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**SUBMISSION TO THE STANDING COMMITTEE ON FAMILY, COMMUNITY, HOUSING AND YOUTH,  
INQUIRY INTO HOMELESSNESS LEGISLATION**

**Introduction**

National Shelter is a national peak housing organisation that aims to improve housing access, affordability, appropriateness, safety and security for people who are on low-incomes, or who face disadvantage in the housing system.

National Shelter works towards this goal by influencing government policy and action, and by raising community awareness in relation to housing.

National Shelter thanks the Standing Committee on Family, Community, Housing and Youth for the opportunity to contribute to the Inquiry into Homelessness Legislation.

National Shelter supports the committee's review of the Supported Accommodation and Assistance Act (1994) to inform the creation of new legislation that recognises both the Commonwealth Government's commitment to ameliorating homelessness and States and Territories willingness to enter into partnership agreements complementing the National Affordable Housing Agreement (NAHA) to achieve the aims of eliminating rough sleeping and halving overall homelessness by 2020.

National Shelter believes that goals articulated in the White Paper on Homelessness, *The Road Home*, and progress made in responses to homelessness through the Council of Australian Governments (COAG) improving homelessness responses in the areas of early intervention, family reunification, outreach support, Indigenous rough sleeping, women and their families experiencing domestic violence, and assisting those with mental illness, should be consolidated within new legislation. National Shelter believes that enshrining this progress in legislation will reduce reliance upon continued alignment of State, Territory, and Federal governments through COAG.

National Shelter supports the Commonwealth Government's intent to amend the Supported Accommodation Assistance legislation to ensure that people who are homeless or at risk of homelessness receive quality services and adequate support<sup>1</sup> by establishing quality standards that encourage innovation and focus on achieving positive outcomes for people experiencing or at risk of homelessness.

While National Shelter supports the establishment of a National Human Rights Act, existing State and Territory Human Rights Acts do not identify housing as a human right. As such recognition of this right with the preambles of the SAA Act and Housing Assistance Act should be contained within the new legislation as intrinsic materials.

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<sup>1</sup> The Road Home: A National Approach to Reducing Homelessness p 68.

National Shelter recommends that States and Territories enact complementary homelessness legislation to regulate the service delivery of funded organisations within their jurisdictions.

National Shelter recommends that new homelessness legislation regulates homelessness funding to a range of services including but not limited to supported accommodation providers as outlined in the White Paper; establishes minimum service delivery standards rather than leaving these to the discretion of individual services; includes a charter of client rights – recognising that access to housing is the most basic of these– and responsibilities and grievance procedures; and establishing processes by which reductions in homelessness and improvements in client outcomes can be gauged.

**1. The Principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness.**

New homelessness legislation should acknowledge that access to adequate and appropriate housing and shelter are human rights as agreed by the Australia’s ratification of the following:

- International Covenants on Economic, Social, and Cultural and Civil and Political Rights
- Conventions on the Elimination of all Forms of Racial Discrimination
- The Elimination of all Forms of Discrimination against Women; and the
- Rights of the Child, and
- The Acceptance of the Universal Declaration on Human Rights and of the Declaration on the Elimination of Violence against Women.

While these principles are contained in the preamble to the Housing Assistance Act 1996 (Cth) and Supported Accommodation Assistance Act 1994 they should be included in new Homelessness legislation rather than as an extrinsic preamble. In 2006, the United Nations Special Rapporteur on Adequate Housing, Miloon Kathari, stated that Australia has

*failed to implement its legal obligation to progressively realise the human right to adequate housing, particularly in view of its responsibilities as a rich and prosperous Country.<sup>2</sup>*

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 use of public spaces by homeless people such as vagrancy laws and the exercise of move on powers, for instance those provided under Section Five of the Police Powers and Responsibilities Act 2000(Qld).

The U.N. Special Rapporteur recommended that Australian Federal and state authorities

*Should make bigger efforts to explicitly incorporate the wide range of International Human Rights instruments to which Australia is party, into the domestic Legal system. Domestic implementation could include constitutional guarantees for human rights, adoption of bill of*

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<sup>2</sup> Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, 2006 , Miloon Kothari, United Nations Human Rights Council.

