

**ATTORNEY-GENERAL'S DEPARTMENT
SUBMISSION TO THE HOUSE STANDING COMMITTEE ON FAMILY,
COMMUNITY, HOUSING AND YOUTH COMMITTEE'S
INQUIRY INTO HOMELESSNESS LEGISLATION**

The Department is the central policy and coordinating element of the Attorney-General's portfolio and provides support for the Attorney-General in his role as First Law Officer. The portfolio covers a broad range of law and justice matters. These include legal policy and services to the Commonwealth, administering the personal insolvency system, Commonwealth courts and tribunals, legal assistance, native title, national and international human rights issues, copyright, family law, criminal law and law enforcement, national security, emergency management, customs and border control, administration of territories and management of the Australian Government's interests in the National Capital.

While the Department does not have primary responsibility for the development of homelessness legislation, a number of the Department's strategic priorities either directly or (in consultation with other agencies) support initiatives of relevance to homelessness. These include the social inclusion agenda, closing the gap on Indigenous disadvantage and the National Plan to Reduce Violence against Women and their Children. Of direct relevance are the Department's human rights and access to justice priorities, and priorities for addressing Indigenous law and justice issues.

Social inclusion

As articulated in the preamble to the *Housing Assistance Act 1996* (Cth) housing and shelter are basic human needs. While most Australians are able to obtain housing of an appropriate standard, people who are economically or socially disadvantaged may find themselves without appropriate housing. The inability to obtain adequate and ecologically appropriate housing can have adverse effects on health and the quality of life and reduces the prospects of obtaining employment and other opportunities that would ordinarily arise for people during their lifetimes.

Addressing homelessness is a key priority under the Australian Government's social inclusion agenda. This agenda envisages an inclusive society in which all Australians feel valued and have the opportunity to participate fully. Service provision for all Australians who are homeless or at risk of homelessness should first and foremost be underpinned by the broader Principles for Social Inclusion developed by the Social Inclusion Board and endorsed by the Australian Government. These principles can be found at www.socialinclusion.gov.au.

Disadvantage and exclusion in Australia tends to be much higher amongst certain (often overlapping) demographics and accordingly, in May 2008, the Government identified the following early priority areas in which to focus its work:

- addressing the incidence and needs of jobless families with children
- delivering effective support to children at greatest risk of long-term disadvantage
- focusing on particular locations, neighbourhoods and communities to ensure programs and services are getting to the right places
- addressing the incidence of homelessness
- employment for people living with a disability or mental illness, and
- closing the gap for Indigenous Australians.

The most socially excluded Australians are those who experience complex and multiple forms of disadvantage relating to low income, work, health, education, safety and support. Multiple disadvantage can affect individuals, families and communities. In response to the global economic downturn, the Government recently adjusted its priority focus on jobless families to include the vulnerable unemployed (comprising the long term unemployed, the recently unemployed and low-skilled adults). In designing actions to increase participation for excluded groups, particular attention is also being given to vulnerable new arrivals and refugees.

Achieving success in social inclusion requires changes in how government policies and programs are designed, developed, coordinated and delivered, covering all major policy areas of government from health to education through to infrastructure, law and justice, financial services and other portfolios. The Deputy Prime Minister, the Hon Julia Gillard MP, released the Social Inclusion Policy Toolkit on 20 August 2009 to assist agencies to incorporate social inclusion principles in policy design and delivery, so that the needs of disadvantaged people are better met. The six steps in the social inclusion method of policy design and delivery are to:

- identify groups at risk of exclusion
- analyse the nature and causes of disadvantage and exclusion
- strengthen protective factors and reduce risk factors
- work with other agencies to coordinate efforts across government and other sectors
- (re)design delivery systems and promote changes in culture, and
- establish a clear implementation plan and monitor delivery.

The Toolkit is also available at www.socialinclusion.gov.au. The Committee may find the toolkit a useful resource in undertaking its Inquiry.

Joined-up solutions

A key issue in addressing homelessness will be ensuring that a coherent national approach can be taken across Australia's federal system, and that the multiple problems experienced by the homeless are addressed at an early stage. This will require joined up approaches across governments, and governments working in partnership with the not for profit sector in delivering services. It will also require service providers from different sectors working together to proactively identify client needs and actively assist their clients in locating the most appropriate service to meet their needs.

Human rights

Respect for human rights is an essential element of social justice and underpins many of the values that make an inclusive society. Economic, social and cultural rights underpin the thrust of the Government's broader social inclusion agenda which aims to ensure that all Australians feel valued and have the opportunity to participate fully in social and economic life. A human rights culture is one in which individuals are treated fairly and with dignity.

