

Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness
A joint initiative of the Public Interest Advocacy Centre Ltd
and the Public Interest Law Clearing House Inc



Public Interest Advocacy Centre Ltd
Level 9, 299 Elizabeth Street
Sydney NSW 2000
DX 643 Sydney
Tel: +61 2 8898 6545
Fax: +61 2 8898 6555
E-mail: homelessproject@piac.asn.au
ABN: 77 002 773 524

More than just a roof over our heads!

Submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation

18 August 2009

Chris Hartley
Policy Officer
Homeless Persons' Legal Service

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Introduction

Homeless Persons' Legal Service

In 2003, following an extensive consultation process, the Homeless Persons' Legal Service (**HPLS**) was established by the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**).¹ PIAC receives funding for HPLS from the NSW Public Purpose Fund through the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates nine clinics on a roster basis at welfare agencies in the greater Sydney area.² These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from PILCH member organisations.³ Since the launch of HPLS in May 2004 it has provided advice to over 3,000 clients.

Involvement of homeless people

The Homeless Persons' Legal Service believes that the House of Representatives Standing Committee on Family, Community, Housing and Youth (the Committee) Inquiry into homelessness legislation (the Inquiry) is a chance for HPLS as an advocate for homeless people not just to provide its own perspectives on how to reduce the growing rates of homelessness, but also (and importantly) to listen to the voices and opinions of people on the streets.

¹ Further information about the Public Interest Advocacy Centre and the Public Interest Law Clearing House is provided as Appendix A to this document.

² The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Norman Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

³ The following PILCH members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Deacons, DLA Phillips Fox, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW and Minter Ellison.

HPLS believes that the active involvement of those who are or have been homeless will lead to the development of more effective public policy in response to issues facing homeless people, as well as assisting in the empowerment of participants. HPLS also recognises the fundamental right of people to ‘take part in the conduct of public affairs’, as enshrined in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR).⁴

HPLS has not held direct consultations with homeless people in response to the call for submissions to the parliamentary inquiry. However, HPLS has previously held consultations with over 200 homeless and formerly homeless people as part of its submission to the Federal Government’s Green Paper on homelessness, *Which Way Home, A new approach to homelessness* (the Homelessness Green Paper).⁵ In addition to its Homelessness Green Paper consultation events, HPLS consulted with over 130 people currently experiencing homelessness in order to develop its response to the National Human Rights Consultation. The input HPLS received through both processes has been used to inform the content of this submission. A copy of the HPLS submission to the National Human Rights Consultation is appended to this submission (Appendix B).

Acknowledgement

The Public Interest Advocacy Centre and the Homeless Persons’ Legal Service would like to acknowledge the Disability Discrimination Legal Centre and the Intellectual Disability Rights Service in supporting the research contained in this submission.

Executive summary and recommendations

This submission is made by the Homeless Persons’ Legal Service to the House of Representatives Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation. The submission is based on HPLS’s casework and public policy and law reform work, as well as the information provided to HPLS by participants in HPLS’s consultation processes in respect of the Homelessness Green Paper and the National Human Rights Consultation.

The *Supported Accommodation Assistance Act 1994* (Cth) (SAA Act) has the ambitious objective of providing ‘transitional supported accommodation and related support services, in order to help people who are homeless to achieve the maximum possible degree of self-reliance and independence’.⁶ However it is clear that, despite

⁴ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993). Australia is a State Party to the *International Covenant on Civil and Political Rights*, having ratified it on 13 August 1980. It came into force for Australia on 13 November 1980. The full text of the ICCPR is available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>.

⁵ Commonwealth, *Which Way Home, A new approach to homelessness*, (2008).

⁶ *Supported Accommodation Assistance Act 1994* (Cth) s 5(2).

the best intentions of the homeless welfare sector, this objective has not been met. At best, the Supported Accommodation Assistance Program (SAAP) acts as a crisis-management system that has little impact on reducing the increasing rates of homelessness.

HPLS therefore welcomes the proposal to develop new legislation that will support the Federal Government's commitment to reducing homelessness. In this submission, HPLS focuses on the principles underpinning the proposed new homelessness legislation and government initiatives in the areas of social inclusion and rights.