*rights in States, justiciability of human rights, and guaranteeing effective complaints mechanisms.*<sup>3</sup>

He also recommended that Australia revises and amends

*Laws that criminalise poverty and homelessness and those currently disproportionately impacting upon homeless people such as begging laws, public drinking laws and public space laws*

to ensure that fundamental human rights are protected.<sup>4</sup> These laws are often reflected in local government regulations and by-laws. For instance, the Alice Springs Town Council By-Law prohibits camping or sleeping in a public place, including in motor vehicles, between 9 pm and 6 am. Palmerston imposes a \$3,000 fine for sleeping in a public place. Proposed new by-laws will also prohibit sleeping in a caravan without a permit.

The Act should include Indigenous peoples' recognised rights as acknowledged in the United Nations Declaration on the Rights of Indigenous Peoples (2007), including minimum standards for the survival and well being of Indigenous peoples and their rights including but not limited to:

- Improving their economic and social conditions including housing (Article 21) and
- Active involvement in development and delivery of Health and Housing programs that affect them, and as far as possible, delivering these programs through their own institutions (Article 23).

The U.N. Rapporteur recommended that

*Australian Governments most urgently address the humanitarian tragedy of the lack of housing and basic services for indigenous peoples of Australia living on Indigenous lands and elsewhere... This should not be done at the expense of indigenous Australians who live in urban areas, who also suffer inadequate housing and living conditions*<sup>5</sup>.

A Homelessness Act should acknowledge Australia's undertakings as signatories to the Convention of the Rights of Peoples with Disabilities (2008) and principles contained regarding the provision of reasonable and accessible accommodation, including access to public housing programs to persons with long term physical, mental, Intellectual, or sensory impairments.

The proposed Act should also acknowledge the U.N. Declaration on the Rights of Migrant Workers Article 43 (1)(d) of which states that migrant workers have *equal access to housing, including social housing schemes, and protection against exploitation in terms of rent*, in consideration of which the definition of Australians should include legal Australian residents.

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<sup>3</sup> Ibid s.130.

<sup>4</sup> Ibid s.132

<sup>5</sup> Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, 2006 , Miloon Kothari, United Nations Human Rights Council s.133-134.

The SAA Act's definition of homelessness was restrictive and should be replaced by the Chamberlain and Mackenzie cultural definition of homelessness as primary (rough sleepers), secondary (temporary, including emergency accommodation, overcrowding, and in boarding houses), and the tertiary –residents in boarding houses and caravan parks with little security of tenure. The use of the cultural definition will aid with better assessing outputs against the Commonwealth Government's goals of eliminating primary and halving overall homelessness by 2020.

The new Act should provide for a separation of housing and support to ensure that strategies designed to *Turn off the Tap* in the White Paper and funded through national Partnership agreements on Homelessness are not solely tied to short term accommodation managed by specialist homelessness support agencies. The Aged Care Act provides a framework for separating differing forms of support for clients with different needs.

Outreach services funded under the National Partnership Agreement on Homelessness should be included in the definition of Specialist Homelessness Support Services. Clients housed in crisis or transitional housing should be also be defined as homeless to reduce time spent in crisis accommodation and assist with their transition into longer term social and affordable housing.

The new Act should require all states to align existing legislation with the Act. For instance, the use of police move on powers to force homeless people to relocate can be considered an unreasonable response that leads to the criminalisation of homelessness by a government that fails in its duty to provide adequate shelter to those who require it and a symptom of an increased reliance upon the criminal justice system as a response to homelessness.<sup>6</sup>

The Act should contain a national charter of client rights and responsibilities, clear grievance and appeals procedures, and a consistent set of national service standards for States to implement. No such charter appears to have been produced as required under the former SAA Act.

The Queensland Department of Family Services and Aboriginal and Slander Affairs produced a document outlining minimum SAAP standards for young people, families, single men and single women in March 1993. Under which identified the need to establish the legitimate rights of users and develop mechanisms to deal with the breach of these rights.

The document states that

*In order to develop a user rights strategy, it is necessary to firstly establish the legitimate rights of users. Minimum standards, in conjunction with service agreements and individual service charters of rights and responsibilities, constitute the first stage of establishing what these rights are.*

However, clients are still reliant upon individual services for both definition of their rights and provision of grievance mechanisms.