The Government has made human rights a key focus, with the establishment of the National Human Rights Consultation in December 2008. The Attorney-General appointed a Committee of eminent Australians to conduct the Consultation. The members are Father Frank Brennan SJ AO (Chair), Ms Tammy Williams, Ms Mary Kostakidis and Mr Mick Palmer AO APM. The Consultation Committee sought the views of the Australian community on which rights (including corresponding responsibilities) should be protected and promoted, whether these human rights are currently sufficiently protected and promoted, and how could Australia better protect and promote human rights. The Committee undertook 66 community roundtables in 52 locations across Australia and

received 35,000 submissions. The Consultation also included an interactive website, an online forum, a Facebook site, focus groups, a poll, devolved consultations to hear from some of our most disadvantaged people, and three days of public hearings at Parliament House. The Committee met with stakeholder groups including human rights NGOs, politicians, judges, senior bureaucrats and academics, including key people in the ACT and Victoria to learn about the operation of their human rights statutes (the ACT *Human Rights Act* and Victoria's *Charter of Human Rights and Responsibilities*). Father Brennan visited New Zealand for meetings to discuss the operation of its *Bill of Rights Act 1990*, and travelled to Christmas Island to visit the immigration detention centre. The Committee is due to report to the Attorney-General on 30 September 2009.

Homelessness and its linkages to other areas of disadvantage, for example, mental illness, has been raised at both the community roundtables and in submissions to the Consultation. Many submissions to the Consultation are available on its website www.humanrightsconsultation.gov.au.

The International Covenant on Economic, Social and Cultural Rights, to which Australia is a party, obliges States to ensure the right to an adequate standard of housing. When Australia appeared before the United Nations Committee on Economic, Social and Cultural Rights in May 2009, the Committee expressed concern about the incidence of homelessness in Australia, particularly as it affects Indigenous people. The Committee requested Australia to provide, in its next periodic report, due in 2014, data and information which will allow the Committee to assess the progress made by Australia in improving the housing situation, in particular with respect to Indigenous people.

The principles enshrined in Australia's anti-discrimination legislation are also relevant. Discrimination has been identified by the Law and Justice Foundation of New South Wales as a factor that not only affects people while they are homeless but may also contribute to their becoming homeless¹. For example, discrimination against a person who is trying to gain access to accommodation because they have a mental illness or are Indigenous, may contribute to them also becoming homeless.

Australia's framework of anti-discrimination legislation includes Commonwealth, State and Territory legislation prohibiting discrimination on a number of grounds. These laws generally seek to have complaints of unlawful discrimination resolved in the first instance through investigation and conciliation by human rights institutions with resort to the justice system if these procedures do not resolve the matter. However, people who are homeless are likely to be suffering multiple disadvantage so that recourse to the courts is probably not a realistic option in most cases. They may be unaware of their rights or they may not know of community or Indigenous legal services or other advocacy groups which could assist them. Some homeless people may have had contact with the criminal justice system and may be wary of courts. Others may simply find the process overwhelming.

Access to justice

Everyday problems can have legal dimensions that, if left unresolved, can escalate and contribute to multiple disadvantage, including homelessness. There is often a direct causal link between a person's homelessness and their legal problems, and many people experiencing homelessness have

¹ Forell, S McCarron, E & Schetzer, L No home, no justice? The legal needs of homeless people in NSW, Law and Justice Foundation of NSW, Sydney, 2005 p 93

³ Pleasence 2004, referred to in the L&J Foundation at p 25.

previously had some interaction with the legal system, either as a defendant or victim of violence in a criminal matter.

Legal issues often do not arise in isolation. Nor are they experienced randomly or equally across society. Experiencing one legal issue may increase the likelihood of experiencing further issues because one triggers another, both arise out of the same circumstances or some individuals are vulnerable to experiencing more than one type of legal issue.³ Common legal issues for people who are homeless include family law, Centrelink disputes, tenancy, credit and debts and employment.

The Department of Family, Housing, Community Services and Indigenous Affairs' white paper on homelessness, *The Road Home; A National Approach to Reducing Homelessness*, notes that legal issues and lack of access to legal advice can contribute to or increase homelessness.