Despite extensive references to Australia's international human rights commitments in its objects⁷, the SAA Act provides no actual protections for the human rights of people experiencing homelessness. HPLS submits that new national legislation must be based on a human rights framework that enforces rights to housing, health care and consumer participation in order to ensure it adequately responds to the many issues surrounding homelessness.

In summary, the Homeless Persons' Legal Service recommends that:

Recommendation One

That national homelessness legislation protect the human right of homeless people to adequate housing by incorporating an enforceable right based on international models such as the *Homelessness etc (Scotland) Act 2003* (UK).

Recommendation Two

That national homelessness legislation protect the right to adequate housing by linking accreditation and funding of homeless support services to non-discriminatory exclusion and access policies.

Recommendation Three

That national homelessness legislation should recognise and protect the rights of homeless people to participation by requiring federal, state and territory government departments and agencies to meaningfully involve those experiencing homelessness in law reform and public policy development processes.

Recommendation Four

That national homelessness legislation promote the right to participation through funding and support for dedicated homeless consumer groups.

Recommendation Five

That national homelessness legislation link the involvement of homeless people in the development and ongoing evaluation of service standards to service accreditation.

⁷ *Supported Accommodation Assistance Act 1994* (Cth) s 5.

Recommendation Six

That national homelessness legislation provide an enforceable right to adequate health care.

Recommendation Seven

That national homelessness legislation permit agencies to extend short-term accommodation for users who require significant and/or ongoing support.

Recommendation Eight

That national homelessness legislation recognise the human rights of homeless people to personal safety.

Recommendation Nine

That national homelessness legislation require agencies to develop action plans to respond effectively to incidents of violence against homeless people.

Recommendation Ten

That national homelessness legislation recognise and protect other human rights of homeless people including the right to social security, the right to freedom of association and the right to vote.

Principles for change – human rights

HPLS welcomes the Federal Government's recognition, as expressed in the White Paper⁸, of the need to introduce a new legislative approach to improve outcomes for those experiencing homelessness. HPLS believes the primary principle that should underpin and inform the provision of services to those currently or at risk of homelessness is protection and promotion of human rights.

Australia's ratification of international human rights treaties such as the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁹, the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*¹⁰, the *Convention on the Rights of the Child (CROC)*¹¹, the *Convention on the Elimination*

⁸ Commonwealth, *The Road Home – A national approach to reducing homelessness*, (2009) 44.

⁹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ratified by Australia on 10 December 1975 (entered into force for Australia on 10 March 1976). Australia ratified the *International Covenant on Economic, Social and Cultural Rights* on 10 December 1975. *ICESCR* came into force for Australia on 10 March 1976.

¹⁰ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) ratified by Australia on 30 September 1975 (entered into force for Australia on 30 October 1975, except article 14, which entered into force for Australia on 28 January 1993). Australia ratified the *International Convention on the Elimination of All Forms of Racial Discrimination* on 30 September 1975. *CERD* came into force for Australia on 30 October 1975.

¹¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ratified by Australia 17 December 1990 (entered into

of *All Forms of Discrimination against Women* (CEDAW)¹² and the *Convention on the Rights of Persons with Disabilities*¹³ imposes an obligation on Australia to ensure that the rights within those treaties are protected, promoted and fulfilled in Australia.

The SAA Act makes a number of references to Australia's international human rights commitments. The objects to the SAA Act details that 'Australia has acted to protect the rights of all of its citizens, including people who are homeless or at risk of homelessness, by recognising international standards for the protection of universal human rights and fundamental freedoms'.¹⁴ In addition, the preamble details that homeless people's 'universal human rights should not be prejudiced by the manner by which services are provided to them'.¹⁵ The SAA Act also specifies that SAAP agreements must contain detail on how 'the civil, political, economic and social rights of people that are homeless may be preserved and protected by service providers'.¹⁶

However, the intention of Government (as expressed through the SAA Act) that the provision of services to homeless people would not impact upon their universal rights has not translated into practice. In response to the Federal Government's announcement of a National Human Rights Consultation, HPLS held a series of human rights workshops in homeless shelters in inner city Sydney. During these workshops, homeless people in attendance were encouraged and assisted to provide their stories and ideas about how and how well their human rights are protected in Australia. HPLS received considerable feedback from homeless people that their human rights in areas such as housing, social security, discrimination and personal safety were being consistently undermined by the operation of federal, state and territory government policies. In addition, those consulted by HPLS were concerned that SAAP service providers were also failing to adequately protect their human rights in service delivery. Participants were also asked to vote on the model of rights protection they would like to see to best protect their rights. Tellingly, of the over 130 homeless people who attended one of these consultation events, not one person cast a vote to retaining the status quo.

