

Social Inclusion, Human Rights and Homelessness

- 4.1 Recognising and reflecting changes in the homeless population, as well as reflecting changes in social standards and expectations, will be key features of the new homelessness legal framework. In this context a large volume of evidence has called for new legislation to be founded on a human rights approach to achieving social inclusion for people who are homeless or at risk.

Association between Social Inclusion and Human Rights

- 4.2 Homeless people, people at risk of homelessness and those living in inadequate housing situations are among the most powerless and marginalised groups in society. Therefore evidence to the inquiry argues that responses to homelessness will need to be informed by, and consistent with, social inclusion frameworks. Specifically new homelessness legislation must clearly indicate how homelessness fits within the Government's broader reform agenda.¹
- 4.3 Two key elements for consideration are social inclusion and human rights. Evidence to the inquiry has emphasised the strong overlap between protecting human rights and realising social inclusion, particularly for vulnerable populations. Although social inclusion and human rights are considered separately below, it is important to recognise that to some

¹ See for example: Commissioner for Children and Young People (WA), Submission No 7, p 11; Catholic Social Services Australia, Submission No 68, p 3; Wesley Mission Melbourne, Submission No 70, p 6.

extent they are mutually reinforcing and complementary.² As explained in the submission from the Australian Human Rights Commission (AHRC):

Human rights principles focus on the empowerment of individuals to participate in their community and to control their own lives. They also focus on ensuring that all people enjoy minimum standards of treatment consistent with their inherent dignity and entitlement to respect. This approach is particularly important when public policy is endeavouring to support people experiencing extreme disadvantage.

Similarly, the Australian Government's Social Inclusion Principles sets out three 'Aspirational Principles':

- addressing disadvantage
- increasing social, civil and economic participation
- giving people a greater voice, combined with greater responsibility.³

Homelessness and Social Inclusion

4.4 An emphasis on full participation in economic, social and political life is the primary aim of the Government's Social Inclusion Agenda. To achieve this aim the Australian Social Inclusion Board has framed the following eleven Social Inclusion Principles:

- reducing disadvantage;
- increasing social, civil and economic participation;
- a greater voice combined with greater responsibility;
- building on individual and community strengths;
- building partnerships with key stakeholders;
- developing tailored services;
- focus on early intervention and prevention;
- building joined up services;
- evidence-based policy development;
- locational approaches;
- planning for sustainability.⁴

2 See for example: Australian Lawyers for Human Rights, Submission No 61, p 4; Australian Red Cross, Submission No 77, pp 7–8; Human Rights Law Resource Centre (HRLRC), Submission No 82, p 9; Public Interest Law Clearing House (Vic) Homeless Persons' Legal Clinic (PILCH HPLC), Submission No 85, p 8.

3 Australian Human Rights Commission (AHRC), Submission No 90, pp 13–14.

4.5 These principles have considerable relevance to addressing homelessness and therefore to developing a new legislative framework. Not surprisingly there is significant similarity and overlap between the 11 Social Inclusion Principles and the 10 guiding principles underpinning the Government's new policy approach to homelessness as set out in *The Road Home*.⁵ The relevance of several Social Inclusion Principles to achieving a holistic response to homelessness has already been recognised in Chapter 3.⁶

4.6 Noting that addressing homelessness is one of the Australian Social Inclusion Board's priorities, the Australian Government Department of Education, Employment and Workplace Relations (DEEWR) emphasised the very strong association with the Government's Social Inclusion Agenda stating:

The Australian Government's Social Inclusion Agenda provides a policy framework and approaches that aim to engage individuals and communities experiencing disadvantage. With a vision of a socially inclusive and fairer Australia, this agenda is about enabling all individuals, regardless of background or circumstance, to fully participate in the economic, social and civil life of their local community.⁷

4.7 Expanding on the links between elements of social inclusion and addressing homelessness, the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) reported that:

Submissions responding to the Government's Green Paper on homelessness proposed a number of goals focused on social inclusion for people who are homeless or at risk, including:

- no person needs to sleep rough because of lack of alternatives;
- increase support to help individuals increase their capacity to successfully sustain engagement in the social and economic functions of society;
- ensure that responses to homelessness re-integrate people with education, employment, long term housing, health and other services;

4 Australian Government website, *Social Inclusion Principles for Australia*, viewed on 29 October at <http://www.socialinclusion.gov.au/Principles/Pages/default.aspx>.

5 Australian Government (2008), *The Road Home: A National Approach to Reducing Homelessness*, pp 19-20.

6 See references in Chapter 3 to: building joined up services; building partnerships with key stakeholders; focus on early intervention and prevention; and planning for sustainability.

7 Australian Government Department of Education, Employment and Workplace Relations (DEEWR), Submission No 69, p 2.

- increase social acceptance and understanding of homelessness issues to improve community ownership and foster social inclusion of the marginalised and vulnerable; and
- improvement of living conditions for Indigenous people.⁸

4.8 Evidence to the inquiry generally supported a legislative framework encompassing the concept and principles of social inclusion.⁹ Some evidence however has noted a degree of uncertainty about the meaning and application of the term social inclusion.¹⁰ Some have cautioned against a narrow interpretation of social inclusion, which places too great an emphasis on employment and economic participation.¹¹ For example, providing its support for a broad definition of social inclusion the Regional Youth Development Officers' Network (RYDON) submits that:

... social inclusion for the terms of homelessness legislation needs to encompass 'providing people with the fundamentals of a decent life within their own community: opportunities to engage in the economic and social life of the community with dignity; increasing their capabilities and functioning; connecting people to the networks of local community; supporting health, housing, education, skills training, employment and caring responsibilities.'¹²

4.9 Observing that social inclusion principles are subject to varied interpretation and that Government priorities change over time, National Shelter concludes that social inclusion needs to be defined within the legislation to clarify interpretation and to ensure constancy over time.¹³ The Committee agrees with this conclusion.

8 Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Submission No 86, p 6.

9 See for example: Mission Australia, Submission No 53, p 23; Queensland Youth Housing Coalition Inc (QYHC), Submission No 50, pp 12-13; Catholic Social Services Australia, Submission No 68, pp 3-4; Wesley Mission Melbourne, Submission No 70, p 6.

10 National Shelter, Submission No 63, p 6. See also: Australian Government (2008), *Social Inclusion: Origins, Concepts and Key Themes*, viewed on 29 October 2009 at <http://www.socialinclusion.gov.au/Pages/Resources.aspx>.

11 See for example: Christo Youth Services, Submission No 35, p 5; Youth Accommodation Association (YAA), Submission No 54, p 11.

