

Submission No. 28
(homelessness legislation)
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Homelessness NSW

The logo for Homelessness NSW features the text 'Homelessness NSW' in a bold, black, sans-serif font. Below the text is a stylized red graphic element that resembles a thick, curved arrow pointing to the right, with a slight upward curve at the tip.

Submission to the Inquiry into homelessness legislation

House Standing Committee on Family, Community,
Housing & Youth

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Recommendations

Recommendation 1

Access to housing and support should be framed to be easily accessible and available for all who need it, regardless of how they have come to be homeless. This is a strong principle in the current SAA Act and should be strengthened in future legislation.

Recommendation 2

There should be legislation that enshrines an enforceable right to adequate housing. Such legislation would be an overarching instrument under which other legislation, relating to housing and funding of service providers and support services, would be situated.

Recommendation 3

The legislation must clearly define homelessness, giving clarity to the categories of primary, secondary and tertiary homelessness, specialist homelessness services and create a spiritual definition of homelessness that encompasses separation from traditional land or family specific to Indigenous Australians.

Recommendation 4

The principles underpinning homelessness legislation must be stated coherently within the Act to ensure consistency of the intent of the Act over time. It is essential that the principles are able to be enforced and that it is clear which sections of government and the community they apply to.

Recommendation 5

Development of homelessness legislation must be responsive to the findings of the current consultation being undertaken into a Bill of Rights for Australia and build on the human rights protections currently enshrined in the SAA Act.

Recommendation 6

Homelessness legislation must contain principles and measures to provide a legislative framework that facilitates the work of government and non-government agencies in working collaboratively in partnership to resolve homelessness.

Recommendation 7

To capture the spirit and intent of Australia's social inclusion strategy, homelessness legislation should enact provisions for broad government policy review with mechanisms to force change in policies that result in people becoming homeless.

Recommendation 8

The quality accountabilities enshrined in homelessness legislation should require all services that work with homeless people and those at risk of homelessness to be accountable for their service delivery, not just those services that currently receive funding under the SAA Act.

Recommendation 9

Any homelessness regulatory system that is developed must take account of other regulatory processes that a service undertakes and only look for additional or new effort relating to the homelessness component of that service to be regulated.

Recommendation 10

State and territory governments must develop homelessness strategies with resources attached, linked to clear national directions regarding the reduction in the number of people who are homeless.

Recommendation 11

In considering the mechanisms developed to improve the quality of services delivered to homeless people and those at risk of homelessness, a robust data collection must be developed that will capture a broad range of information to support program response and effectiveness and support the development of a research evidence base.

Recommendation 12

All government agencies and instrumentalities responsible for providing, building or designing services for people who are homeless or at risk of homelessness must be responsible and accountable for their operations.

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

If the intent of the Federal Government's White Paper on homelessness¹ is to build better and more responsive services for people who are homeless and for those at risk of homelessness, then strong principles founded in the human rights framework are fundamental to delivering on this.

These principles should be developed to underpin the services delivered by the broad range of government and non-government agencies that deliver services to homeless people and those at risk of homelessness across Australia.

Homelessness NSW believes that the *Supported Accommodation Assistance Act 1994* (Cth) (SAA Act) has provided a level of human rights protection for people experiencing homelessness. However this protection is limited. As the census data shows only 19% of the homeless population gain access to the Supported Accommodation Assistance Program. This means that 81% of people experiencing homelessness have no level of protection of their right to support and accommodation under the current legislative framework. By the very nature of the *SAA Act* people at risk of homelessness also have no legal recourse to having their right to housing enforced.

It has been argued that this lack of legal rights to housing and support is one of the reasons that Australia saw no reduction in the numbers of people experiencing homelessness between the Census dates 2001 and 2006, despite the nation having 20 consecutive quarters of economic growth.

This is why Homelessness NSW supports a strong legislative framework for people experiencing homelessness, for those at risk of homelessness and a right to housing for the general population. This would enable government policies, programs and procedures to be examined to ensure that they do not intentionally or non-intentionally cause people to become homeless.

Recommendation 1

Access to housing and support should be framed to be easily accessible and available for all who need it, regardless of how they have come to be homeless. This is a strong principle in the current SAA Act and should be strengthened in future legislation.

Indigenous Australians are significantly over represented in homelessness data, identifying that there are key systemic issues impacting on them that make them increasingly vulnerable to homelessness.

Services should be responsive to individual client need with funding linked to the delivery of responsive services that support prevention of and resolution of homelessness.

