



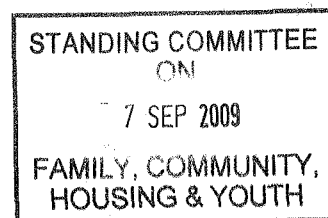
Premier of Queensland

**Submission No. 92**  
(homelessness legislation)  
A.O.C. Date: 08/09/09

1 SEP 2009

Executive Building  
100 George Street Brisbane  
PO Box 15185 City East  
Queensland 4002 Australia  
**Telephone +61 7 3224 4500**  
**Facsimile +61 7 3221 3631**  
**Email ThePremier@premiers.qld.gov.au**  
**Website www.thepremier.qld.gov.au**

Committee Secretariat  
Standing Committee on Family, Community, Housing and Youth  
House of Representatives  
Parliament House  
PO Box 6021  
CANBERRA ACT 2600



Dear Sir/Madam

The Queensland Government welcomes the opportunity to provide a submission to the inquiry into homelessness legislation.

Queensland is committed to working collaboratively with the Australian Government and the community services sector to reduce homelessness. New homelessness legislation will play an important role in contributing to this effort, particularly in supporting the delivery of high-quality, effective services to help people move beyond homelessness.

The attached submission provides initial feedback in response to the inquiry terms of reference. This feedback may be refined or further developed as more information becomes available about the proposed new legislation.

The Queensland Government looks forward to further collaboration with the Australian Government in developing the new national homelessness legislation, through the Housing Ministers' Council and other relevant forums.

Yours sincerely

**ANNA BLIGH MP**  
**PREMIER OF QUEENSLAND**

Enc. (1)

***QUEENSLAND'S SUBMISSION TO INQUIRY INTO NEW HOMELESSNESS  
LEGISLATION\****

***PREAMBLE***

The Queensland Government welcomes the development of new homelessness legislation that ensures people have access to high-quality, effective services to help them move beyond homelessness.

Queensland is committed to reducing homelessness. New strategies to reduce homelessness build on existing investment in *Responding to Homelessness Strategy*<sup>1</sup> and the one social housing system<sup>2</sup>. The Queensland Government committed \$235.5 million over four years (2005-09) to the *Responding to Homelessness Strategy* to expand and better integrate existing services and to establish a range of new and innovative services to assist homeless people. Many of the strategies align with the direction of *The Road Home*, the Australian Government's White Paper on Homelessness.

The one social housing system, which covers all government-funded housing assistance was introduced in 2005. It includes a needs-based allocation system which is targeted at those individuals and families at most risk, including those who are homeless or at risk of homelessness. Approximately 60% of allocations of long-term social housing between 1 September 2008 and 30 June 2009 were made to people who were homeless or at risk of homelessness.

The development of new legislation provides an opportunity to support the Queensland Government's efforts to help people move out of homelessness and into sustainable housing, and maximise positive outcomes for clients. The Queensland Government will continue to work towards:

- ensuring that housing assistance is targeted to those in highest housing need, including those who are experiencing homelessness;
- further developing the homelessness service system to include improved links to the one social housing system to support effective pathways from homelessness into sustainable housing;
- establishing supportive tenancy management systems to improve the sustainability of social housing tenancies for people who are at risk of homelessness; and
- ensuring registered providers and homeless services meet accreditation systems and quality standards through the *Housing Act 2003*, *Community Services Act 2007* and the *Community Services Regulation 2008*.

The Queensland Government supports legislation that incorporates high level principles to guide how services are delivered. The principles should help ensure the right services are provided to people who are homeless or at risk of homelessness, and that all homeless Australians have equitable access to these services.

The legislation should facilitate jurisdictions' efforts to reduce homelessness and to provide flexible, tailored approaches to key groups in different areas over time. The Queensland Government supports legislation that safeguards the rights of homeless

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\* This submission is not Queensland Government policy. The submission provides initial feedback to the Inquiry based on the concise terms of reference and is presented with the understanding that significant further collaborative processes with States and Territories will occur to develop new national homelessness legislation. The Queensland Government reserves the right to alter the position laid out in this submission as more information becomes available and legal advice is sought.

people but acknowledges that prescriptive rights to accommodation within specified timeframes can present challenges.

There is also a significant risk of unintended negative outcomes from legislated targets, such as a housing-centric and crisis focused responses rather than a holistic, prevention focused homelessness service system.

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## ***1: THE PRINCIPLES THAT SHOULD UNDERPIN THE PROVISION OF SERVICES TO AUSTRALIANS WHO ARE HOMELESS OR AT RISK OF HOMELESSNESS.***

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### **Recommendation**

New homelessness legislation should retain the client-focussed framework for homeless service delivery that existed in the Supported Accommodation and Assistance Act 1994 (SAAP Act). Additional principles, as set out in *The Road Home: A National Approach to Homelessness* (the White Paper) should underpin the provision of services to people who are homeless or at risk of homelessness. The Queensland Government also suggests including several additional principles related to client privacy, data and information sharing and Indigenous clients.

The principles will require significant further consultation and development before being included in national legislation.