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<sup>6</sup> A Dream Denied: Criminalisation of Homelessness in U.S. Cities. The National Coalition for the Homeless and the National Law Center on Homelessness & Poverty Report, January 2006.

Western Australia's service standards, developed in 2002, place the responsibility for developing charters of clients' rights with SAAP agencies, though they do require services to inform clients of their right to complain to the Department of Community Development. Western Australia has developed Protocols for referral and response that attempt to guarantee service provision between the SAAP Non-government agencies and several public agencies, which were signed off at the Director General level over a five year period. The protocols are stronger than memorandums of understanding but are not mandatory and still rely on mutual awareness of their existence, inter-sectoral and interagency goodwill and capacity, with variable success in implementation.

Clearly articulated client rights should form the basis of an obligation for States and Territories in receipt of funding under the National Affordable Housing Agreement to provide appropriate and accessible accommodation to those requiring assistance.

## **2. The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights.**

New homelessness legislation would best support the Commonwealth's social Inclusion principles by:

- Ensuring that all homeless persons, or those at risk, have access to a range of options that transition them into long term housing with appropriate levels of support ( separate from housing provision) will reduce disadvantage by minimising the number of clients repeatedly using SAAP services and corollary intergenerational homelessness
- Giving a high priority to early intervention services that work with the homeless and tenants in private and public tenures with a separation housing and support will reduce the number of people requiring crisis accommodation
- Amending State legislation across Health, Justice, Employment and Education, and communities to align them with the Act will improve government and NGO collaboration to develop tailored services to meet a diversity of needs while building partnerships between the government and non-government sectors
- Improving specialist homelessness support services' links to education, training and employment programs will increase social participation
- Improving the use of evidence and integrated data to inform policy by broadening National Data Collection Agency's data collection points beyond former SAAP services to all government, non-government and not for profit agencies, including State and Territory housing authorities and early intervention and outreach services that have contact with people experiencing or at risk of homelessness. Data sets, such as those required of service providers by State Governments, that do not currently identify outreach work should be revised. Where States and Territories may be allowed to collect data to measure outcomes against Commonwealth interim and long term homelessness reduction targets these must

employ a consistent methodology across jurisdictions to ensure reporting consistency and integrity.

- The Commonwealth can ensure that programs provide long term sustainable improvement by ensuring that funding for specialist homelessness services implemented under the National Partnership Agreements on Homelessness, presently through Council of Australian Governments agreement, is allocated through the Act and administered as recurrent funding through the National Affordable Housing Agreement.
- Social Inclusion principles, subject to varied interpretation and priorities by changing governments, should be defined within a new homelessness act to ensure their constancy.

**3. The role of legislation in improving the quality of services for people who are homeless or at risk of homelessness.**

Homelessness legislation should confer rights upon the service user as identified in the U.N.'s Covenants on Economic, Social, and Cultural and Civil and Political Rights; principally the right to affordable, accessible, and adequate housing.

The current definition of Supported Accommodation should be changed to Specialist Homelessness Support Services (SHSS) and enlarged to include all outreach programs funded under the National Partnership Agreements on Homelessness.

The SAA Act required SAAP to develop grievance and appeals procedures without defining whether these will be developed at a National, State, regional or service level, or contained within agencies' service agreements as part of their accreditation processes, S.5 (4)(f). As such, clients seeking assistance are both unsure of their rights and subject to varying degrees of recourse if these rights are not met. The new Act should identify minimum national service standards, rather than allowing States and Territories to form their own. States should be required to determine the extent of homelessness and develop strategies to reduce it (as required under Scottish legislation).

National Shelter supports the development of a national charter of clients' rights and grievance processes that include clients' right to accommodation and states' responsibility to provide it.

National Shelter supports the establishment of a national body to guide the establishment and monitoring of nationally consistent program delivery, standards, and complaints mechanisms. The Commonwealth Advisory Committee on Homelessness formerly fulfilled this function under the SAA Act. Accreditation processes developed under new legislation should align with existing state and territory accreditation requirements wherever possible.

Payments made to States and territories through National Partnership Agreements on Homelessness to fund SHSS should be included in the National Affordable Housing Agreement and identified in the Act.

State and Territory Ministers should be required to report on homelessness program implementation to their parliaments annually.

