
- l. have a co-ordinated response that works jointly with other government initiatives such as the National Plan to Reduce Violence against Women and their Children; and
- m. address barriers to justice that further place women and their children at risk of homelessness.

## Contact details

This submission was prepared by Zione Walker-Nthenda on behalf of the Women's Legal Service Victoria for consideration by the House Standing Committee on Family, Community, housing and Youth.

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