### **Supporting Comments**

The Queensland Government considers that the guiding principles articulated in the Australian Government's White Paper on homelessness, together with the principles already embedded in the SAAP V Multilateral Agreement (outlined in Attachment 1), provide a solid foundation for the establishment of new national legislation on homelessness. The White Paper principles that should be considered are:

- a national commitment, strong leadership and cooperation from all levels of government and from non government and business sectors is needed;
- preventing homelessness is important;
- social inclusion drives our efforts;
- clients need to be placed at the centre of service delivery and design;
- the safety and wellbeing of all clients is essential;
- the rights and responsibilities of individuals and families need to be protected;
- joined-up service delivery needs joined up policy;
- transition points are a priority;
- evidence-based policy helps to shape our priorities for action; and
- targets are set to reduce homelessness and hold ourselves accountable.

The Queensland Government also proposes the addition of the following principles for consideration:

***Client privacy and data.*** *Clients' right to privacy and confidentiality should be protected, particularly because homelessness can be a traumatic experience and homeless people are often the most vulnerable in society. Data collected on homelessness services and clients is vital for policy and program decision making and to measure success but collection should be kept to a minimum to ensure the burden on clients and services is low.*

***Information sharing.*** *Information sharing provisions consistent with a client's right to privacy should be introduced. These provisions should support working across multiple agencies, jurisdictions, non-government and private industry to enhance collaborative service provision. Clients should have equal access to information and*

*have the opportunity to use advocates, alternative forms of information and communication methods.*

***Indigenous clients are responded to appropriately.*** Homeless services will recognise that causes of homelessness in the Indigenous population can be different to those facing the non-Indigenous population. Engagement with Indigenous people and communities is central to the design and delivery of programs and services. Programs and services will be physically and culturally accessible to Indigenous people recognising the diversity of urban, regional and remote needs.

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## ***2: THE SCOPE OF ANY LEGISLATION WITH RESPECT TO RELATED GOVERNMENT INITIATIVES IN THE AREAS OF SOCIAL INCLUSION AND RIGHTS.***

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### **Recommendation**

**New homelessness legislation should provide a framework to support the goals of social inclusion and to build the capacity of people and communities.**

**Queensland supports the safeguarding of rights for homeless people in national legislation, including but not limited to the areas of:**

- **high-quality accommodation and support services;**
- **anti-discrimination; and**
- **mechanisms for recourse, such as grievances and appeal procedures if people feel they have been treated unfairly or poorly.**

**Queensland recognises the significant implementation challenges in providing a specific statutory right to accommodation within specified timeframes.**

### **Supporting Comments**

#### *Social Inclusion*

The Queensland Government supports the principles of social inclusion and acknowledges that homelessness responses require more than just a focus on shelter and support. For homeless people, a socially inclusive society is one where they can feel valued, their differences are respected, and their basic needs are met so they can live in dignity. Homelessness cannot be tackled without addressing its structural factors that may include long term unemployment, lack of stable and affordable housing, family breakdown, mental health and substance abuse, and/or domestic and family violence. Any efforts to improve social inclusion should maximise people's potential to participate in the economy and socially in their community, including people who are homeless or at risk of homelessness.

#### *Rights*

People who are homeless or at risk of homelessness are entitled to the same respect, opportunities and support as other members of the community. While many homeless people have complex and multiple needs and require various support options, it is not acceptable for homeless people to be subject to discrimination, sub-standard services or accommodation, or to be excluded from assistance because of the complexity of their needs.

#### *A statutory right to accommodation*

Queensland supports the safeguarding of rights for homeless people in national legislation, including things such as high-quality accommodation and support services, the relative priority needs of homeless people, anti-discrimination, and mechanisms such as grievances and appeal procedures. Queensland acknowledges that there are significant challenges in providing a specific statutory right to accommodation that includes specified timeframes.

A specific statutory right to accommodation would require both adequate housing and the accompanying support services to sustain housing.

Experience in the United Kingdom indicates that a statutory right may lead to unintended consequences, including a principal focus by governments and service providers on prioritisation of crisis responses to meet a legislated responsibility that presents a risk of reduced focus on early intervention and prevention. Attachment 2 identifies some of the challenges in relation to a statutory right to accommodation.

### **Current activity in Queensland**

#### *Queensland's one social housing system*

The Queensland Government's one social housing system currently aims to accommodate people who are homeless or at risk of homelessness as soon as appropriate housing is available. For example, for applications lodged between 20 September 2008, when the new Client Intake and Assessment Process was implemented, and 30 June 2009, homeless people with high needs had an average wait time to be allocated long-term housing of approximately two months.

The one social housing system includes a needs-based allocation system which is targeted at those individuals and families at most risk, including those who are homeless or at risk of homelessness. This could include, those living on the streets, sleeping in parks, or squatting in derelict buildings; people who are in existing housing that is makeshift or illegal; people fleeing domestic violence; people who are at risk of violence/abuse from another household resident, neighbour or community member (this includes child safety issues) etc.