On the basis of these consultations events, HPLS believes it is essential that any new piece of homelessness legislation incorporates and be based on a human rights

force for Australia on 16 January 1991). Australia ratified the *Convention on the Rights of the Child* on 17 December 1980. CROC came into force for Australia on 16 January 1991.

¹² *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ratified by Australia 28 July 1983 (entered into force for Australia on 27 August 1983). Australia ratified the *Convention on the Elimination of All Forms of Discrimination against Women* on 28 July 1983 CEDAW came into force for Australia on 27 August 1983.

¹³ *Convention on the Rights of Persons with Disabilities*, opened for signature 31 March 2007, Doc.A/61/611 (entered into force 3 May 2008), ratified by Australia on 17 July 2008 (entered into force for Australia on 16 August 2008).

¹⁴ *Supported Accommodation Assistance Act 1994* (Cth) s. 5

¹⁵ *Ibid.*

¹⁶ *Supported Accommodation Assistance Act 1994* (Cth) s 8.

framework. Without this framework, the central impact that violations of human rights can have in causing, exacerbating and maintaining homelessness will be overlooked. Unlike with the SAA Act, these human rights should not be merely aspirational but standards that must be met by service providers to retain funding and accreditation. Importantly, the Federal Government must ensure that it provides adequate support and resourcing to the sector to enable the realisation of these rights and standards. In addition, HPLS believes human rights standards in the homelessness legislation must provide individuals with effective remedies for breach of these human rights by service providers and government departments and agencies.

The current lack of protection for human rights under the SAA Act and the impact of this on homeless people are discussed in detail below.

The Right to Adequate Housing

I applied for priority housing. They told me it would be processed in a couple of months but it has not and it is year and a half later. While I wait I am living in a cockroach castle (a boarding house).

*Homeless person, Edward Eagar Lodge,
HPLS event for the National Human Rights Consultation*

Human right to adequate housing

The right to adequate housing is formulated in Article 25 of the *Universal Declaration of Human Rights* and the binding right is set out in Article 11 of the *International Covenant on Economic, Social and Cultural Rights*. Article 11(1) of the ICESCR recognises:

... the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The nature of the right to adequate housing has been extensively defined by the UN Committee on Economic, Social and Cultural Rights. The Committee established that the right to adequate housing involves more than just having shelter but that it is the 'right to live somewhere in security, peace and dignity'.¹⁷ The Committee also established seven indicia of adequacy including security of tenure and that housing is affordable and accessible.¹⁸

As a State Party to the ICESCR, Australia is required by Article 11(1) to take appropriate steps to ensure the realisation of the right to adequate housing. These appropriate steps are required by the ICESCR to be 'concrete', 'targeted', 'expeditious' and 'effective', and should include making adequate housing a

¹⁷ UN Committee on Economic, Social and Cultural Rights, *General comment No. 4, The right to Adequate Housing (Art. 11(1) of the Covenant)*, [7], UN Doc E/1992/23 (1991).

¹⁸ *Ibid* [8].

budgetary priority.¹⁹ One of the homeless people consulted by HPLS at Matthew Talbot as part of HPLS's Green Paper consultation events provided his own indicia of whether housing is adequate, claiming it must allow you to:

- [have] stability;
- [allow you to] belong to the community;
- [have a] sense of belonging;
- [have] somewhere to call home;
- [have] a chance;
- [have] security of items, security of person.

In addition to the right as articulated in the ICESCR, the right to non-discriminatory access to public housing programs is provided for in Article 28 of the *Convention on the Rights of Persons with Disabilities*.