¹ *The Road Home: A national approach to ending homelessness*, December 2008 Australian Government

The evidence clearly shows that Australia is currently not meeting its international obligations for safe and secure housing. Homelessness NSW believes that as a nation that prides itself on its human rights record it is important that Australia not only do the right thing, but also be seen to do the right thing.

As a member based organisation, Homelessness NSW has consulted widely with our members and people experiencing homelessness on this issue. We have received consistent feedback from both providers of services and recipients of homeless services that they believe that a strong legislative response is required to ensure that Australia will meet the aspirational targets set in the White Paper.

Recommendation 2

There should be legislation that enshrines an enforceable right to adequate housing. Such legislation would be an overarching instrument under which other legislation, relating to housing and funding of service providers and support services, would be situated.

To ensure consistency it is vital the proposed national homelessness legislation is as clear as possible and so it is essential that the terms used in the legislation are defined.

In particular the proposed national homelessness legislation must define (at least):

- Primary, secondary and tertiary homelessness
- Specialist homelessness services

We also advocate for the inclusion of a spiritual definition of homelessness encompassing separation from traditional land or family² specific to indigenous Australians.

Recommendation 3

The legislation must clearly define homelessness, giving clarity to the categories of primary, secondary and tertiary homelessness, specialist homelessness services and create a spiritual definition of homelessness that encompasses separation from traditional land or family specific to Indigenous Australians.

The first United Nations Special Rapporteur on housing has stated that “the human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity”³. Homelessness NSW would support this statement.

² Indigenous homelessness within Australia / prepared by: the Commonwealth Advisory Committee on Homelessness and the Australian Government Department of Families, Community Services and Indigenous Affairs and supported by the National Aboriginal and Torres Strait Islander Homelessness Consultations.

³ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari <http://daccessdds.un.org/doc/UNDOC/GEN/G07/125/72/PDF/G0712572.pdf?OpenElement>

Recommendation 4

The principles underpinning homelessness legislation must be stated coherently within the Act to ensure consistency of the intent of the Act over time. It is essential that the principles are able to be enforced and that it is clear which sections of government and the community they apply to.

The principles and penalties if they are broken should apply not just to specialist homelessness services (currently known as SAAP services) but also to state, territory and federal governments and their related government programs.

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

The legislation, the principles and penalties that it applies must be layered throughout government, including all departments, sectors and NGOs so that there is a universal accountability for actions (or in-actions) that led to homelessness.

The Federal Government has just embarked on a nationwide consultation on the development of a Bill of Rights for Australia.

Recommendation 5

Development of homelessness legislation must be responsive to the findings of the current consultation being undertaken into a Bill of Rights for Australia and build on the human rights protections currently enshrined in the SAA Act.

In addition, the Australian Government is committed to using the framework of social inclusion to tackle disadvantage. The Social Inclusion Board was established in May 2008 with eleven principles to frame the policy response for Australia.⁴ One of these principles focus on getting different parts and different levels of government to work together in new and flexible ways to get better outcomes and services for people in need.

A major focus of the reforms outlined in *The Road Home* is of joined up service delivery responses. It identifies that an overarching policy framework is needed to guide all government approaches to addressing homelessness.

Program funding and accountability boundaries must be changed to allow governments and funded organisations to take a multidisciplinary approach to addressing people's needs. The concept of joined up service delivery responses is fundamental to the implementation of the social inclusion framework as a means of tackling disadvantage.

⁴ *Social Inclusion Principles for Australia*, Nov 2008, Australian Government.

Recommendation 6

Homelessness legislation must contain principles and measures to provide a legislative framework that facilitates the work of government and non-government agencies in working collaboratively in partnership to resolve homelessness.

The Joseph Rowntree Foundation in the UK has funded the production of a series of annual reports, with the aim of providing an independent assessment of the progress being made in eliminating poverty and reducing social exclusion in the UK. The most recent report for 2006 considered 50 indicators, covering child and adult poverty, inequalities in income and pay, health inequalities, minimum educational standards, and exclusion by institutions (Palmer, MacInnes, & Kenway, 2006⁵).

This report found that child poverty had been reduced and that there had been a big reduction in poverty among pensioners. However, poverty among working-age adults had not reduced and there was a problem of "in-work poverty". The report also found that in areas where the government had specific policies (e.g., bank accounts and central heating) exclusion fell substantially, but that exclusion by institutions remained an issue. There have been concerns that the most disadvantaged families have not benefited and are still being left behind.