The one social housing system prioritises these applications to ensure that people who are homeless or at risk of homelessness are allocated to long-term housing. In cases where very high need applicants are not ready to undertake a long term tenancy in social housing, these applicants are client-managed with other agencies to monitor their readiness to enter long term social housing.

The Queensland Government is further developing links with the homelessness service system to include improved access to the one social housing system to support moving from homelessness into sustainable housing. This means that clients in crisis and/or transitional housing will be case managed and offered such things as individual tenancy plans to assist clients make a transition to long-term housing.

In addition, the Queensland Government has in place a wide range of policy and program activities that provide housing and support for those in need. These operate across many portfolios and subject areas, including health, disability, youth, education and training and clients may have entitlements to support from a range of sources.

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### ***3: THE ROLE OF LEGISLATION IN IMPROVING THE QUALITY OF SERVICES FOR PEOPLE WHO ARE HOMELESS OR AT RISK OF HOMELESSNESS.***

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#### **Recommendation**

**New homelessness legislation should provide a legislative framework that ensures a focus on prevention and early intervention service provision.**

**Queensland supports benchmarks for quality standards. However significant further work is required to understand the implications of adopting benchmarks proposed by any national system.**

**In considering any longer term options for quality standards in homelessness legislation, such as national accreditation systems, the Queensland Government recommends consideration of several principles, including that there should be:**

- **Recognition that substantial systems are already in place in jurisdictions and that there will be significant impacts on services and jurisdictions;**
- **A reduction of the legislative and administrative burden on individual homelessness service providers, including through prior recognition of same or very similar standards from other legislation or regulations and the elimination of conflicting requirements;**
- **Equality and consistency across jurisdictions in terms of quality standards and access to services by homeless people;**
- **A demonstrated benefit to homeless people through changes to quality standards; and**
- **Acknowledgment that any major changes to service standards will be a long-term, incremental process.**

#### **Supporting Comments**

##### *The role of early intervention and prevention*

New legislation should support the intent of the White Paper by ratifying that homelessness responses need to move beyond a crisis and emergency focus. Homelessness services have the potential to better assist homeless people if they can link with the broader service system, including social housing agencies, legal centres, Centrelink and private landlords. A prevention and early intervention approach may also involve facilitating family reconciliation, working with parents and teenagers, and working in schools.

Homelessness legislation should aim to help people exit homelessness into long term sustainable housing options, and prevent people recycling through the system.

The shortage of affordable and appropriate housing has meant the intent of the former SAAP Act to assist people to transition to independent housing arrangements has often been frustrated.

A significant measure that will assist in addressing the shortage of affordable and appropriate housing is the significant investment of \$1.3 billion to build around 4500



new social housing dwellings across Queensland as part of the \$6.4 billion Nation Building Economic Stimulus Plan. While this will assist more homeless people access long-term housing, new homelessness legislation needs to complement this by guiding responses that help people transition out of homeless services and into other accommodation if they are ready.

Legislation should ensure access and equity principles are embedded throughout service delivery. In particular, homeless people should be provided with easily understood information to inform their decision making process. This could include the provision of advocates or alternative forms of information and communication methods.

In addition, information sharing provisions to help people work with clients across multiple agencies, jurisdictions, non-government and private industry will also enhance collaborative service provision. Any legislation requirements must facilitate seamless access to services for various people including multi-generational rough sleepers, culturally and linguistically diverse (CALD) people, and people of Aboriginal and Torres Strait Islander backgrounds, including proof of identity requirements as a condition to accessing services.

To support a holistic approach, new legislation must support a clearer role for homelessness services and other key services. For example:

- while it is not the ‘core business’ of homelessness services to cater for needs that are best met by other key service areas, for example provision of primary health services to people who are acutely ill and who require health, mental health or drug and alcohol services;
- homelessness services must not exclude people on the basis that they have significant needs and may need assistance from other key services. Homelessness services must help to respond in a coordinated way, by assisting people with multiple needs access key services if there is a need to do so.<sup>3</sup>

### *Quality standards*

The Queensland Government considers that there are three main options for changing the framework for current quality standards for homelessness service providers:

1. a national system to replace state-based systems;
2. streamlined state-based systems; and
3. a hybrid system consisting of core national standards and state-specific standards.

Further work would be required to understand the implications of the three options either at a national and/or state level. In lieu of this evidence being available at this time, the Queensland Government proposes that State and Territory based accreditation systems continue to set benchmarks for the minimum standards of service providers.

### *Queensland’s service delivery standards*

Non-government homelessness service providers in Queensland funded under the *Community Services Act 2007* and the *Community Services Regulation 2008* are

subject to a number of legislative measures which are designed to ensure the quality, safety and accountability of services delivered to vulnerable clients.

The Act and Regulation set out new laws about services funded by the Department of Communities. They provide an up-to-date legal foundation for supporting the work of community organisations and ensuring Queenslanders have access to high-quality, safe and accountable community services. The new laws were developed as part of the *Strengthening Non-Government Organisations Strategy*<sup>4</sup>. They are designed to:

- provide greater transparency and certainty about how the Department of Communities gives funding and other assistance to community organisations;
- ensure services meet the needs of Queenslanders and their families and communities; and
- clarify how the department and community organisations can work together to build sustainable communities.