12 Regional Youth Development Officers' Network (RYDON), Submission No 33, p 6. See also: YAA, Submission No 54, p 11.

13 National Shelter, Submission No 63, p 6.

Homelessness and Human Rights

4.10 Evidence indicates that homeless people and those living in inadequate housing are more likely to experience a range of discriminatory experiences and human rights violations. Information from homeless people themselves to the Homeless Persons' Legal Service (HPLS) indicates 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.¹⁴

4.11 Similar observations were made by the Law Institute of Victoria which noted that homeless people and those in inadequate housing were more likely to experience violations of:

... the right to privacy, the rights of families and children, the right to life, the right to liberty and security, the right to freedom of movement, the right to participation in public affairs, the right to freedom from cruel, inhuman or degrading treatment, the right to freedom from discrimination, the right to property, the right to social security, the right to the highest attainable standard of health, the right to work and the right to education.¹⁵

4.12 While the interdependency and indivisibility of many rights is evident, the centrality of adequate housing was also emphasised in the submission from the Australian Red Cross as follows:

Housing is a basic human right and provides the basis for the enjoyment of other rights. Housing provides safety and security, connection to friends, family and community as well as making it easier to hold down a job and to lead a healthy and stable life.¹⁶

4.13 The centrality of housing to social inclusion is also the premise underpinning the 'housing first' model which has been a core feature of

14 Homeless Persons' Legal Service (HPLS), Submission No 65, p 5.

15 Law Institute of Victoria, Submission No 29, p 4. See also for example: Women's Health Victoria, Submission No 16, p 2; Inner Sydney Catholic Social Justice Group, Submission No 21, p2; Hanover Welfare Services, Submission No 34, p 4; Australian Council of Social Service (ACOSS), Submission No 60, pp 17, 18; HPLS, Submission No 65, p 4; City of Sydney, Submission No 66, p 4.

16 Australian Red Cross, Submission No 77, p 5.

the response to homelessness in the USA.¹⁷ As explained in the submission from Homelessness Australia:

Central to the housing first approach is the proposition that people experiencing homelessness are more likely to address the complex reasons that have led them to become homeless if they are given priority access to permanent housing.¹⁸

- 4.14 Issues associated with incorporating the right to adequate housing into a new legal framework for addressing homelessness are considered in more detail below.

The Right to Adequate Housing

- 4.15 A significant volume of evidence has called for new homelessness legislation to incorporate an enforceable right to adequate housing.¹⁹ As noted previously, the SAA Act makes several references to human rights, including specific reference in the preamble to the following international treaties to which Australia is party:

- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Covenants on Civil and Political Rights (ICCPR);
- Convention on the Elimination of all Forms of Racial Discrimination;
- Convention on Elimination of all Forms of Discrimination against Women;
- Convention on the Rights of the Child;
- Universal Declaration of Human Rights (UDHR); and
- Declaration on the Elimination of Violence Against Women.²⁰

17 See for example: RANZCP, Submission No 13, p 9; Australian Psychological Society, Submission No 40, p 6; Mercy Foundation, Submission No 51, p 1; Catholic Social Services Australia, Submission No 68, p 8.

18 Homelessness Australia, Submission No 39, p 29.

19 See for example: Commissioner for Children and Young People (WA), Submission No 7, p 9; 12; Kids Under Cover, Submission No 9, p 1; ANGLICARE Diocese of Sydney, Submission No 31, p 10; Homelessness Australia, Submission No 39, p 10; St Vincent de Paul Society, Submission No 43, p 5; Mission Australia, Submission No 53, p 12; HPLS, Submission No 65, pp 9–11; Homeless Outreach Psychiatric Services, Submission No 79, p 3; Human Rights Law Resource Centre, Submission No 82, pp 40–41; PILCH HPLC, Submission No 85, pp 25–26.

20 *Supported Accommodation Assistance Act 1994*, Preamble.

4.16 Chapter 3 indicates considerable support in evidence for references to international human rights made in the preamble to the SAA Act. The international treaties referred to in the preamble contain a number of provisions that have particular relevance to addressing homelessness. Notably Article 25(1) of the UDHR provides that:

Everyone has the right to a standard of living adequate for health and well being of himself [or herself] and his [or her] family, including food, clothing, housing and medical care and necessary social services ...²¹

4.17 Also Article 11 of the ICESCR provides:

The State Parties to the present Covenant recognise 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 State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.²²

4.18 Importantly, however it has been noted that reference to international human rights treaties in the preamble of an Act is not sufficient to automatically incorporate these rights into domestic law.²³ Nevertheless, there are obligations for Australia as a signatory to various covenants and conventions. As noted in the submission from the Australian Lawyers for Human Rights:

21 Universal Declaration of Human Rights, Article 25(1). See for example: Asylum Seeker Resource Centre, Submission No 5, Attachment 1, p 5; Commissioner for Children and Young People (WA), Submission No 7, p 8; Inner Sydney Catholic Social Justice Group, Submission No 21, p 1; Central Coast Group of Amnesty International, Submission No 22, p 1; NSW Young Lawyers Human Rights Committee, Submission No 27, p 4; ANGLICARE Diocese of Sydney, Submission No 31, pp 7-8; Hotham Mission Asylum Seeker Project, Submission No 62, p 8; HPLS, Submission No 65, p 6; Queensland Government, Submission No 91, p 5.

22 International Covenant on Economic, Social and Cultural Rights, Article 11. See for example: Mr B Woods, Submission No 2, p 3; Women With Disabilities Australia, Submission No 3, Attachment 1, p 12; Commissioner for Children and Young People (WA), Submission No 7, p 8; NSW Young Lawyers Human Rights Committee, Submission No 27, p 4; Law Institute of Victoria, Submission No 29, p 4; RYDON, Submission No 33, p 5; Australian Christian Lobby, Submission No 37, p 6; Salvation Army Tasmanian Division, Submission No 42, p 6; Financial and Consumer Rights Council Inc, Submission No 44, p 2; YAA, Submission No 54, p 11; Australian Lawyers for Human Rights, Submission No 61, p 6; Hotham Mission Asylum Seeker Project, Submission No 62, p 9; HPLS, Submission No 65, p 6; North Australian Aboriginal Justice & Larrakia Nation Aboriginal Corporation (NAAJA & LNAC), Submission No 72, p 8; Human Rights Law Resource Centre, Submission No 82, pp 12-13; AHRC, Submission No 90, pp 17, 47.

23 Queensland Government, Submission No 92, p 18.

Article 2(1) of the ICESCR obliges Australia to take concrete steps, using the maximum available resources, to progressively fulfil economic, social and cultural rights. The steps taken must be targeted and directed towards the most expeditious, effective and full realisation of human rights possible. They should include legislative, financial, social, educational and administrative measures, including budgetary prioritisation.²⁴

- 4.19 Despite these obligations, submissions have argued that the SAA Act's intention to protect the rights of people who are homeless or at risk of homelessness, has not translated well into practice.²⁵ Several submissions have drawn attention to findings of the United Nations (UN) in relation to Australian fulfilment of its international human rights obligations. For example, the Australian Human Rights Commission (AHRC) noted that in September 2000:

The [United Nations Committee on Economic, Social and Cultural Rights] has commented upon the failure of Australia to wholly implement the ICESCR into domestic law, such that 'its provisions cannot be invoked before a court of law'.²⁶

- 4.20 Similarly the submission from National Shelter also refers to following statement made in 2006 by the UN Special Rapporteur on Adequate Housing:

... 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.²⁷

- 4.21 National Shelter proceeds to elaborate on the shortcoming reported by the UN Special Rapporteur as follows:

According to the Special Rapporteur's report Australia failed to realise these rights in the following areas; the location of affordable housing; lack of complaints mechanisms for prosecuting or alleging violations of human rights; laws that criminalise the

24 Australian Lawyers for Human Rights, Submission No 61, p 5. See also: Office of the High Commissioner for Human Rights website, viewed on 14 September 2009 at <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

25 See for example: National Shelter, Submission No 63, p 2; HPLS, Submission No 65, p 5; AHRC, Submission No 90, p 30.

26 AHRC, Submission No 90, p 30.

27 National Shelter, Submission No 63, p 2.

use of public spaces by homeless people such as vagrancy laws and the exercise of move on powers ...²⁸

4.22 To address this the Commissioner for Children and Young People (Western Australia) notes that:

... the UN Special Rapporteur on Adequate Housing has urged federal and state authorities to make a greater effort to incorporate the international human rights instruments (to which Australia is a party) into the domestic legal system.²⁹

4.23 It is in this context that the need for new homelessness legislation has been viewed as an opportunity to embed the right to adequate housing into domestic law.³⁰ In doing so, submissions have argued that to be truly effective the right to adequate housing must be legally enforceable and therefore included in substantive provisions of new legislation rather than in the preamble.³¹

4.24 However, some evidence cautions against placing too much emphasis on the right to housing in order to address the issue of homelessness. Notably the submission from the Queensland Government highlights a number of challenges and limitations with a statutory right to housing, including:

- the potential of a housing centric focus to overlook the structural causes of homelessness;
- the relative inflexibility of legislation which reduces its responsiveness to changing environments and emerging trends; and
- placing unrealistic obligations on government and non-government service providers operating in a constrained funding environment with limited affordable housing options.³²

4.25 Similarly the NSW Government also notes the limitations associated with pursuing a purely legislative approach, stating:

28 National Shelter, Submission No 63, p 2.

29 Commissioner for Children and Young People (WA), Submission No 7, p 9.

30 See for example: Commissioner for Children and Young People (WA), Submission No 7, pp 8-9; Coalition Against Youth Homelessness (CAYH), Submission No 23, p 5; Law Society of New South Wales Young Lawyers, Submission No 27, pp 4-5.

31 See for example: Youthlaw, Submission No 24, p 3; Homelessness NSW, Submission No 28, p 7; Mission Australia, Submission No 53, p 12; HPLS, Submission No 65, p 9; The Homeless Outreach Psychiatric Service (HOPS), Submission No 79, p 3; Human Rights Law Resource Centre, Submission No 82, p 40; PILCH HPLC, Submission No 85, pp 25-26.

32 Queensland Government, Submission No 92, p 16.

While legislation can be a powerful tool from which to underpin changes to policy and practice, the right to housing can not be secured simply through legislation, and requires commitments such as increased funding for social housing and/or significant reforms across social and economic areas including housing, employment and income support.³³

- 4.26 The Committee agrees that a key issue with a legislated right to adequate housing is the need to avoid setting unrealistic expectations. As observed by one public hearing witness:

There would not be much point in conferring a right [to adequate housing] if we could not actually deliver on it.³⁴

- 4.27 Clearly, if legislated, the right to adequate housing would need to be underpinned by a holistic response to homelessness which addresses the underlying and structural causes of homelessness, as well as addressing housing affordability issues.

What is Adequate Housing?

- 4.28 Evidence has emphasised that adequate housing is more than simply providing shelter or putting a roof over someone's head. With regard to the interpretation of adequate housing as provided for under Article 11 of the ICESCR, several submissions have noted that the UN Special Rapporteurs on Adequate Housing's statement that:

... all people have the right to adequate housing, which includes a right to live somewhere in security, peace and dignity.³⁵

- 4.29 A number of submissions have noted that the UN Committee on Economic, Social and Cultural Rights (CESCR) has provided clear guidance on how to assess adequate housing.³⁶ The CESCR identified seven essential components:

- legal security of tenure: people should possess a degree of security of tenure which guarantees legal protection against

33 NSW Government, Submission No 96, p 12.

34 K Gumley, Transcript of Evidence, 28 October 2009.

35 Australian Lawyers for Human Rights, Submission No 61, p 6. See also: Homelessness NSW, Submission No 28, p 7.

36 See for example: Youthlaw, Submission No 24, p 3; Australian Lawyers for Human Rights, Submission No 61, p 6; City of Sydney, Submission No 66, p 4; Australian Red Cross, Submission No 77, p 5; HOPS, Submission No 79, p 4; HPLC, Submission No 85, p 26; AHRC, Submission No 90, p 20.

forced evictions, harassment and other threats, regardless of the type of tenure;

- availability of services, materials, facilities and infrastructure: to be adequate, housing must contain certain facilities essential for health, security, comfort and nutrition;
- affordability: housing costs should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised;
- habitability: housing must provide adequate space and protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors;
- accessibility to disadvantaged groups: disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Housing law and policy should take their special housing needs fully into account;
- location: housing must be located as to allow access to employment options, health-care services, schools, child-care centre and other social facilities, and must not be built on or near polluted sites or sources of pollution; and
- cultural adequacy: the construction of housing, including the building materials used and supporting policies must appropriately enable the expression of cultural identity and diversity of housing.³⁷

4.30 As noted previously in the report, some submissions recognise that the broad definition of homelessness in the SAA Act already acknowledges the importance of access to housing that is adequate (i.e. habitable, safe, secure, affordable etc).³⁸

Realising the Right to Adequate Housing

4.31 In addition to establishing the essential elements of adequate housing, a number of submissions have considered the practicalities of implementing an enforceable right to housing. As noted in the submission from the Homeless Persons' Legal Clinic (HPLC):

Enshrining the right to adequate housing in a Federal Homelessness Act would require government to take reasonable

37 United Nations Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, para 8, viewed on 30 October at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument).

38 See for example: Mission Australia, Submission No 53, p 22; Shelter NSW, Submission No 56, pp 12-13; Catholic Social Service Australia, Submission No 68, p 2.

and effective steps to progressively realise the right to adequate housing in Australia ...³⁹

- 4.32 Also considering the implementation of an enforceable right to housing Mission Australia observed:

We recognise, however, the many practical difficulties associated with fulfilling this obligation, not the least of which is funding given that meeting the right to adequate housing first requires sufficient housing stock to be available. In view of this, the gradual enforcement of a right to housing might be both achievable, and a significant improvement on the current situation.⁴⁰

- 4.33 Similarly, the submission from the AHRC explains that progressive realisation of the right to adequate housing:

... allows for the full realisation ... over a period of time, taking resource constraints into account. This is very important, recognising that 'the right to adequate housing' does not mean that every person has a right to a house immediately.⁴¹

- 4.34 Expanding on progressive realisation the AHRC explains further:

The obligation of progressive realisation requires governments to demonstrate they are incrementally contributing to the realisation of human rights. Failure to act or provide incremental funding increases which are needed to reduce homelessness is not in compliance with the principle of progressive realisation.⁴²

International Legislative Precedents

- 4.35 In support of introducing new homelessness legislation which incorporates an enforceable right to adequate housing, submissions have drawn upon the experiences of a number of overseas jurisdictions. A number of submissions have provided detailed consideration of the strengths and weaknesses of homelessness legislation from overseas, particularly South Africa, Scotland and the UK (England and Wales).⁴³

39 HPLC, Submission No 85, p 26. See also: Youthlaw, Submission No 24, pp 3–4; Australian Lawyers for Human Rights, Submission No 61, p 13; NAAJA & LNAC, Submission No 72, p 14; Human Rights Law Resource Centre, Submission No 82, pp 24–25.