Current protections under the SAA Act

Australia's failure to take 'expeditious', 'effective' or 'targeted steps' to ensure the realisation of the right to affordable and secure housing has been recognised by the UN Special Rapporteur on Adequate Housing. In 2006, the Special Rapporteur reported that Australia has 'failed to implement its legal obligation to progressively realise the human right to adequate housing ... particularly in view of its responsibilities as a rich and prosperous country'.²⁰

This failure to protect homeless people's right to adequate housing is particularly evident in the operation of the SAA Act. The current SAA Act fails to provide those experiencing homelessness with a right to housing in a number of key ways.

Unmet need

The failure of the SAA Act to protect the human rights of homeless people to adequate housing is evident in the large number of people currently being turned away from SAAP accommodation. Figures cited in the Australian Institute of Health and Welfare report, *Demand for SAAP accommodation by homeless people 2007–08*, indicate that on an average daily basis, 735 people (446 adults and unaccompanied children and 289 accompanying children) made a valid unmet request for accommodation in a SAAP service.²¹ This figure roughly means that 59 percent of people initiating new requests for supported accommodation were turned away on an average day.²² The large number of homeless people seeking

¹⁹ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)*, [2] and [9], UN Doc E/1991/23 (1990).

²⁰ Miloon Kothari, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, [126] UN Doc A/HRC/4/18/Add.2, (2007) <<http://daccessdds.un.org/doc/UNDOC/GEN/G07/125/>> at 13 August 2009.

²¹ Australian Institute of Health and Welfare, *Demand for SAAP accommodation by homeless people 2007–08 (2009)* <<http://www.aihw.gov.au/publications/hou/hou-211-10772/hou-211-10772.pdf>> at 13 August 2009.

²² Ibid.

accommodation that are turned away is due in part to the large number of requests SAAP services are receiving. Recent figures from the City of Sydney reveal that the Homeless Persons' Information Centre (the leading referral centre for crisis accommodation services) received over 66,610 calls during the last 12 months, a rise of more than 13,000 on the previous year.²³

Exclusions

The right of homeless people to adequate housing is also undermined by the exclusion policies of many SAAP service providers. In addition to the SAA Act, the New South Wales SAAP standards and the NSW SAAP service framework are in place to regulate the process of excluding clients from SAAP services. These standards and regulations proscribed that exclusion policies in SAAP services were to be developed so as to be free from discrimination and consistent with human rights principles.²⁴ However, as the NSW Ombudsman found in his report, *Assisting homeless people – the need to improve their access to accommodation and support services*, there are considerable numbers of exclusions from SAAP services that are unreasonable and in contravention of SAAP and anti-discrimination legislation.²⁵ The NSW Ombudsman found that over a six-month period over 57 percent of SAAP services surveyed turned away between one and 20 people, and 11 percent turned away over 40 people.²⁶ In total, from the 165 SAAP services that participated in the NSW Ombudsman's survey approximately 2,249 people experiencing homeless had been excluded.²⁷

Approximately half of the SAAP services consulted indicated that they exclude people with a mental illness and almost two thirds of services exclude people with drug and alcohol disorders.²⁸ Also of concern to the NSW Ombudsman was the high number of SAAP services excluding pregnant woman.²⁹ While HPLS recognises the need to ensure the occupational health and safety of workers within homelessness services, as the NSW Ombudsman's figures reveal, the number of exclusions based on concern to the physical safety of workers is extremely small.³⁰ The considerable

²³ "Calls to homeless helpline increases", *The Age*, (Melbourne), 5 August 2009, <http://news.theage.com.au/breaking-news-national/calls-to-homeless-helpline-increases-20090805-ea63.html>

²⁴ See, for example NSW Department of Community Services, *SAAP Standards* (1998) 6.

²⁵ NSW Ombudsman, *Assisting homeless people – the need to improve their access to accommodation and support services* (2004) [30] <http://ombo.nsw.gov.au/publication/PDF/specialreport/Assisting%20homeless%20people.pdf> at 13 August 2009.

²⁶ Ibid 30.

²⁷ Ibid 33.

²⁸ Ibid 30.

²⁹ Ibid 29.

³⁰ Ibid 11.

impact these exclusion policies have on the ability of homeless people with mental health and co-existent conditions to receive adequate treatment is discussed below.