Service providers are subject to Community Services standards emanating from the Act and Regulation, administered by the Department of Communities. There are eleven Standards for Community Services and these can be found in Attachment 3.

Resources will be provided to support implementation of the standards, including:

- a manual outlining the Standards for Community Services and the process for self-assessment;
- a workbook for recording evidence that includes step-by-step guidelines to conduct a self-assessment;
- online guides and templates for developing and implementing policies; and
- small grants to help with the self-assessment process and development of improvement plans.

Community sector development workers are also available through the Queensland Council of Social Service (QCOSS) to assist organisations implement the standards. Indigenous organisations are able to access support from Strengthening Indigenous Non-Government Organisations<sup>5</sup> officers to undertake a self-assessment and implement an improvement plan.

#### *Registered community housing providers*

Under the *Housing Regulation 2003*, affordable housing providers and registered organisations funded under the community-managed housing – studio units program, community rent scheme, and long-term community housing program with more than 100 tenancies must obtain accreditation by the later of:

- 31 January 2010; or
- the date which is 18 months from the day the provider starts delivering the housing service or is required to deliver the service under the terms and conditions of the Agreement.

The accreditation system in Queensland is managed by the Department of Communities and promotes a system of accreditation which is linked to the National Community Housing Standards. Accreditation decisions are made by the Queensland Community Housing Standards and Accreditation Council. Council members are appointed by the Queensland Government.

The Department of Communities is leading a national project to review and revise the National Community Housing Standards and publish a third edition of the manual. As part of the project, extensive nation-wide consultation has been undertaken to determine contemporary good practice in the community housing sector. The third edition of the National Community Housing Standards Manual is expected to be available by early 2010.

### *Reducing the regulatory burden*

Funded non-government service providers have previously advocated for a reduction in the compliance and administrative burden. Existing legislative requirements that apply to service providers deal with incorporation, taxation, industrial relations, fundraising, governance, pre-employment screening for employees and volunteers; and the quality of service delivery. Any new requirements will need to recognise existing accreditation or pre-approval, and at the very least, be harmonised with existing requirements to minimise conflict.

The effectiveness of legislation is also dependant on the enforcement regime that accompanies it. This includes both compliance activities and mechanisms for consumers and potentially providers to refer complaints. The design of these systems is also likely to have resourcing impacts.

In addition, the Council of Australian Governments (COAG) has tasked the Business Regulation and Competition Working Group<sup>6</sup> with regulatory reform to reduce the compliance burden on not-for-profit organisations. The Productivity Commission has also recently commenced a review of the contribution of the not-for-profit sector which will examine factors affecting the viability of the sector.

As a result, any examination of new legislation for the homelessness services sector should avoid adding to the compliance burden. In particular, legislation should avoid duplicating the significant number of existing standards and accreditation processes which already apply to many service providers through their funding obligations and incorporation requirements.

Quality of service may also be supported through other mechanisms, including contracting arrangements and service agreements, and sector development initiatives to support enhanced service delivery including models of early intervention and prevention which, if implemented together with new legislation, could produce better results.

The Queensland Government has also committed through the *Queensland Compact*<sup>7</sup> to actively reduce administrative duplication, compliance costs and unnecessary prescriptive funding agreements and to recognise that organisations may have multiple funding streams. In addition, the community services sector has agreed to actively pursue improvements in the efficiency and sustainability of organisational and management approaches.

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#### ***4: THE EFFECTIVENESS OF EXISTING LEGISLATION AND REGULATIONS GOVERNING HOMELESSNESS SERVICES IN AUSTRALIA AND OVERSEAS.***

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##### **Recommendation**

The Queensland Government considers that the SAAP Act was effective legislation overall, with principles providing a solid foundation for new legislation. The Act was, however limited in its narrow focus, with service delivery primarily being delivered for short term solutions, rather than providing a framework of prevention and early intervention.

The Queensland Government notes that there are numerous international examples of legislation on homelessness, housing, and human rights that are useful to consider when developing new legislation. The evidence of the effectiveness of homelessness legislation is not extensive or clear.

##### **Supporting Comments**

###### *SAAP Act*

As discussed, the SAAP Act provides a positive, client focused framework with principles providing a solid foundation for new legislation. Improvements to new legislation would include broadening the focus to support an early intervention and prevention approach.

The homelessness service system needs to develop much stronger connections with income security, employment and educational agencies, while at the same time improve relationships and collaborative arrangements with mental health, drug and alcohol, housing and child protection services. Increased integration between homeless and other services in relation to shared clients who are experiencing crisis needs to occur.<sup>8</sup>

New legislation could also be improved by updating the definitions of homelessness to acknowledge the complexities of different types of homelessness, for example, Indigenous homelessness. The Queensland Government acknowledges the difficulties and complexities of developing useful and agreed definitions of homelessness. However, research<sup>9</sup> undertaken for the Australian Housing and Urban Research Institute on categories of Indigenous homelessness could be used to inform responses to Indigenous homelessness. International definitions of homelessness should also be examined for their applicability to homelessness in Australia<sup>10</sup>. The definitions of homelessness should be kept broad to ensure that people in need are not excluded from services. National and international legislation covering can be found at attachment 4.