A key lesson to be learned from the social inclusion agendas in the UK has been the importance placed upon delivering the multiple services required to address the multiple disadvantages experienced by the socially excluded. It is clear that placing the person in need of services at the centre for the "web of services" is crucial and that the standard approaches to service delivery simply do not work for the most disadvantaged.

There is currently no national legislative and policy framework in Australia against which the outcomes of government programs and strategies can be evaluated to assess to what extent they are contributing to homelessness.

An example of a government policy that has significantly contributed to homelessness can be found in the actions of the Commonwealth Agency, Centrelink, which actually forced thousands of people into homelessness through payments being subject to a compliance regime.⁶ Homelessness NSW does not believe that this would have been the stated intention of any person involved in the development or enforcement of this policy, but that it was an unintended consequence.

⁵ Palmer, G., MacInnes, T., & Kenway, P. (2006). *Monitoring poverty and social exclusion 2006*. York: Joseph Rowntree Foundation and New Policy Institute.

⁶ <http://www.smh.com.au/news/national/centrelink-penalty-adding-to-homelessness/2009/01/20/1232213646798.html>

Recommendation 7

To capture the spirit and intent of Australia's social inclusion strategy, homelessness legislation should enact provisions for broad government policy review with mechanisms to force change in policies that result in people becoming homeless.

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

Homelessness NSW supports the concept of continuous quality improvement for all services that work with people who are homeless and those who are at risk of homelessness.

Recommendation 8

The quality accountabilities enshrined in homelessness legislation should require all services that work with homeless people and those at risk of homelessness to be accountable for their service delivery, not just those services that currently receive funding under the SAA Act.

Many SAAP services already undertake accreditation and quality improvement strategies as part of funding accountability mechanisms for other aspects of their services such as accreditation for health or child care programs or housing provider status. It is imperative that any accreditation or quality improvement systems developed for homeless service providers acknowledge this and looks to accept other accreditation status, seeking to integrate the results of this regulation resulting in a requirement only to have new or homelessness program specific functions further accredited.

As the census data shows only 19% of the homeless population gain access to the Supported Accommodation Assistance Programs. This means that 81% of people experiencing homelessness have no level of protection of their right to support and accommodation under the current legislative framework. There are many other NGO's and government departments that also work with homeless people and people at risk of homelessness. These organisation and departments need to be equally "*accountable for their service delivery*".

Recommendation 9

Any homelessness regulatory system that is developed must take account of other regulatory processes that a service undertakes and only look for additional or new effort relating to the homelessness component of that service to be regulated.

However, it must be understood that focusing on quality improvement in isolation does not address the issue of adequate funding and the affordable housing stock required to deliver responsive services to homeless people and those who are at risk of homelessness. A key strength of the *SAA Act* was that it legislated a minimum response for a marginalised group of people who become homeless often through falling through all the other service systems.

Homelessness NSW suggests that legislation can address the issue of quality services only if it ensures that both government and non-government services are bound to the Act. Mechanisms must be built into the legislation that stipulate the minimum level of service that state and territory governments must deliver for people who are homeless and those at risk of homelessness.

Homelessness NSW also acknowledges that there will be a cost factor to implementing a regulatory system at both the service provision and the regulatory level that needs to be accounted for.

Recommendation 10

State and territory governments must develop homelessness strategies with resources attached, linked to clear national directions regarding the reduction in the number of people who are homeless.

The Federal Government Homelessness White Paper outlined a Prime Minister's Council on Homelessness. The role and function of this council could be similar to the Commonwealth Advisory Committee on Homelessness outlined in the SAA Act 1994 and provide for monitoring of the quality of state and territory responses broadly to homelessness.

In addition, an important function of the current SAAP service system is one of the collection of homelessness data through the National Data Collection Agency. This data is one of the only two homelessness specific data collections undertaken in Australia, the other being the homelessness census collection every 5 years.

SAAP data is important in understanding the level and depth of services required, the numbers of people seeking assistance who are unable to be aided and some measure of the effectiveness of the programs delivered.

Recommendation 11

In considering the mechanisms developed to improve the quality of services delivered to homeless people and those at risk of homelessness, a robust data collection must be developed that will capture a broad range of information to support program response and effectiveness and support the development of a research evidence base.

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

Australia

Legislation currently in operation across Australia is the *Supported Accommodation Assistance Act 1994* (Cth).