40 Mission Australia, Submission No 53, p 11.

41 AHRC, Submission No 90, pp 17–18.

42 AHRC, Submission No 90, p 19.

43 See for example: SYFS, Submission No 4, pp 13–14; Homelessness Australia, Submission No 39, pp 22–30; Queensland Public Interest Law Clearing House (QPILCH), Submission No 47,

- 4.36 Submissions have drawn attention to the implementation of the right to housing in South Africa as an example of how to give practical effect to ICESCR commitments while still reserving the Government's discretion to set appropriate policies and budgets to implement those commitments.⁴⁴ In South Africa, as explained by the Tennant's Union of Victoria:

It is the government's duty to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. The constitution allows that the right to adequate housing cannot be achieved immediately but must be achieved over time. Nevertheless government must show that it has worked effectively as possible to achieve this right.⁴⁵

- 4.37 Submissions have also included support for the Scottish legislative approach to tackling homelessness which has been described as being progressive and representing best practice.⁴⁶ As explained in the submission from the HPLC:

The Scottish Homelessness Act 2001 sets an ambitious goal of effectively guaranteeing the right of access to emergency accommodation in Scotland within 10 years (by 2012). Under the Act, local authorities have both corporate duties to the Scottish Executive to develop their own homelessness strategy and ongoing monitoring and evaluation strategies as well as duties to homeless individuals.⁴⁷

- 4.38 With regard to implementing progressive realisation, evidence has recommended that where limited resources are available new homelessness legislation should expressly provide immediate priority for housing be given to those most in need and to vulnerable population groups. Again with reference to the Scottish legislative model, the HPLC notes:

Scotland's ten year target is to be achieved by gradually expanding the categories of people defined as being in 'priority

p 2; Young Women's Dual Diagnosis Project (Richmond Fellowship NSW), Submission No 48, p 5; Australian Lawyers for Human Rights, Submission No 61, pp 21-22.

44 See for example: Human Rights Law Resource Centre, Submission No 82, pp 40-41; HPLC, Submission No 85, p 31.

45 Tennant's Union of Victoria, Submission No 84, p 1.

46 See for example: Commissioner for Children and Young People (WA), Submission No 7, p 9; CAYH, Submission 23, p 10; Hanover Welfare Services, Submission No 34, p 6; Mission Australia, Submission No 53, p 11; HPLS, Submission No 65, p 9; HOPS, Submission No 79, p 3; Council for Homeless Persons, Submission No 80, pp 21-22; Human Rights Legal Resource Centre, Submission No 82, p 27.

47 HPLC, Submission No 85, pp 31-32.

housing need' and giving households classified as 'intentionally homeless', accommodation with greater social support. For example, the categories of priority need will be gradually broadened until in ten years time there is no distinction drawn between any homeless person who is categorised as unintentionally homeless.⁴⁸

4.39 Although seen as less progressive than Scottish legislation, England and Wales also provide a legally enforceable right to adequate housing.⁴⁹ As noted by the HRLRC:

The legislation does not currently protect all homeless people, drawing distinctions based on whether a person has a priority need, is intentionally homeless and has a local connection.⁵⁰

4.40 Several submissions drew attention to continuing debate in the UK about its housing and homelessness legislation, noting concern about:

- exclusions from the definition of homelessness;
- insufficient focus on tackling the structural causes of homelessness;
- the need to retain a low eligibility threshold for interim accommodation;
- the process for assessing priority need and vulnerability; and
- poor standards of temporary accommodation.⁵¹

4.41 While these international legislative frameworks provide useful models for Australia to draw on, further consideration must also now take into account the recently released outcomes of the Australian Government's National Human Rights Consultation (NHRC).

48 HPLC, Submission No 85, pp 31–32. See also: HRLRC, Submission No 82, p 27.

49 See for example: Homelessness NSW, Submission No 28, p 13; Homelessness Australia, Submission No 39, pp 25–26; Mercy Foundation, Submission No 51, p 4.

50 HRLRC, Submission No 82, p 53.

51 Homelessness NSW, Submission No 28, pp 13–14. See also: SYFS, Submission No 4, pp 15–16; RYDON, Submission No 33, pp 11–12; Homelessness Australia, Submission No 39, pp 25–26; Salvation Army Australia Eastern Territory, Submission No 55, pp 8–9; Queensland Government, Submission No 92, p 16.

Outcomes of the National Human Rights Consultation

4.42 As noted in Chapter 2, the outcomes of the Australian Government's NHRC were released in September 2009. In its consideration of the issue of homelessness, the NHRC committee reported:

Although most people would agree that the right to adequate housing is a fundamental human right – as recognised in the International Covenant on Economic, Social and Cultural Rights – this right is not protected in Australia.⁵²

4.43 The NHRC committee found that there was significant support for increased protection of social, economic and cultural rights, including the right to adequate housing.⁵³ The report found, that for most Australians, the main social and economic concerns related to the realisation of the rights to education, housing and the highest attainable standard of health.⁵⁴

4.44 However, the NHRC committee received submissions with conflicting views about the most appropriate way to support increased protection of social, economic and cultural rights.⁵⁵ It was agreed that pre-legislative scrutiny (e.g. statements of compatibility for Bills and reviews of legislative compliance with human rights)⁵⁶ would at a minimum provide some protection for social, economic and cultural rights.

4.45 The main controversy relates to whether such rights should be justiciable, as this would require the courts to make determinations in relation to the 'reasonableness' of Government's approach to realisation of these rights. This could include the courts reviewing the Government's social and fiscal policy, and making judgements as to whether Government has dedicated sufficient resources to achieving outcomes. This was a role that some felt was best decided by the Parliament rather than by the courts.⁵⁷ In view of these concerns, and the additional complexity caused by shared responsibility for funding and service delivery between the Australian Government and state governments, the NHRC committee made the

52 Australian Government (2009), National Human Rights Consultation Report, p 27.

53 Australian Government (2009), National Human Rights Consultation Report, p 79.

54 Australian Government (2009), National Human Rights Consultation Report, p 365.

55 Australian Government (2009), National Human Rights Consultation Report, pp 78–82.

56 Australian Government (2009), National Human Rights Consultation Report, Recommendations 6, 7, 26 & 27.

57 Australian Government (2009), National Human Rights Consultation Report, pp 314–318.

following recommendation should a Human Rights Act be introduced in Australia:

The Committee recommends that, if economic and social rights are listed in a federal Human Rights Act, those rights not be justiciable and that complaints be heard by the Australian Human Rights Commission. Priority should be given to the following:

- the right to an adequate standard of living – including adequate food, clothing and housing.
- the right to the enjoyment of the highest attainable standard of physical and mental health.
- the right to education.⁵⁸

4.46 However, the NHRC committee also noted that:

... a Human Rights Act will be no substitute for more resources and more effective distribution of those resources to secure the basic economic and social rights of those whose dignity is most at risk in contemporary Australia.⁵⁹

4.47 A number of submissions to this inquiry have made reference to their input to the NHRC.⁶⁰ For example, the submission from the Law Institute of Victoria states:

Australia does not currently have a national charter of human rights which could assist in protecting the right to adequate housing. In its submission to the National Human Rights Consultation, the LIV called on the Australian Government to introduce a National Human Rights Act that provides for the protection of all human rights and a right of enforcement and remedy.⁶¹

4.48 ACOSS speculates on the various options available for promoting and protecting the right to housing, depending on the outcomes of the NHRC. According to ACOSS should Government decide to adopt a Human Rights Act which includes the right to adequate housing then:

... new homelessness legislation should make reference to the rights included in the act and the act should be drafted so as to be consistent with a national human rights act.⁶²

58 Australian Government (2009), National Human Rights Consultation Report, p 366.

59 Australian Government (2009), National Human Rights Consultation Report, p 365, 378.

60 See for example: Homelessness NSW, Submission No 28, p 8; Law Institute of Victoria, Submission No 29, p 6.

61 Law Institute of Victoria, Submission No 29, p 6.

62 ACOSS, Submission No 60, p 7.

4.49 In the event that a Human Rights Act is not adopted or that the right to adequate housing is excluded from the Act, then ACOSS recommends:

... consideration should be given to the inclusion of a charter of rights for those who are homeless or at risk of homelessness in new homelessness legislation. Such a charter should include the right to housing and set out government responsibilities to progressive realisation of the right ... It should also include related rights, including access to services and Indigenous rights to active involvement in the development and delivery of health and housing programs that affect their communities.⁶³

The Way Forward

4.50 The Committee notes that the majority of submissions to this inquiry strongly support new homelessness legislation which incorporates an enforceable right to adequate housing. The Committee also notes the options put forward by the NHRC committee to promote and better protect social, economic and cultural rights, including the right to adequate housing. As a formal response to the NHRC recommendations is not yet available, it is not known yet whether the Government will introduce national Human Rights Bill into Parliament.

4.51 Should Australia adopt a national Human Rights Act which includes the right to adequate housing, then new homelessness legislation will need to be consistent with such an Act. Should a Human Rights Act not be adopted, then the Committee recommends new homelessness legislation include provisions for the right to adequate housing to be progressively realised. A definition of adequate housing, including its essential components should be included in legislation. The legislation should explicitly recognise that realisation of the right to adequate housing will have to be met in the context of available resources.

Recommendation 7

4.52 **That new homelessness legislation specify the right of all Australians to adequate housing. Such a provision should:**

- **include appropriate reference to Australia's international**

63 ACOSS, Submission No 60, p 7.

- human rights obligations;**
- **include a clear definition of adequate housing; and**
- **explicitly recognise the right to adequate housing will be progressively realised.**

Principles Underpinning Homelessness Legislation

4.53 While reducing homelessness and increasing social inclusion through the right to adequate housing will be key features of new homelessness legislation, a rights based approach to addressing homelessness will also need to be underpinned by a number of principles. Many submissions have included extensive and comprehensive lists of principles that should be incorporated into new homelessness legislation.⁶⁴ Essentially these principles can be summarised as follows:

- accessibility of services and support;
- flexibility of services and supports to enable responses that are tailored to the specific needs of individuals, families and communities;
- the inclusion of mechanisms which empower people by enabling active participation in the development of legislation, policy and in decision making;
- improved accountability of services through independent assessment and monitoring;
- the provision of internal and external mechanisms to enable feedback and making complaints;
- provisions to ensure protection of confidentiality and privacy; and
- the protection of personal safety and wellbeing.

4.54 The accessibility of services and supports is considered in more detail below, with a particular focus on the challenges experienced by vulnerable and marginalised populations.

64 See for example: Law Society of Victoria, Submission No 29, p 6; RYDON, Submission No 33, p 4; Salvation Army Australia Southern Territory, Submission No 91, pp 11–12.

Accessibility of Services and Supports

4.55 While people who are homeless come from all walks of life, it is apparent that some groups are more likely to experience homelessness than others. Ideally, access to housing and other services for homeless people and those at increased risk of homelessness should be available and readily accessible for all who need it.⁶⁵ However, there are some population groups that face greater challenges than others in accessing appropriate assistance. While not intended to be an exhaustive list, submissions have identified additional challenges experienced by the following vulnerable and marginalised groups:

- young people and children;
- women and families;
- Aboriginal and Torres Strait Islander Peoples;
- asylum seekers and refugees;
- people with disabilities or chronic illness;
- people leaving care or institutions; and
- rural populations.

4.56 The Committee will recommend that new legislation gives some recognition to the needs of especially vulnerable groups.

Young People and Children

4.57 Children and young people under the age of 21 years make up approximately one third of the homeless population.⁶⁶ In accordance with a rights based approach, some submissions have drawn attention to Article 27 of the United Nation Convention on the Rights of the Child which states:

Every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.⁶⁷

4.58 However some have expressed the view that the rights of homeless children and young people have not been adequately recognised or

65 See for example: Homelessness NSW, Submission No 28, p 6; RANZCP, Submission No 13; p 8; RYDON, Submission No 33, p 7.

66 Australian Bureau of Statistics (ABS) (2008), *Counting the Homeless 2006*, 2050.0, p 29.

67 Queensland Commission for Children and Young People and Child Guardian, Submission No 74, p 1.

protected in previous homelessness legislation.⁶⁸ To address this, submissions have called for children and young people to be recognised as a priority group of clients in their own right.⁶⁹ Furthermore, it has been suggested that new legislation should incorporate the best interests of the child as a guiding principle in developing homelessness policy and service delivery.⁷⁰

- 4.59 The causes and events leading to homelessness for young people are varied and complex. The importance of prevention and early intervention strategies that address the structural causes of homelessness for this group has been repeatedly emphasised.⁷¹

Women and Families

- 4.60 In 2006 women made up approximately 44% of the homeless population in Australia.⁷² In 2007–08, half of the women with children using SAAP services cited escaping domestic or family violence as their reason for seeking support.⁷³ Given the significance of domestic violence as a cause of homelessness, evidence has called for domestic violence to be specifically acknowledged throughout new legislation.⁷⁴ Evidence has also included support for a broad definition of homelessness in new legislation which recognises the importance of ‘safety’ as an essential element of adequate housing.⁷⁵

68 See for example: Queensland Commission for Children and Young People and Child Guardian, Submission No 74, p 4; Victorian Children’s Resource Program, Submission No 25, p 1.