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## ***5: THE APPLICABILITY OF EXISTING LEGISLATION AND REGULATORY MODELS USED IN OTHER COMMUNITY SERVICE SYSTEMS, SUCH AS DISABILITY SERVICES, AGED CARE AND CHILD CARE, TO THE HOMELESSNESS SECTOR.***

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### **Recommendation**

The Standing Committee should note legislation and regulatory models used in other community service systems that could be applied to new homelessness legislation. In particular, the Commonwealth's *Disability Services Act 1986* and Queensland's *Disability Services Act 2006* have features that are particularly applicable. For example, the safeguarding of rights and positive outcomes for clients through national frameworks, such as those in the *Disability Services Act 1986* is applicable. Similarly, the ability of States and Territories to retain the flexibility to establish locally appropriate arrangements that are broadly consistent within a national framework, for example in the area of accreditation, is also relevant.

The Queensland Government would seek to minimise any potential negative impacts of new legislation on related Acts that provide assistance to people who are homeless or at risk of homelessness.

### **Supporting Comments**

#### *Disability Services*

The national *Disability Services Act 1986* provides a strong framework for the promotion of the rights of people with a disability and guides services to be innovative and focused on achieving positive outcomes for people with disabilities. The national act is primarily focused on the delivery of rehabilitation services and disability employment services that are administered by the Australian Government.

The Queensland *Disability Services Act 2006* recognises service standards and a certification process for services to provide support to people with a disability in Queensland. While States and Territories have flexibility to determine standards and quality assurance processes that are broadly consistent with National Disability Services Standards, Queensland has closely aligned its standards and certification processes with those of the Australian Government.

The Queensland Government view is that the Disability Services legislation and its associated regulations and agreements provides a model that is applicable to the homelessness sector, providing that State and Territories retain the flexibility to establish locally appropriate arrangements for accreditation and safeguarding rights that are broadly consistent with a national framework, as currently applies with the Disability Services legislation and regulations.

#### *Child Care Services*

The National Childcare Accreditation Council (NCAC) was appointed by the Australian Government to administer Child Care Quality Assurance (CCQA) systems for long day care centres, family day care schemes and outside school hours care

services. These Quality Assurance Systems are linked to Australian Government child care funding through legislation. Child Care services are required to register with NCAC and meet the requirements of the appropriate Quality Assurance System in order to be eligible to receive Child Care Benefit.

The emphasis of CCQA systems is on continuous improvement towards higher standards in staff practices and outcomes for children. The CCQA system includes elements of reflective self assessment by services, peer review and a moderation process.

States and Territories are responsible for legislation under which child care services are licensed, primarily focusing on minimum standards relating to structural quality factors such as space, number and ages of children, number and qualifications of staff.

Concerns have been identified by COAG about blurred boundaries between the CCQA and the State and Territory licensing system, together with issues relating to the operation of the system. COAG has agreed that the current system should be reviewed.

The appropriateness of the Child Care model for the homelessness sector will be clearer following the review. The Queensland Government considers that the key elements of an appropriate model will include sufficient flexibility to establish standards that are relevant to the diverse circumstances for homeless people across States and Territories and the diverse range of locally appropriate service models needed to improve outcomes for homeless people.

### **Impacts on Other Legislation**

While the Queensland Government supports the introduction of new homelessness legislation, it would seek to minimise the potentially negative impacts of new legislation on related Acts that provide assistance for people who are homeless or at risk of homelessness.

#### *Disability Services*

To safeguard the rights of people with a disability in Queensland, Disability Services operates within a legislative framework comprising the following:

- Disability Services Act 2006 (Queensland)
- Disability Services Act 1986 (National)
- Disability Discrimination Act 1992 (National)

This legislative framework also incorporates provisions from other legislation such as the:

- Powers of Attorney Act 1998 (Queensland)
- Guardianship and Administration Act 2000 (Queensland)
- Public Trustee Act 1978 (Queensland)
- Anti-Discrimination Act 1991 (Queensland)

The introduction of new legislation to address homelessness should not adversely affect the State's responsibility to distribute resources equitably amongst disability services existing priorities and ensure decisions are made in the best interests of a person.

### *Aged Care*

As part of the approach to address homelessness the Australian Government has proposed to amend the *Aged Care Act 1997* to recognise older people who are homeless as a ‘special needs’ group. Given that the Home and Community Care (HACC) Program is a central element of the Australian Government’s aged care policy providing community care services to frail aged people, younger people with a disability and their carers, any amendments to the Act need to take into consideration the potential impacts on other relevant legislation such as the *Home and Community Care Act 1985 (National)*.