The purpose of the *Supported Accommodation Assistance Act 1994* (Cth) is to grant financial assistance to the states to administer a program of transitional supported

accommodation and related support services to assist people who are homeless or at risk of homelessness.

The program, known as SAAP, aims to achieve the maximum possible degree of self-reliance and independence for people using its services. SAAP aims to promote and protect the rights of people experiencing homelessness. Section 7 of the Act recognises the relationship between the achievement of these objectives and the increased access of people experiencing homelessness to such fundamental resources as:

- employment;
- education and training;
- health services (including mental health services);
- disability and rehabilitation services;
- income support;
- other appropriate opportunities and resources; and
- adequate housing.

The *SAA Act* 1994 provides a range of safeguards for homeless people in that there is:

- A legislative response to homelessness that ensures the responses to homeless people and that are not subject to the vagaries of political funding cycles;
- A national response to homelessness (targeted at homelessness not an adjunct to another policy);
- A legislative response that entrenches a human rights framework to homelessness;
- A right to access to services regardless of an ability to pay;
- A right to non discriminatory access to services;
- An engagement with the community;
- A programmatic response to homelessness that guarantees a level of funding; and
- A legislative focus on all levels of government to work together.

New homelessness legislation must maintain the safeguards contained within the *SAA Act* for homeless people and those at risk of homelessness within its framework.

Whilst only providing for 19% of those who are homeless, Homelessness NSW holds that, as shown in reviews of the program that have occurred every five years since the program began in the 1980's, SAAP has been successful in developing broad and effective responses for many of those who have accessed its services.

England and Wales

The UK first legislated for homelessness in 1977, using terminology such as temporary accommodation, priority need and intentional homelessness. At the time, it was considered landmark legislation, among the most progressive in the world. It was created at a time when the worst housing shortages of the post-war period had eased, yet a significant group of people had been left behind. For the first time, there was an enforceable duty to house some people who found themselves homeless.

Many questions surrounding homelessness and the principles contained within the legislation continue within the UK. Questions regarding who can reasonably be described as homeless, the issue of fault, and who should receive help continue.⁷

In England and Wales the governing legislation is the *Housing Act 1996*, Part 7. This imposes a duty on local authorities to secure accommodation for homeless persons who satisfy a number of criteria. The applicant must be eligible (as defined in terms of their immigration status), homeless, in priority need, and not intentionally homeless.

The definition of homelessness is relatively broad encompassing all those without a legal right to occupy and those in accommodation which the authority considers it is not reasonable for them to continue to occupy. The priority need categories encompass those who are pregnant, those with dependent children, single people who are vulnerable, and those who have lost their home in an emergency such as flood or fire. Intentional homelessness deprives an applicant of long-term assistance if they have deliberately done or failed to do something in consequence of which they have ceased to occupy available accommodation.

Challenges recently debated in the United Kingdom

1. Retaining a broad definition of homelessness

A broad view of homelessness is essential if the true scale of the homelessness problem is to be understood. If only those who are roofless (ie rough sleeping) are counted in homelessness statistics, this will lead to solutions and policies that only tackle half the problem.

2. Tackling the causes of homelessness

Discussion regarding government policy approaches - in particular a belief that the UK government focuses too much on pre-crisis intervention without enough focus on preventing the structural causes of homelessness.

Issues regarding inadequate supply of social rental housing, the need to develop a strategy for the private rental sector, reducing the number of repossessions and evictions and strategies to assist tenancies have all been discussed at some length.

3. Retention of the low threshold for interim accommodation

⁷ Elizabeth O'Hara, *Policy Report: Rights and wrongs*, Shelter UK November 2007, p7

There is a strong belief that any system that is designed to assist homeless households should be easily accessible and have a low threshold. This is seen as one of the most important legacies of the 1977 Act.

There is a need to have a provision for a safety net that gives emergency accommodation promptly to those who are homeless in the broadest sense.

4. Priority need and vulnerability

Issues regarding extending the priority needs criteria beyond just those households that had children to those that did not has been lobbied for. The Housing Act currently gives grounds for the government to confer priority need on those who have spent time in prison, or in the armed forces so that they no longer need to pass the vulnerability test.

5. Standards of temporary accommodation

Significant concerns are held for the standards of temporary accommodation - question whether legislation should mandate standards for temporary accommodation.