Access

The inadequate standard of accommodation provided by many SAAP services also undermines the right to adequate housing. Many SAAP accommodation services are inaccessible to people with physical disabilities due to the fact that they are mostly located in converted buildings such as churches and community halls. This is inconsistent with the right to an adequate standard of living and social protection as set out in Article 28(2)(d) of the *Convention on the Rights of Persons with Disabilities*, which states:

State Parties recognize the right of persons with disabilities to social protection and the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this rights, including measures ... [t]o ensure access by persons with disabilities to public housing programs.

Under section 25 of the *Disability Discrimination Act 1992* (Cth) it is unlawful to discriminate against a person with disability in the provision of accommodation unless it imposes an unjustifiable hardship on the accommodation provider. Unfortunately, HPLS is aware of a considerable number of clients who are forced to sleep rough as they are unable to obtain accommodation in SAAP services because of their physical disability. This is confirmed by the NSW Ombudsman who reports that he found that over one third of SAAP services indicated they exclude people with a physical or an intellectual disability.³¹ Most of these services indicated they had inadequate access for people with mobility problems or who use wheelchairs. Such conduct is not only clearly in breach of the *Disability Discrimination Act 1992* (Cth) but also of Australia's international human rights commitments under the *Convention on Rights of Persons with Disabilities*.

Realisation of the right to housing

In order to address problems around unmet need, exclusions and access in the provision of services to homeless people, HPLS submits that national homelessness legislation should contain an enforceable right to housing. This right to adequate housing should reflect the inclusive definition of the right to housing in Article 11 of the ICESCR (as detailed above) in order to ensure services that are provided to homeless people are both accessible and adequate to their needs.

There are a number of overseas jurisdictions with homelessness legislation that incorporates an enforceable right to housing. These include the *Homelessness etc (Scotland) Act 2003* (UK) (the Scotland Act) and *Homelessness Act 2002* (UK) (the UK Act).

The UK Act imposes a duty on local housing authorities in the United Kingdom to provide accommodation to all individuals found to be unintentionally homeless and in

³¹ Ibid 30.

priority need. While attempting to provide a right to housing for homeless people, there are two major limitations of the UK Act, namely that individuals must demonstrate that they are not intentionally homeless (that they have not deliberately lost accommodation that would have been reasonable for them to occupy) and that they are in priority need in order to access that right. In order to establish priority need it must be established that an individual is either pregnant, is fleeing violence, has dependent children or is vulnerable on the basis of mental illness or other criteria. While HPLS is not supportive of restricting the rights of homeless people on the above criteria it is interesting to note that those found to have priority needs under the UK Act are the groups most likely to be excluded from SAAP accommodation in Australia. While the UK Act does, in the view of HPLS, unnecessarily restrict the right to adequate housing, it does provide all applicants with a right to appeal any decisions of a local housing authority internally and to then further appeal to the County Court on a question of law.³²

A less restrictive articulation of the right to adequate housing is contained in the Scotland Act, 'the most progressive homelessness law in Europe'.³³ While not specifically referring to the right to adequate housing, the Scotland Act offers a progressive realisation of the right by offering accommodation to every homeless person who requires it by the end of ten years. The Scotland Act does retain elements of the UK Act including 'priority need' and 'intentionally homeless', but rather than being exemptions under the Act, these criteria enable individuals to be identified, not for the purpose of exclusion, but rather, to ensure they received increased support to maintain their tenancies. In addition, the Scotland Act requires local councils to accommodate homeless people in areas where they have local connections and support, as well as granting the Minister for Housing the authority to list accommodation not deemed suitable for the needs of homeless people.

For further detail on the operation of these two acts, HPLS refers to the Victorian Homeless Persons' Legal Clinic submission to the Homelessness Green Paper, *Righting the Wrongs of Homelessness*.³⁴

HPLS submits that any service standards and accreditations should reflect the right to adequate housing by ensuring homeless service providers develop non-discriminatory exclusion and access policies. Service standards and accreditations should recognise that homeless people are particularly vulnerable, sometimes presenting with complex needs, and offering requiring urgent and/or ongoing support. HPLS submits that the policies of service providers should be positively framed, such

³² For further discussion on the right of appeal under the *Homelessness Act 2002* (UK), please see Dan Nicholson, *The Human Right to Housing in Australia*, 2004 Victorian Council of Social Services
<http://www.vcross.org.au/documents/VCOSS%20docs/Housing/Human%20right%20to%20housing_Eb.pdf> at 13 August 2009.