Service providers indicate funding provided through the Home and Community Care Program and Community Aged Care Packages has a significant role to play in the provision of “specialist homelessness services” and provide practical and innovative responses. Many services provide access through a one stop shop or response point. Services provided need to reflect the person’s changing or current social and economic situation.

### *Child Safety Services*

Applicable legislation for Child Safety Services includes:

- Child Protection Act 1999
- Child Safety Protection Regulation 2000
- Commission for Children and Young People and Child Guardian Act 2000

The introduction of new legislation to address homelessness should not adversely affect the State’s responsibility to distribute resources equitably amongst child safety services existing priorities.

### *Private Residential services*

Implications of accreditation on the private residential sector need to be carefully considered. Decreased financial viability and service capacity has been an issue in the sector over recent years, since the introduction of fire safety standards and State accreditation standards in 2002.

Any changes to standards may force some private operators under the *Residential Services (Accreditation) Act 2002* and the *Residential Tenancies and Rooming Accommodation Act 2008* into financial distress leading to possible closures of services; or the passing of costs on to residents, many of whom are already vulnerable.

There is a need to balance the important priority of improving standards in private residential services against unintended consequences that may result from increased compliance costs in the sector. An incremental approach is therefore needed.

SAAP V Multilateral Agreement Principles

The principles outlined below have been adapted to ensure consistency with current terminology under the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness. The term “homelessness services” refers to all government and non-government service providers that assist homeless people or people at risk of homelessness, which are not covered by other legislation and regulations.

***Shared commitment.*** *Commitment for homelessness services is shared between the Australian Government and all State and Territory Governments. It relies on agreed funding, a shared commitment to performance monitoring and evaluation, and a shared commitment to collaboration between parties.*

***Cultural appropriateness.*** *Homelessness services are inclusive and recognise that the characteristics of homelessness vary between cultural groups. Homelessness services will be appropriate in their design, delivery and promotion to the needs of Indigenous people and people from culturally and linguistically diverse backgrounds and where appropriate, delivered with the assistance of an interpreter in a language in which the client is competent in. Causes of homelessness in the Indigenous population can be different to those facing the non-Indigenous population.*

***Service responsiveness and flexibility.*** *Homelessness services are sensitive to the range of needs of the client. Appropriate client-focussed responses are delivered as soon as practicable, and case management ensures that changing needs are met. Services are able to establish and maintain linkages to assist in resolving client needs, including reconnection with family and social networks and with employment, housing, education and income support to help with longer term stabilisation.*

***Service accessibility.*** *Homelessness services are accessible to all clients, and there are no barriers to access, for example due to an inability to pay. Services are able to meet the special needs of specific client groups, and there are no discriminatory practices or policies. Accommodation should not be conditional upon other forms of participation, for example taking part in religious activities.*

***Client rights and dignities protected and promoted.*** *The homelessness service system supports effective client charters and provides access to appropriate avenues of dispute resolution.*

***Client independence and resilience maximised.*** *Homelessness service delivery is aimed at maximising the client’s capacity for independence and resilience, by establishing appropriate connections with the range of social and economic supports and enhancing the opportunities for participation. These include reconnection with family and social networks and with employment, housing, education and income support to help with longer term stabilisation.*

***A service system that is efficient and effective.*** *Within available resources the homelessness service system is robust and sustainable, and is able to reform to meet emerging and changing needs without jeopardising existing system successes.*



### Challenges relating to a statutory right to housing

- Prescriptive rights-based approaches focus effort and place obligations on government and the community services sector to respond to crisis situations experienced by homeless people. This approach has the potential to overlook the structural causes of homelessness and diminishes the ability to form holistic responses to homelessness. There is also a risk that the already overburdened crisis accommodation system would experience further blockages and that long-term and preventative measures would become secondary to emergency responses.
- England, Scotland and Wales have legislated the right to accommodation (within 28 days) for homeless people, which is unique in the world. However, significant debate and issues persist in these countries about these rights and the evidence of its effectiveness in reducing homelessness is mixed.
- Legislation can be an effective mechanism to address social issues, however it can not on its own reduce homelessness.<sup>11</sup> Also, there is little value if the complexities of translating rights into practical service delivery responses on the ground outweigh the benefits. These complexities may undermine the very intent of a rights based approach, and be a source of frustration for all stakeholders in the homelessness sector.
- Legislation can be inflexible compared to policies and programs, which can evolve and be more nuanced to suit shifting environments and key groups.
- Evidence from overseas suggests that unintended outcomes can occur in the pursuit of legislated accommodation rights. For example, homeless households can be segregated in insecure and precarious housing and be excluded from mainstream housing. There are examples of this occurring in France and Sweden.
- In England, there have been problems with defining who is reasonably described as homeless. If a person is not defined as homeless under the law, homelessness responses, such as crisis accommodation, may miss or even exclude key groups from services. In England, homelessness legislation prioritised pregnant women and homeless families with children but did not recognise rough sleepers who were identified as intentionally homeless. In this case, although a statutory right to accommodation existed, it was undermined by the definition of who should receive assistance.
- A statutory right to accommodation can lead to a housing centric focus – those who are able to receive a statutory response to accommodation will not necessarily receive a statutory response in relation to support. This can lead to unsustainable tenancies and lack of emphasis on or responsibility for the wider care and support needs of vulnerable homeless people under the legislation.
- A statutory right to accommodation depends on housing and support being available as an immediate option for people who are homeless. In a constrained funding environment with limited affordable housing options, this may place an unrealistic obligation on government and non-government service providers.
- It is unclear how a target-based right to accommodation would be enforceable in Australia and significant legal complexities may result.
- Effective contemporary methods of reducing homelessness are based on whole-of-community responses (such as the 10-year action plans in the United States) that do not rely significantly on legislation.