69 See for example: Victorian Children’s Resource Program, Submission No 25, p 1; NSW Women’s Refuge Movement, Submission No 58, p 2; Queensland Commission for Children and Young People and Child Guardian, Submission No 74, p 3; McCauley Community Services for Women, Submission No 94, p 3.

70 See for example: Youthlaw, Submission No 24, p 4; Law Institute of Victoria, Submission No 29, p 6; Queensland Commission for Children and Young People and Child Guardian, Submission No 74, p 1; FaHCSIA, Submission No 86, p 6; AHRC, Submission No 90, p 15.

71 See for example: Name withheld, Submission No 10, p 4; Commissioner for Children and Young People (WA), Submission No 7, pp 9–10, 15; Kids Under Cover, Submission No 9, p 1; NSW Association for Adolescent Health & NSW Youth Health Council, Submission No 38, pp 5–6; CAYH, Submission No 23, p 7.

72 ABS (2008), *Counting the Homeless 2006*, 2050.0, p 28.

73 Australian Institute of Health and Welfare (AIHW) (2009), *Homeless People in SAAP: SAAP National Data Collection Annual Report*. SAAP NDC Report Series 13, Cat No HOU 191, Canberra.

74 NSW Women’s Refuge Movement Working Party, Submission No 46, p 16; NSW Women’s Refuge Movement, Submission No 58, p 1.

75 NSW Women’s Refuge Movement Working Party, Submission No 46, p 4–6; NSW Women’s Refuge Movement, Submission No 58, p 2.

- 4.61 In the context of rights based legislation submissions have contended that it is critical for new homelessness legislation to explicitly protect the rights of women and children escaping domestic violence.⁷⁶ The importance of a coordinated and integrated response that links with other policies and government reforms aimed at tackling the causes of homelessness for women and families has also been highlighted in evidence.⁷⁷

Aboriginal and Torres Strait Islanders

- 4.62 Aboriginal and Torres Strait Islanders are over-represented in all sectors of the homeless population.⁷⁸ Submissions have called for services that are both accessible to Aboriginal and Torres Strait Islanders and culturally appropriate.⁷⁹ The submission from the North Australian Aboriginal Justice Agency (NAAJA) and the Larrakia Nation Aboriginal Corporation (LNAC) calls for:

... provision for Aboriginal specific services that provide safe, accessible, trusted and culturally-appropriate services that specialise in assisting the chronically as well as short-term homeless, that address the need for life-long rather than one-off support, and that do not require strict compliance with rigid bureaucratic requirements.⁸⁰

- 4.63 The submission from the Aboriginal Hostels also advocates for the maintenance of distinct service arrangements for homeless Aboriginal and Torres Strait Islanders⁸¹, while the Victorian Aboriginal Legal Service (VALS) Cooperative contends that:

... [there is a] need for both Aboriginal and Torres Strait Islander specific services and mainstream services, not one or the other. VALS is critical of mainstreaming because it removes the choice between using an Aboriginal and Torres Strait Islander service or mainstream service. A person of Aboriginal or Torres Strait Islander descent might use the former service in order to be

76 Domestic Violence Victoria, Submission No 49, p 4.

77 See for example: Women's Health Victoria, Submission No 16, p 3; E Dourado, Submission No 20, p 1; Women's Legal Service Victoria, Submission No 36, p 11; NSW Women's Refuge Movement Working Party, Submission No 46, p 12.

78 ABS (2008), *Counting the Homeless 2006*, 2050.0, p 29.

79 See for example: NAAJA & LNAC, Submission No 72, p 14; Aboriginal Legal Service of WA (ALSWA), Submission No 73, p 6-7; Victorian Aboriginal Legal Service (VALS) Cooperative, Submission No 75, pp 3-4; Australian Red Cross, Submission No 77, p 6.

80 NAAJA & LNAC, Submission No 72, p 10.

81 Aboriginal Hostels Limited, Submission No 15, p 13.

assured of a culturally sensitive service [or] might user the latter service because they know a worker at the Aboriginal and Torres Strait Islander service and desire privacy.⁸²

- 4.64 Importantly, noting a policy emphasis on rural and remote locations, VALS also emphasises the importance of measures to address homelessness experienced by Aboriginal and Torres Strait Islanders living in urban areas.⁸³

Asylum Seekers

- 4.65 A number of submissions highlight the risks and challenges experienced by homeless asylum seekers trying gain access to adequate housing.⁸⁴ The submission from Hotham Mission Asylum Seeker Project notes that risk of homelessness is increased for asylum seekers, particularly as this group has limited access to safety nets such as public housing and social security.⁸⁵ The submission argues that in accordance with its international human rights obligations, the Australian Government should provide greater support for asylum seekers.⁸⁶
- 4.66 In 2009 the Asylum Seeker Resource Centre⁸⁷ produced a position paper on homelessness among asylum seekers. The paper found that asylum seekers had difficulty accessing both mainstream and specialist services. It identified the following key issues faced by asylum seekers needing emergency or transitional accommodation:
- the struggle to gain access to Housing Agencies for emergency and transitional accommodation;
 - the lack of understanding and willingness of Housing Agencies to provide an adequate emergency and transitional accommodation response;
 - a (well-documented) lack of safe rooming houses and emergency-type accommodation options; and

82 VALS Cooperative, Submission No 75, p 3.

83 VALS Cooperative, Submission No 75, pp 1-2.

84 See for example: Asylum Seeker Resource Centre, Submission No 5, pp 1-2; Hotham Mission Asylum Seeker Project, Submission No 62, pp 1-18; Australian Red Cross, Submission No 77, p 7.

85 Hotham Mission Asylum Seeker Project, Submission No 62, p 7.

86 Hotham Mission Asylum Seeker Project, Submission No 62, pp 8-11.

87 Asylum Seeker Resource Centre (2009), *Locked Out: Position Paper on Homelessness of Asylum Seekers Living in the Community*.

- no current entry point to access mainstream transitional housing.⁸⁸

4.67 Also with reference to the Asylum Seeker Resource Centre's position paper, the Australian Red Cross notes:

Recent reports have highlighted the difficulty accessing the housing and homelessness support sector that asylum seekers experience and the disastrous impact on their lives as they seek to settle in Australia. The reality is that contrary to the principal of 'no wrong doors' outlined in 'The Road Home' asylum seekers are finding that there are many wrong doors. Red Cross fervently believes that the Commonwealth homelessness legislation must include a legislative right of eligibility to services for asylum seekers.⁸⁹

People with Disabilities or Chronic Illness

4.68 A number of submissions have emphasised that people with disabilities or chronic illness (including mental illness and people with alcohol or other drug disorders) are more likely to experience poverty, social exclusion and discrimination.⁹⁰ As a consequence these groups are also at increased risk of homelessness.