The Attorney-General has identified a need for a strategic approach to access to justice. The current approach is ad hoc and historical. Improving access to justice requires a broad examination of how the whole legal system, and its various institutions are influenced by each other and work together to support (or limit) people's capacity to address legal problems. The Attorney-General has established an Access to Justice Taskforce within his Department which is developing a strategic framework for access to justice in relation to the Federal civil justice system.

Research in Australia and abroad shows that early access to effective information and assistance to resolve legal problems before they escalate and compound is fundamental to social justice and tackling social exclusion. Legal assistance services, particularly those with a focus on prevention and early intervention, can address legal problems that are known to lead to homelessness. For example, relationship breakdown, particularly where there is family violence, is the major cause of homelessness for women and children⁴. But there are other problems that lead to family breakdown and violence. For example, becoming unemployed has been found to double the occurrence of family breakdown.⁵

The Department funds legal assistance services that can be accessed by homeless people to help them resolve problems that may have led to their social exclusion and homelessness. These services are provided through State and Territory legal aid commissions, community legal centres and Indigenous-specific legal assistance services operated by non-government organisations. In particular, community legal centres provide the homeless, and those on the verge of homelessness, with targeted legal assistance services aimed at preventing and stopping the cycle of homelessness. Their multi-dimensional and holistic approach to service delivery is well suited to assisting homeless clients, who often present with complex needs and multiple disadvantages. They have considerable expertise in providing services targeted to those clients presenting with known triggers leading to homelessness, including mental health, tenancy problems, sexual assault and family breakdown. Services also have the flexibility to identify and tailor services to meet the particular needs of their communities. These services seek to assist people to understand and act on their rights and obligations as tenants and family members, and assist in the prevention of homelessness.

Legal assistance services will play an important role in providing advice to clients about the impact of any new homelessness legislation.

⁴ Homelessness Taskforce, Department of Families, Housing, Community Services and Indigenous Affairs, *The Road Home; A National Approach to Reducing Homelessness*, 2008 p 5.

⁵ Pleasence, P, March 2009, Legal Aid in Tomorrow's World: Developments and Solutions from Research, presentation at the Lionel Murphy Centre, Melbourne http://www.legalaid.vic.gov.au/dir.Pascoe_Pleasence_Powerpoints.pdf.

Supporting families through separation and divorce

Family separation or divorce and family violence can lead to homelessness. The Australian family law system aims to provide effective support to affected families to assist them to resolve disputes about property and children in both a timely and low-cost manner.

Through the legislative framework set out in the *Family Law Act 1975* and the funding provided to the not-for-profit sector to provide services such as mediation and counselling, separating families are supported and encouraged to make timely and appropriate arrangements which reflect current circumstances and future needs of the family members. This is a lower cost way of resolving issues and more time effective than proceeding to litigation in the family courts.

Early and timely resolution of issues around property settlements and the arrangements for care of the children assist in reducing the risk of homelessness by ensuring family members can get certainty about their future financial position and likely responsibilities and making housing arrangements which reflect this.

A range of entry points into the family law system, such as Family Relationship Centres and the Family Relationship Advice Line, have referral processes in place to programs specifically directed at helping people at risk of or who are homeless.

On 24 July 2009, the Attorney-General announced a new pilot program to assist separating families who have been affected by family violence. The pilot will provide legally assisted family dispute resolution for cases involving family violence. If successful, this would provide victims of family violence with an alternative way of resolving issues flowing from separation. For some families, this method of dispute resolution will be more effective than pursuing lengthy and costly litigation in the family courts which, for many, is currently the only safe mechanism to resolve disputes.

Indigenous Australians

Indigenous Australians make up 9 per cent of the homeless population and 18 per cent of the Supported Assistance Accommodation Program (SAAP) clients across Australia.⁶ The Council of Australian Governments (COAG) has agreed to targets for closing the gap between Indigenous and non-Indigenous Australians across urban, rural and remote areas.

Consistent with the COAG agenda for closing the gap on Indigenous disadvantage, the Standing Committee of Attorneys-General is developing the National Indigenous Law and Justice Framework. The National Indigenous Law and Justice Framework aims to eliminate Indigenous people's disadvantage in relation to law and justice. The Framework seeks to build a sustainable whole of government and community partnership approach to law and justice issues, to reduce the evident levels of disadvantage that are directly related to adverse contact with the justice systems.

Commonwealth and State and Territory Governments have agreed principles of recognition and action that will form the foundation of successful partnerships to realise the vision of the National Indigenous Law and Justice Framework. The Committee may wish to consider these principles in the need for any legislation that will impact on the incidence of homelessness for Indigenous Australians (*Attachment A*).