***Community Service Standards***

**People using services:** Standards 1–6 focus on ensuring that clients receive individually tailored, culturally sensitive services delivered with respect for their individual rights

- Standard for accessibility of services
- Standard for responding to individuals, families and communities
- Standard for participation and choice
- Standard for confidentiality and privacy
- Standard for feedback and complaints
- Standard for protecting safety and wellbeing

**People working in services:** Standards 7-9 focus on ensuring that client services are provided by staff and volunteers who are appropriately selected, competent, and supported in performing their roles

- Standard for recruitment and selection processes for people working in services
- Standard for induction, training and development of people working in services

**Governance:** Standards 10-11 focus on ensuring that client services are based on a clear vision and set of organisational values, and strong governance arrangements.

- Standard for organisational alignment
- Standard for governance and accountability

*International legislation*

The human right to an adequate standard of living is set out in four different international law treaties.

1. The International Covenant on Economic, Social and Cultural Rights (ICESR)<sup>12</sup>;
2. The Convention on the Elimination of Racial Discrimination (CERD)<sup>13</sup>;
3. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>14</sup>; and
4. Convention on the Rights of the Child (CRC)<sup>15</sup>.

Australia has ratified all of these international treaties, which means Australia must periodically report to various United Nations (UN) treaty bodies regarding progress in upholding these rights. Any recommendations made by the UN bodies, however are not legally enforceable.

The treaties do not become part of Australian law unless there is domestic legislation that directly incorporates the treaties. In Australia, none of the human rights treaties affecting the homeless have been incorporated into Commonwealth legislation, other than parts of CEDAW (through the *Sex Discrimination Act 1984*<sup>16</sup>) and CERD (through the *Racial Discrimination Act*).

The *Victorian Charter of Human Rights and Responsibilities*<sup>17</sup> incorporates most of the rights in the International Covenant on Civil and Political Rights (ICCPR) that guarantees every person the right to liberty and security of the person, but it does not incorporate the rights in the ICESR. This means that the right to adequate housing is not enforceable.<sup>18</sup>

Although Australia periodically reports to various UN bodies regarding the process for upholding certain rights, there is no precedent in Australia for a statutory right to accommodation.

*International review of statutory rights to accommodation*

England, Scotland and Wales are unusual in providing, for some homeless groups, a legally-enforceable right to 'suitable' temporary accommodation which lasts, in most cases, until 'settled' housing becomes available.<sup>19</sup>

In France, there has for some years been an active debate underway about whether an enforceable right to housing should be established.

- Legislation was passed in March 2007 aiming to establish a legally-enforceable right to housing in France.
- From January 2012, all social housing applicants who have experienced 'an abnormally long delay' in being allocated accommodation can apply to an administrative tribunal judge to demand that the state provide them with housing.
- There are also transitional arrangements in place that provide that social housing applicants in one of five 'priority' categories, including homeless people, can benefit from this legislation from December 2008. This legislation

was passed very quickly and there are concerns that its vagueness in key areas may raise difficulties in implementation.<sup>20</sup>

The United States federal legislative response to homelessness is the *McKinney-Vento Homelessness Assistance Act 1987*. The charter of the McKinney Act is to coordinate the federal response to homelessness and to create partnerships between the Federal agencies addressing homelessness and every level of local government and every element of the private sector.<sup>21</sup> The McKinney Act does not provide a legally-enforceable right to housing but refers to it as a critical urgent need.<sup>22</sup>

The United States Interagency Council on Homelessness (USICH) was established through the McKinney-Vento Homelessness Assistance Act 1987. The USICH recognized that Homelessness was a national problem with local solutions. Federal agency collaborations and partnerships with state and local governments and the private and faith-based and community sectors were key to achieving the objectives of preventing and ending homelessness.<sup>23</sup>

The establishment of the USICH represented a significant paradigm shift in homeless services in the US with the emphasis from managing the problem of homelessness with emergency shelters, soup kitchens and health clinics to ending homelessness by housing individuals who are experiencing homelessness.<sup>24</sup>

Recent studies indicate that it is significantly less expensive to provide housing and support through this approach. In Seattle, where a 10-year action plan to reduce homelessness has been implemented, studies indicated that for 75 chronic inebriates a \$2.5 million saving was achieved after 12 months. Savings included reduced emergency medical visits, jail, sobering up and detox. The annual operating cost is \$1 million and in most places an average 85 per cent successfully sustained housing over the longer term.<sup>25</sup>

#### *Rights to emergency accommodation*<sup>26</sup>

Legally-enforceable rights to emergency accommodation for homeless people are more common than rights to settled housing, but these still exist in only a few countries, all of them in Europe. Immigrants who are legally resident in these countries are generally entitled to emergency accommodation on the same basis as national citizens. A single jurisdiction within the United States – New York City – also provides a legally-enforceable right to accommodation in certain circumstances.