4.69 Due to multiple and often complex needs, these groups are also more likely to experience difficulty accessing support from specialist homelessness services, as well as from mainstream services. A number of submissions have noted exclusionary policies and practices employed by SAAP providers.⁹¹ A 2004 report by the NSW Ombudsman found that:

... the level and nature of exclusions in SAAP are extensive. According to the agency survey, in eligibility policies:

- over three quarters of agencies indicated that they exclude people exhibiting violent behaviour;

88 Asylum Seeker Resource Centre (2009), *Locked Out: Position Paper on Homelessness of Asylum Seekers Living in the Community*, p 3.

89 Australian Red Cross, Submission No 77, p 7.

90 See for example: Women With Disabilities Australia, Submission No 3, p 1; RANZCP, Submission No 13, pp 5-6; The Richmond Fellowship of NSW, Submission No 48, pp 1, 7-8; Alcohol and Other Drugs Council of Australia, Submission No 64, p 1; Mental Health Council of Australia (MHCA), Submission No 81, p 1.

91 See for example: Women with Disabilities Australia, Submission No 3 (Attachment 1), pp 14-15; HPLS, Submission No 65, p 8; Mission Australia, Submission No 53, p 23; HPLS, Submission No 65, p 8.

- almost two thirds of agencies stated that they exclude people with drug and alcohol disorders;
- approximately half of the agencies stated that they exclude people with a mental illness;
- over one third of agencies indicated they exclude people with a physical or an intellectual disability;
- over one third of agencies indicated they exclude people unable to live independently/ semi-independently;
- almost one third of agencies stated that they exclude people who have been blacklisted.⁹²

4.70 The NSW Ombudsman's report proceeded to identify the reasons given by the service providers for access exclusion:

Approximately three quarters of agencies surveyed indicated that physical safety of clients and staff were reasons for excluding particular groups of clients. In addition, approximately half of agencies stated the following as reasons for exclusion:

- limited staffing levels;
- occupational health and safety and other industrial legislative issues for staff;
- service model/ primary target group incompatible with certain clients (i.e. shared or independent accommodation);
- compatibility with other clients/ residents;
- physical accessibility (i.e. of premises/location).

A lack of staff expertise and skills, and an inability of the service to provide adequate case management for the client, were also commonly stated reasons.⁹³

4.71 Evidence has indicated that addressing the sometimes high level and complex care needs of homeless people with disabilities or chronic illness will require new legislation to establish a framework that integrates and coordinates responses linking specialist services and mainstream services.⁹⁴

People Exiting Care

4.72 People are more vulnerable to homelessness at times of change. This includes people who are leaving statutory, custodial care and hospital,

92 NSW Ombudsman (2004), *Assisting homeless people – the need to improve their access to accommodation and support services*, p 29.

93 NSW Ombudsman (2004), *Assisting homeless people – the need to improve their access to accommodation and support services*, p 30.

94 See for example: ADCA, Submission No 64, p 2; MHCA, Submission No 81, p 4.

mental health, and drug and alcohol services. *The Road Home* includes in its approach to reducing homelessness a commitment to 'no exits into homelessness'.⁹⁵ A 'no exits into homelessness' approach will involve more than the provision of housing, but also pre-release planning and access post-exit to a range of support services to prevent re-entry into homelessness at a later date.⁹⁶ Submissions have expressly called for 'no exits into homelessness' to be made explicit in new legislation and regularly monitored.⁹⁷

Rural Populations

- 4.73 While rates of homelessness are higher in inner cities and metropolitan centres, homelessness is not restricted to these areas. However, shortages of specialist homelessness services and mainstream services in rural and remote areas have been noted.⁹⁸ As a result homeless people in rural or regional areas either are not able to access required services or have to relocate to do so. Submissions have called for new legislation to promote strategies to address shortages of services in rural and regional Australia.⁹⁹

Promoting Equity of Access to Services and Supports

- 4.74 The Committee believes that new homelessness legislation should commit governments to the principle of providing equitable access to services. However, for some groups the risk of experiencing homelessness is increased and the challenges accessing services are more significant. To some extent concerns raised in relation to better supporting these vulnerable and marginalised groups have been addressed earlier in the

95 Australian Government (2008), *The Road Home: A National Approach to Reducing Homelessness*, p 27.

96 See for example: Homelessness Australia, Submission No 39, p 8; Australian Psychological Society, Submission No 40, p 13; ACOSS, Submission No 60, p 9; Queensland Commission for Children and Young People and Child Guardian, Submission No 74, p 2; Mental Health Council of Australia, Submission No 81, pp 4-5.

97 See for example: ANGLICARE Diocese of Sydney, Submission No 31, p 11; Homelessness Australia, Submission No 39, p 8; Welfare Rights Centre, Submission No 59, p 4; Catholic Social Services Australia, Submission No 68, p 2; Australian Red Cross, Submission No 77, pp 12-13.

98 See for example: RANZCP, Submission No 13, p 8; Byron Emergency Accommodation Project, Submission No 30, p 2; NSW Young Lawyers Human Rights Committee, Submission No 27, p 12; J Hourigan Ruse, Transcript of Evidence, 9 September 2009, p 7.

99 See for example: Name withheld, Submission No 10, p 3; RANZCP, Submission No 13, p 8; NSW Young Lawyers Human Rights Committee, Submission No 27, p 12.

report. Notably the Committee's recommendation for the structural and individual causes to be recognised in a redrafted preamble will emphasise the diversity of homeless people and their needs. A broad definition of homelessness which recognises 'at risk' populations and people living in inadequate housing will also encourage service providers to cater to these groups. The recommended focus on prevention of homelessness and on integrated and coordinated responses to homelessness which includes both specialist and mainstream services are also crucial to addressing the needs of vulnerable populations.

- 4.75 The Committee believes that new homelessness legislation should include explicit recognition of vulnerable and marginalised groups and their specific needs to promote equity of access and support. However, the Committee also acknowledges the practical realities of operating in a resource constrained environment. Although the right to adequate housing is universal, the commitment to progressive realisation will initially necessitate a process of prioritisation. The Committee notes that even in countries where the right to housing has already been legislated (e.g. Scotland, England and Wales etc) there are provisions for determining priority. While determining categories for priority will be challenging, the Committee believes that assessing need and vulnerability will be key considerations.

Recommendation 8

- 4.76 **That the Minister for Housing include provision in new homelessness legislation to give priority access within available resources to services and supports based on an assessment of the needs and vulnerability.**
- 4.77 The Committee believes that effective and independent monitoring and reporting on progress toward the realisation of the right to adequate housing is essential. This may be an undertaking for the Prime Minister's Council on Homelessness which was recently established to monitor and report on the Government's progress against targets for reducing homelessness as set out in *The Road Home*. While the Committee understands that this will require some changes to data collection¹⁰⁰, monitoring and reporting should include disaggregated information for those populations identified as vulnerable or marginal.