⁶ Australian Bureau of Statistics, *Health and welfare of Australia's Aboriginal and Torres Strait Islander peoples, 2008*, ABS cat. no. 4704.0, Commonwealth of Australia, Canberra, 2008.

In addition to funding Indigenous specific legal assistance and family violence prevention legal services, the Department provides funding to programs that seek to divert Indigenous Australians away from adverse contact with the legal system and rehabilitate and support Indigenous Australians who have been incarcerated or are in custody.

The Department also assists in the administration of the Northern Territory Closing the Gap National Partnership made between the Prime Minister and the then Chief Minister of the Northern Territory. The purpose of this agreement was to enhance services in relation to the protection of vulnerable children and the provision of law and order measures. Part of this funding goes to night patrols which assist people at risk of either causing or becoming the victims of harm in order to break the cycle of violence and crime in communities. The service patrols local community areas, identifies people who may be at risk of coming into adverse contact with the justice system and takes them to an appropriate place. They also have an indirect impact on the reduction of substance abuse and anti-social behaviour and have a role in preventing family violence and family feuding which are contributing factors in Indigenous homelessness.

In addition to the above, funding is provided through the Indigenous Justice Program to develop and undertake projects that assist in reducing Indigenous Australians' adverse contact with the justice system. The objective of the program is to assist youth at risk and in the instance of incarceration, provide through care support in reintegration back to community.

Bankruptcy services

Financial pressures are another major driver of disadvantage that can lead to homelessness. The majority of bankruptcies relate to consumer debts and involve people with relatively few assets and little income. They tend to involve people who have fallen on hard times rather than unscrupulous debtors trying to avoid paying their debts.

The Attorney-General has recently announced reforms to bankruptcy legislation aimed at ensuring those in financial difficulty have the opportunity and the ability to obtain advice and information about their options and possible alternative solutions before entering bankruptcy. The draft *Bankruptcy Legislation Amendment Bill 2009* will give those in financial distress a more realistic opportunity to consider their options, reorganise their affairs and where possible, avoid bankruptcy, by:

- increasing the minimum debt for which a creditor can petition for bankruptcy from \$2,000 to \$10,000;
- increasing the stay period from when a declaration of intent to file a debtor's petition is filed to when a creditor may commence action to recover debts from seven to 28 days; and
- increasing the income, asset and debt thresholds to allow more people in financial distress to enter into voluntary debt agreements.

The aim is to ensure that bankruptcy laws are able to deal with personal insolvency issues quickly and efficiently so that people can get back on their feet as soon as possible.

The draft Bill and accompanying Explanatory Memorandum are available on the Attorney-General's Department website at <www.ag.gov.au>, and will be open for public comment until 14 September 2009.

National Indigenous Law and Justice Framework - principles of recognition and action

Principles of recognition:

1. the diversity of Indigenous communities and cultures is recognised and respected
2. the negative impact of dispossession, the removal of children from their families and past policies and the need for healing within Indigenous communities is acknowledged
3. Aboriginal peoples and Torres Strait Islanders have the right to their individual safety and contribute to the safety of their communities
4. Aboriginal peoples and Torres Strait Islanders have the right to live free from victimisation, racism and discrimination
5. Australia is a party to a range of International human rights instruments that have implications for this Framework
6. Aboriginal peoples and Torres Strait Islanders have the right to live peaceful, productive and empowered lives, and
7. Aboriginal peoples and Torres Strait Islanders have a right to procedural fairness.

Principles of action:

8. acknowledge the Report of the Royal Commission into Aboriginal Deaths in Custody, particularly its findings on causal and related issues, as a foundation document guiding the work of governments in this area
9. comprehensively respond to factors contributing to violent and criminal behaviour in Indigenous communities in particular mental health issues and the misuse and abuse of alcohol and other substances
10. cooperate through the building of partnerships across jurisdictions and with Aboriginal peoples and Torres Strait Islanders in the development, implementation and evaluation of Indigenous justice initiatives
11. exercise leadership and responsibility by committing to cooperative whole of government and across government relationships to develop holistic responses to address the underlying causes of Indigenous crime and victimisation
12. work collaboratively with stakeholders in identifying, agreeing upon and targeting the key issues and promote evidence based approaches and rigorous evaluation of Indigenous justice initiatives, and
13. support and encourage innovation in service delivery across justice and related sectors, and rigorous and transparent governance arrangements, long term commitment, and endeavour to provide sufficient levels of funding and resourcing to implement actions.