³³ Ibid.

³⁴ Public Interest Law Clearing House Homeless Persons' Legal Clinic, *Righting the Wrongs of Homelessness* 2008 unpublished

as by embracing and adopting the concepts of reasonable adjustment, to allow full inclusion and access by all homeless people regardless of disability or mental illness.

Recommendation 1: That national homelessness legislation protect the human right of homeless people to adequate housing by incorporating an enforceable right based on international models such as the *Homelessness etc (Scotland) Act 2003* (UK).

Recommendation 2: That national homelessness legislation protect the right to adequate housing by linking accreditation and funding of homeless support services to non-discriminatory exclusion and access policies.

Consumer participation is service delivery and design.

If you want to know how to fix homelessness, just ask us. We are the experts!

*Sarah, member of Street Care,
at the 'Never About Us Without Us' Public Forum.*

A human rights framework within national homelessness legislation should also protect the right of homeless people to be involved in government and other decision-making processes that directly affect them.

Human right to participation

As detailed above, the right for homeless people to be involved in decision-making processes that impact them is enshrined in Article 25 of the ICCPR which states:

Every citizen shall have the right and the opportunity, ... without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

It is the unfortunate experience HPLS that government and other initiatives to address the growing incidence of homelessness do not include genuine consultation with homeless people themselves. Or when consultation does occur it is last minute, ill prepared, not inclusive and not respectful of the needs of those being consulted.

HPLS submits that mechanisms to facilitate the participation of homeless people, like consumer advisory and advocacy groups, are critical to ensuring appropriate and meaningful consultation with homeless people on issues affecting them. Such consumer groups would be able to put forward informed recommendations to government agencies and other organisations, including service providers, to ensure that homeless people have a strong voice in the community.

Current protections under the SAA Act

The importance of consumer participation in service design and delivery is recognised in the objects to the SAA Act, including the need for development of a national advisory committee that has representation from people who have experienced homelessness.

However, in reality there are very few services with a dedicated consumer participation process. Fewer still are the opportunities for people who are or who have experienced homelessness to be involved in advisory committees or to provide input to government processes that affect them.

HPLS in NSW and the Homeless Persons' Legal Clinics in Victoria, Queensland and South Australia are committed to ensuring decision makers hear the voices of homeless people. As detailed above, HPLS's submission to the National Human Rights Consultation was formulated after input from over 130 homeless people. The submissions produced by HPLCs in Victoria, Queensland and South Australia similarly are based on their extensive consultations with people who have experienced homelessness.

Homeless legal services are also leading the way in establishing dedicated consumer bodies that are equipped to advise government departments and agencies on the best ways of engaging with homeless people. One such group, Street Care, was established in February 2009 by the HPLS with funding support from the City of Sydney. Street Care, made up entirely of currently and formerly homeless people, is not a short-cut for government to hear from homeless people, but rather a mechanism to provide advice on how best to consult with homeless people. Members of Street Care recently assisted the New South Wales Youth and Children's Commission to conduct a consultation with young homeless people. Street Care has met with the NSW Minister for Housing, the Hon David Borger MP, and representatives of the Federal Attorney-General's Department to discuss issues around homelessness. Street Care has also been active in ensuring the voices of homeless are represented in sector conferences and forums. Representatives of Street Care have made presentations at a number of events including at the Homelessness NSW Annual Conference, the joint City of Sydney and Mercy Foundation's 'Housing When?' conference and the joint Homelessness NSW and HPLS 'Never about us without us' public forum. Groups similar to Street Care are also in operation in Victoria and Queensland.

Realisation of the right to participation

The need for homeless people to be placed at the centre of service planning has recently been recognised by the White Paper on Homelessness³⁵ and the NSW Homelessness Framework, *A Way Home*.³⁶ HPLS believes that in order to facilitate this consumer focus, national homelessness legislation should support the work of existing consumer advisory groups such as Street Care, as well as ensure that homeless service providers seek to involve homeless people in decision-making processes.