100 See for example: HRLRC, Submission No 82, p 43; AHRC, Submission No 90, p 25.

Recommendation 9

4.78 **That the Minister for Housing include provision in new legislation for the independent monitoring of the progress towards the realisation of the right of all Australians to adequate housing. Data collection mechanisms should allow monitoring of progress for specified vulnerable and marginalised population groups.**

4.79 The Committee was particularly concerned by evidence of groups being excluded from services. To some extent the Committee believes that these practices are a result of shortages and inadequacies with the provision of mainstream services (e.g. mental health services, child protection services etc) which place an inappropriate burden on specialist homelessness services. In view of this, the Committee acknowledges the practical realities facing providers of homelessness services, including the high demand for limited services and responding to clients sometimes with complex, high level needs. Nevertheless the Committee believes that exclusionary practices could be reduced with appropriate resourcing of the sector and with the establishment of a national standards and accreditation framework for services. These issues are considered in more detail in Chapter 5.

Homelessness and Discrimination

4.80 Homeless people are often more vulnerable to systemic discrimination as a result of laws or policies which disproportionately affect them.¹⁰¹ As noted by Mission Australia:

... special consideration ... should be afforded to people who are homeless in recognition of their extreme socio-economic disadvantage and lack of access to private dwellings, which impacts on their ability to receive goods and services and to participate in the daily activities that many of us take for granted. Such special consideration would serve to protect people from

101 See for example: B Woods, Submission No 2, p 4-5; Women's Health Victoria, Submission No 16, p 4; The Australian Psychological Society, Submission No 40, p 7; National Shelter, Submission No 63, p 2; NAAJA & LNAC, Submission No 72, p 9; Australian Red Cross, Submission No 77, p 11, 12.

harassment by the authorities for activities and behaviours (such as drinking, bathing, sleeping, and storing belongings in public spaces) that would not be considered illegal in the privacy of one's home, and are necessary by virtue of the fact that they have no place to call home.¹⁰²

4.81 The indivisibility and interdependence of rights was noted earlier in this Chapter. Therefore some submissions have argued that in addition to specifying the right to adequate housing, new homelessness legislation should recognise the associations between homelessness and the broader rights of people who are homeless. In relation to this ACOSS notes:

As a component of the right to an adequate standard of living, the links between housing and other rights must be understood. The conceptualisation of homelessness as a human rights issue highlights some of these links as it can be considered to bring into play the right to security of the person, the right to freedom from discrimination, the right to privacy, the right to freedom of expression, the right to freedom of association, the right to vote, the right to social security and the right to health, in addition to the right to housing.¹⁰³

4.82 The submission from the HPLS recommends that new legislation should also recognise an enforceable right to adequate healthcare, the right to personal safety, the right to social security, the right to freedom of association and the right to vote.¹⁰⁴ Submissions have identified a range of Commonwealth, state and local government laws and policies which exacerbate the discrimination and violations of rights experienced by homeless people. Those most frequently raised in submissions include:

- anti-discrimination laws and discrimination on the basis of socio-economic status;
- residential tenancy laws, particularly with respect to guaranteeing minimum acceptable accommodation standards and increasing protections against forced evictions; and
- public space laws that criminalise activities such as sleeping, bathing or storing belongings in public spaces.

4.83 To address these issues submissions have argued that there is an urgent need to review all laws and policies that impact disproportionately on

102 Mission Australia, Submission No 53, p 4.

103 ACOSS, Submission No 60, p 18.

104 HPLS, Submission No 65, p 4.

people experiencing homelessness. As recommended by the Law Institute of Victoria:

... the Commonwealth government should facilitate a review of state and territory residential tenancy and other laws to ensure compliance with international human rights standards relevant to homelessness, including protection from forced evictions, and to address any disproportionate impact upon people experiencing homelessness, such as public drinking and public sleeping laws.¹⁰⁵

- 4.84 The realities of being homeless were illustrated by Brad and Shawn, two people with personal experience of homelessness who participated in a public hearing.¹⁰⁶ Commenting on the risks to his personal safety Shawn, described his experience in accessing crisis accommodation when he first became homeless:

This is a few years ago now, but initially I went to a crisis place in St Kilda. I was sitting and waiting for a while before I could be processed, but in the end it turned out to be just a single bed in a hallway. There were a lot of drug users there and different things, and I chose to sleep in my car rather than in that environment.¹⁰⁷

- 4.85 Similarly Brad, who became homeless at the age of thirteen explained:

Like I was saying earlier about being placed in rooming houses with older males, I left those properties because I felt really unsafe and there was no support for me. There were just bad influences from these older males.¹⁰⁸

- 4.86 In addition to the difficulties both have experienced in finding suitable, long-term accommodation, Brad and Shawn also described the challenges they had faced as homeless people in accessing healthcare, education and employment. Shawn also detailed some of his interactions as a homeless person with the police and the criminal justice system.¹⁰⁹

105 Law Institute of Victoria, Submission No 29, pp 6-7. See also: Youthlaw, Submission No 24, pp 4-5; QPILCH, Submission No 47, p 2; ACT Government, Submission No 78, pp 2-3; HOPS, Submission No 79, p 4; PILCH HPLC, Submission No 85, p 44, McCauley Community Services for Women, Submission No 94, p 1.

106 Brad & Shawn, Transcript of Evidence, 16 September 2009, pp 3-15.

107 Shawn, Transcript of Evidence, 16 September 2009, p 12.

108 Brad, Transcript of Evidence, 16 September 2009, p 12.

109 Brad & Shawn, Transcript of Evidence, 16 September 2009, pp 3-15.

Audit of Legislation

- 4.87 The Committee fully appreciates the associations between homelessness and the increased risks of experiencing discrimination and violations of rights. The Committee believes that new homelessness legislation should include a statement which recognises the associations between homelessness and broader disadvantage and has earlier recommended this be included in the preamble to any new legislation. However, it is unclear how new homelessness legislation alone could eliminate discrimination against homeless people, and guarantee the protection and realisation of their human rights.
- 4.88 Clearly the outcomes of the NHRC are relevant. In addition to the NHRC recommendation for the introduction of a federal Human Rights Act¹¹⁰, the Committee also notes the following recommendation:
- that the Federal Government conduct an audit of all federal legislation, policies and practices to determine their compliance with Australia's international human rights obligations, regardless of whether a federal Human Rights Act is introduced. The government should then amend legislation, policies and practices as required, so that they become compliant.
 - that, in the conduct of the audit, the Federal Government give priority to the following areas:
 - ⇒ anti-discrimination legislation, policies and practices ...¹¹¹
- 4.89 Given that there are a large number of Commonwealth, state and local government laws and policies that impact disproportionately on homeless people, the Committee believes that a whole of government review of laws and policies would be needed. Therefore the Committee recommends that the Australian Government, in cooperation with state governments, undertake a review of all laws and policies that impact disproportionately on people experiencing homelessness. Those laws and policies which do not conform to government's anti-discrimination and human rights obligations should be amended accordingly.

110 Australian Government (2009), National Human Rights Consultation Report, Recommendation 18.

111 Australian Government (2009), National Human Rights Consultation Report, Recommendation 4.

Recommendation 10

4.90 That the Australian Government, in cooperation with state and territory governments, conduct an audit of laws and polices that impact disproportionately on people experiencing homelessness. Laws and policies that do not conform to anti-discrimination and human rights obligations should be amended accordingly. Priority should be given to review and amendment of:

- anti-discrimination laws;
- residential tenancy laws; and
- public space laws.