In all instances of emergency accommodation entitlements, either the formal definition, or the nature of the emergency accommodation duty, implies that 'homelessness' is restricted to the threat of rough sleeping.

The Queensland Government suggests the Committee give full consideration to the outcomes achieved in other countries to inform the new legislation.

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## Conventions

- *International Covenant on Civil and Political Rights*
- *International Covenant on Economic, Social and Cultural Rights*
- *International Convention on the Elimination of All Forms of Racial Discrimination*
- *Convention on the Rights of the Child*
- *Convention on the Elimination of All Forms of Discrimination Against Women*

## Queensland Legislation

- *Anti Discrimination Act 1991*
- *Commission for Children and Young People Act 2000*
- *Community Services Act 2007*
- *Community Services Regulation 2008*
- *Disability Services Act 2006*
- *Domestic and Family Violence Protection Act 1989*
- *Family Services Act 1987*
- *Guardianship and Administration Act 2000*

- *Housing Act 2003*
- *Manufactured Homes (Residential Parks) Act 2003*
- *Powers of Attorney Act 1998*
- *Property Law Act 1974*
- *Public Trustee Act 1978*
- *Residential Services (Accommodation) Act 2002*
- *Residential Services (Accreditation) Act 2002*
- *Residential Tenancies Act 1994*
- *Residential Tenancies and Rooming Accommodation Act 2008*
- *State Penalties Enforcement and other Legislation Amendment Bill 2006*

### **Australian Legislation**

- *Supported Accommodation Assistance Act 1994*
- *Disability Services Act 1986*
- *Disability Discrimination Act 1992*
- *Sex Discrimination Act 1984*
- *Racial Discrimination Act 1975*
- *Privacy Act 1988*
- *Aged Care Act 1997*

### **United Kingdom Legislation**

- *Housing (Homeless Persons) Act 1977*
- *Housing Act 1988*
- *Access to Housing Act 1996*
- *England and Wales Homelessness Act 2002*
- *Homelessness etc. (Scotland) Act 2003*
- *The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004*

### **United States Legislation**

- *McKinney-Vento Homeless Assistance Act 1986 (reauthorised 2002)*
- *Community Partnership to End Homelessness Act of 2005 (not passed)*

## End Notes

- <sup>1</sup> More information available at <http://www.housing.qld.gov.au/about/pub/corp/homelessness.htm>
- <sup>2</sup> More information available at <http://www.housing.qld.gov.au/about/strategic/oshs.htm>
- <sup>3</sup> Erebus Consulting Partners. (2004). *National Evaluation of the Supported Accommodation Assistance Program (SAAP IV) – Final Report*, p. 64. Available at: [http://www.fahcsia.gov.au/sa/housing/pubs/homelessness/saap\\_er\\_publications/saap\\_iv/Documents/main\\_report.pdf](http://www.fahcsia.gov.au/sa/housing/pubs/homelessness/saap_er_publications/saap_iv/Documents/main_report.pdf)
- <sup>4</sup> Available at [http://www.communityservices.qld.gov.au/community/strengthening\\_ngos/about-strategy.html](http://www.communityservices.qld.gov.au/community/strengthening_ngos/about-strategy.html)
- <sup>5</sup> Available at [http://www.communityservices.qld.gov.au/community/strengthening\\_ngos/initiatives/indigenous.html](http://www.communityservices.qld.gov.au/community/strengthening_ngos/initiatives/indigenous.html)
- <sup>6</sup> Available at <http://www.finance.gov.au/deregulation/coag.html>
- <sup>7</sup> Available at <http://www.communityservices.qld.gov.au/department/about/corporate-plans/queensland-compact/>
- <sup>8</sup> Erebus Consulting Partners. (2004). *National Evaluation of the Supported Accommodation Assistance Program (SAAP IV) – Final Report*, p. 104. Available at: [http://www.fahcsia.gov.au/sa/housing/pubs/homelessness/saap\\_er\\_publications/saap\\_iv/Documents/main\\_report.pdf](http://www.fahcsia.gov.au/sa/housing/pubs/homelessness/saap_er_publications/saap_iv/Documents/main_report.pdf)
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- <sup>12</sup> Available at [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm)
- <sup>13</sup> Available at <http://www.unhchr.ch/html/menu3/b/9.htm>
- <sup>14</sup> Available at <http://www.un.org/womenwatch/daw/cedaw/>
- <sup>15</sup> Available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
- <sup>16</sup> Available at [http://www.austlii.edu.au/au/legis/cth/consol\\_act/sda1984209/](http://www.austlii.edu.au/au/legis/cth/consol_act/sda1984209/)
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