³⁵ Commonwealth, *The Road Home, A national approach to reducing homelessness* (2009) viii.

³⁶ New South Wales, *A Way Home, Reducing homelessness in NSW, NSW Homelessness Action Plan 2009 – 2014* (2009) 19.

In order to ensure that the voices of regional and remote homeless people are heard by decision makers, on-going funding is required to establish dedicated regional consumer bodies. In addition to funding, national legislation could support the work of Street Care and other homeless consumer advisory groups by requiring Federal Government departments and agencies, such as the Department of Housing and the Department of Families, Housing, Community Services and Indigenous Affairs, to engage consumer groups before making substantive policy and legislative reforms.

It is also essential that national legislation promote the role of homeless people in service delivery by making consumer involvement a prerequisite to service accreditation. HPLS also believes homeless people should play a central role in the development of grievance procedures and charter of rights for homeless services.

Recommendation 3: That national homelessness legislation should recognise and protect the rights of homeless people to participation by requiring federal, state and territory government departments and agencies to meaningfully involve those experiencing homelessness in law reform and public policy development processes.

Recommendation 4: That national homelessness legislation promote the right to participation through funding and support for dedicated homeless consumer groups.

Recommendation 5: That national homelessness legislation link the involvement of homeless people in the development and ongoing evaluation of service standards to service accreditation.

Right to the highest attainable standards of health

There should be more human rights for homeless people with a mental illness!

Anonymous Participant at HPLS Human Rights Forum

Human right to health

The right to the highest attainable standards of physical and mental health is protected under Article 12(1) of the ICESCR.³⁷ Under this right, Australia is required to ensure all individuals have access to adequate health care and services.

Current protections under the SAA Act

The human right to the highest attainable standards to health care is reflected in section 7(b)(iii) of the SAA Act that requires service providers to provide access to appropriate health (including mental health) services.

HPLS is concerned that, despite the SAA Act, the current primary government response to homelessness, the SAA Act, is completely inadequate to address the systemic mental health and related issues that cause and exacerbate homelessness.

³⁷ This right is articulated as it applies to people with disabilities in Article 25 of the *Convention on the Rights of Persons with Disabilities*.

The links between homelessness and mental illness are well established. There is clear evidence that mental illness is not only a significant factor in individuals becoming homeless, but also that a person is more likely to develop a mental illness after experiencing homelessness for a period of time. Recent research revealed that 80 percent of homeless people with mental health problems have been homeless for one year or longer and that most homeless people (81 percent) who mental health problems have experienced two or more episodes of homelessness.³⁸ Another study commissioned by the Federal Department of Family and Community Services found that nearly 30 percent of SAAP service users had a complex mental health condition.³⁹

Whether it is a cause or resultant product of becoming homeless, it is clear that the majority of people with mental illness on the street find it difficult to access appropriate treatment under current service structures. As detailed above, figures for the NSW Ombudsman's report into service exclusions found that over half of the SAAP services indicated that they excluded people with a mental illness. Responses to the NSW Ombudsman's report indicated that most SAAP service providers have rigid 'conditions of stay' that effectively act to preclude people with complex needs from obtaining appropriate accommodation in support. Such service exclusion is a real barrier to people who are homeless and mentally ill from getting the treatment that they require.

The ability of Homeless people to obtain adequate and substantive mental health treatment is further limited by the requirement that users of short-term crisis accommodation move away from the service after a period of three months. In HPLS's experience this means that many SAAP service users hop between short-term accommodation centres, never having the systemic causes for their homelessness adequately understood or addressed. Current requirements within short-term accommodation centres not only act as a barrier to adequate mental health treatment but prevent caseworkers in services from assisting individuals to make applications for public housing and to access ongoing legal advice.

Recommendation 6: That national homelessness legislation provide an enforceable right to adequate health care.

Recommendation 7: That national homelessness legislation permit services to extend short-term accommodation for users who require significant and/or ongoing support.

³⁸ G Johnson and C Chamberlain, 'Are the Homeless Mentally Ill?', (Paper presented at the Australian Social Policy Conference, Sydney, 8-10 July 2009).

³⁹ Thomson Goodall Associates, *People who are assisted by SAAP Services require a High Level and Complexity in Service Provision, a report to the Department of Family and Community Services* (2003).