New legislation should better connect short term housing options such as the crisis and supported accommodation programs with longer term solutions such as social and affordable housing and supports to minimise the time clients spend in shelters. State Housing Acts may be amended to ensure that those in greatest need, including residents in crisis and transitional accommodation are housed.

To prevent homelessness The U.N. Rapporteur recommended that States and Territory governments review residential tenancies laws in order to ensure compliance with international human rights standards, particularly with respect to guaranteeing minimum acceptable accommodation standards, and prohibitions on forced evictions. In cases of Domestic Violence the victim is often held responsible for damage caused to a rental property by the perpetrator under current tenancy law.

#### **4. The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas.**

The SAA Act regulated the funding of crisis accommodation support services since December of 1994 until its expiry on 31 December 2008. During this time, SAAP's ability to meet the increasing demand for accommodation and support has been increasingly constrained without an equivalent increase in funding.

The National Affordable Housing Agreement replaced the SAAP V agreement in January 2009. The 2008 Commonwealth review *The Road Home— A National Approach to Reducing Homelessness* increased the focus on early intervention strategies. However, without improved integration with state social and affordable housing programs those tenants who are unable to maintain their housing will continue to stay in crisis accommodation longer than the 13 weeks allowed under the SAA Act or fail to find alternative affordable accommodation and fall back into homelessness and the homelessness system.

Crisis accommodation and support services should retain their flexibility in providing transitional housing options beyond the currently allowed 13 weeks crisis accommodation period in recognition of the lack of available exit points.

Several overseas programs provide useful examples to consider.

The Scottish Housing Act 2001 improves on U.K. legislation by providing a framework for both social and private housing sectors.

Key aspects of the Act that may be incorporated in an Australian Homelessness Act include:

- Requiring States and Territories, and regions within them to carry out assessments of homelessness within their areas and prepare plans for alleviating and preventing homelessness S.1.(1)
- Imposing a duty to house people who are homeless upon housing authorities
- Recognition of the fact that all people who are homeless have priority needs
- Ensure that information on homelessness and services that may assist in their area is provided to clients at no charge S.2
- Define homelessness to include those who face homelessness within two months
- Disregard contributory negligence when assessing an applicant's eligibility for assistance
- Prohibition of summary evictions of private boarding house clients unless they pose a serious danger to other occupants or staff S.7 (4)- Queensland Boarding House residents can be removed with reasonable force despite recent amendments to the Residential Tenancies Act
- Access to social housing for applicants 16 years of age and above.

In the United States the McKinney-Vento homelessness act requires the turnover of unused federal buildings, excluding military facilities, for use by homelessness services. An Australian Homelessness Act may require the Commonwealth to make unused Commonwealth land, or buildings, available to State and Territory Housing Authorities and community housing providers for use in affordable and social housing programs. The McKinney-Vento Act also requires schools to ease school entry requirements, such as proof of local residence, identification, and immunisation records to remove barriers for homeless children accessing education.

**5. The applicability of existing legislative and regulatory models used in other community service systems, such as Disability Services, Aged Care and Child Care, to the homelessness sector.**

The Aged Care Act 1997 (Cth) provides serves as an example of a legislation that outlines a number of program elements that may be adapted to specialist homelessness support services by providing funding relative to the:

- Locus of support, for example, residential, community based, or flexible delivery (which may include services to high needs primary homeless clients or those in rural or remote locations)
- The type and level of support provided
- The appropriateness of services, and accountability of service providers.



The Aged Care Act's accreditation provisions ensure that services are of high quality, are targeted towards those in greatest need, and that recipients enjoy the same all rights as all people in Australia. These principles are consistent with the Commonwealth Government's White Paper goals.

The Aged Care Act also encourages flexible and responsive service delivery with improved service integration, planning, and delivery across related Health and Community services.

Its structure if adapted to new homelessness legislation should include:

- Recognition of Universal Human rights, such as the right to safe and affordable housing within the Act
- Cultural and Indigenous Definitions of Homelessness and Specialist Homelessness Support Programs
- Standards for crisis accommodation, community based support, and homelessness outreach service provision
- Definitions of provider responsibilities and obligations arising therein
- Commonwealth and State payments arrangements through the national Affordable Housing Agreement
- Improved data collection provisions
- Establishment of a national body to oversee program implementation.