The right to personal safety

Early one morning my friend and I were awoken by a size 12 alarm clock. For some reason three guys who had a few too many decided they would attack a couple of 'streeties' and me and my mate were the first that they came across. They kicked and punched us so hard that they put us both in hospital. When we reported the attack to the police they said 'well, you live on the street, what did you expect?'

Anonymous story of a person homeless person in Sydney

Human right to liberty and security

Article 9 of the ICCPR provides a right to liberty and security of person for all individuals.

Current protections under the SAA Act

The personal safety of those experiencing homelessness is not currently protected under the SAA Act.

In HPLS's experience, homeless people are often subject to violent attacks. The attacks occur not just from within the homeless community but are often perpetrated by people exiting bars and clubs. HPLS routinely speaks to homeless peoples who have been attacked by members of the public while they have been trying to sleep. Many homeless people are also victims of attacks within SAAP services. However, the homeless victims of these violent assaults are often suspicious of law enforcement agencies and therefore rarely report such incidents. The invisibility of homeless people's experience of violence and victimisation is also ensured socially by beliefs within society that homeless people are somehow deserving of violence because of their risky lifestyles, and institutionally by the exclusion of homeless people from national crime surveys that inform crime-prevention policy.

HPLS is currently conducting a violence project to document and describe homeless people's experiences of violence and to explore the contexts of vulnerability in which violent events occur.

Realisation of the right to personal safety

HPLS believes that national legislation must require service providers to develop action plans to prevent and address incidents of violence against homeless people in supported accommodation. HPLS is happy to provide recommendations for such action plans based on its research findings at the conclusion of the homeless violence project.

Recommendation 8: That national homelessness legislation recognise the human rights of homeless people to personal safety.

Recommendation 9: That national homelessness legislation require agencies to develop action plans to respond effectively to incidents of violence against homeless people.

Additional human rights particularly relevant to homelessness

Although not directly relevant to the provision of accommodation, HPLS believes a number of other issues that impact on homelessness and are relevant to human rights should be addressed by the national homelessness legislation. These include the right to social security⁴⁰, the freedom of association and assembly⁴¹, and the right to vote⁴².

Recommendation 10: That national homelessness legislation recognise and protect other human rights of homeless people including the right to social security, the right to freedom of association and the right to vote.

Conclusion

The House of Representatives Standing Committee on Family, Community, Housing and Youth (the Committee) Inquiry into homelessness legislation provides for a real opportunity to recognise the considerable role that violations of human rights play in causing and further exacerbating homelessness, and in preventing people from exiting homelessness. New homelessness legislation should not simply pay 'lip service' to the protection of human rights as does the current SAA Act, but should provide concrete standards of practice that are enforceable against service providers and federal, state and territory governments.

Recognition, promotion and fulfillment of the human rights of homeless people in new national homelessness legislation will go a long way towards ensuring the ambitious targets of reducing homelessness contained in the White Paper on Homelessness, The road home can be realised.

⁴⁰ *International Covenant on Economic, Social and Cultural Rights*, Art 9; and *Convention on the Rights of Persons with Disabilities*, Art 28(2)(b).

⁴¹ *International Covenant on Civil and Political Rights*, Art 22; *Convention on the Rights of the Child*, Art 15; and *International Convention on the Elimination of all Forms of Racial Discrimination*, Art 5(d).

⁴² *International Covenant on Civil and Political Rights*, Art 25; *Convention on the Elimination of all Forms of Discrimination against Women*, Art 7; *International Convention on the Elimination of all Forms of Racial Discrimination*, Art 5(c); and *Convention on the Rights of Persons with Disabilities*, Art 29(a).

Appendix A

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth-State Community Legal Services Program. PIAC also receives funding from the NSW Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

The Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) was established in 1992 by the Law Society of New South Wales, PIAC and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

1. to identify matters of public interest that warrant legal assistance *pro bono publico*;
2. to identify the legal needs of non-profit organisations;

3. to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
4. to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
5. to expand the participation of private practitioners in the law reform process;
6. to seek the integration of *pro bono* work with legal practice; and
7. to encourage co-operation between private practitioners and public interest lawyers.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association and PIAC.

Appendix B