United States of America

The legislation in the United States of America (USA) is the Stewart B. McKinney Homeless Assistance Act. There was an extension of the Act to incorporate McKinney-Vento Homeless Education Assistance Act 2001. However the critical issue for America seems to be the need for funding to meet the demand, and that there needed to be better coordination and strategic responses to youth homelessness.

On May 20, 2009, President Obama signed into law a bill to reauthorize HUD's McKinney-Vento Homeless Assistance programs. The bill was included as part of the Helping Families Save Their Homes Act. The McKinney-Vento reauthorization provisions are identical to those included in two bills introduced earlier in 2009, both known as the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act.

The HEARTH Act will provide communities with new resources and better tools to prevent and end homelessness. The legislation:

- Increases priority on homeless families with children, by providing new resources for rapid re-housing programs, designating funding to permanently house families, and ensuring that families are included in the chronic homelessness initiative.
- Significantly increases resources to prevent homelessness for people who are at risk of homelessness, doubled up, living in hotels, or in other precarious housing situations through the Emergency Solutions Grant program.
- Continues to provide incentives for developing permanent supportive housing and provides dedicated funding for permanent housing renewals.
- Grants rural communities greater flexibility in utilizing McKinney funds.

- Modestly expands the definition of homelessness to include people who are losing their housing in the next 14 days and who lack resources or support networks to obtain housing, as well as families and youth who are persistently unstable and lack independent housing and will continue to do so.

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."

Continuous quality improvement is a broad management term that describes a process through which organisations systematically assess and improve their performance along a range of criteria. Government departments each have their own policy regarding quality processes which apply to both government agencies and government funded programs.

NSW Community Housing Registration

The *Housing Act* 2001 (NSW) was amended to provide for the establishment of a new registration and regulatory system for community housing providers to be administered by the Registrar of Community Housing. The Housing Regulation 2009 prescribes a regulatory code which sets out the requirements for registered community housing providers.

The *Housing Act* and *Housing Regulation 2009* provide the legislative framework for the regulation of community housing providers.

The Regulatory Code has eight performance areas with requirements that community housing providers must meet. The eight performance areas are:

- I. Fairness and Resident Satisfaction
- II. Sustainable Tenancies and Communities
- III. Asset Management
- IV. Sound Governance
- V. Standards of Probity
- VI. Protection of Government Investment
- VII. Efficient and Competitive Delivery of Community Housing
- VIII. Development Projects

The Regulatory Code is aligned with the National Regulatory Framework for community housing providers, which was endorsed by Commonwealth, State and Territory Housing Ministers in 2008. Whilst this form of regulation only commenced in June 2009, it is expected that many services currently providing services to homeless people will nominate to become a registered community housing provider.

DADHC Integrated Monitoring Framework

At the State level, the Department of Ageing and Disability and Home Care (DADHC) has the Integrated Monitoring Framework, in operation since 2005, which applies to both DADHC operated and funded services.

It has been generally accepted that the goal of assisting people with disabilities to participate in society and enjoy opportunities for inclusion to the same extent as other members of the Australian community underpin both the Disability Services legislation (Commonwealth 1986, and NSW 1993) and the *Commonwealth Disability Discrimination Act* (1992). The NSW *Disability Services Act* (1993) guides the funding and provision of services and supports to people with disabilities and is administered by the Department of Ageing Disability and Home Care.

The passing of the Commonwealth *Disability Services Act* in 1986 (DSA) represents the foundation for reform in this country. The Act itself expresses quite explicitly the rights that people with disabilities should enjoy, and indicates that funded services should be working toward assisting people with disabilities to achieve these goals. The NSW *Disability Services Act* (1993) has also developed a set of standards, the NSW Disability Services Standards, which guide services toward practices that can generally assist people with disabilities to achieve goals that are in line with the rights expectations of the DSA.

Mainstreaming effective disability regulation

In their response to the Federal Government's call for submissions on the National Disability Strategy Discussion Paper, PIAC states that in many areas, the approach by Government to ensuring inclusive practices has been to extract the disability specific issues from the main regulatory bodies and make them the responsibility of a specialist disability focused or rights-focused body⁸. For example, regulation of airlines access for people with disabilities is not dealt with expressly in the licensing and regulation of the airline industry. Nor is the regulation in relation to the provision of captioning of television broadcasts dealt with expressly in the licensing and regulation of television broadcasting.

By way of comparison, PIAC understands that the proposed Disability Standard in respect of access to premises will become part of the overall national regulatory framework for building in Australia. PIAC believes that the effect of the separation of disability-specific regulation from mainstream regulatory activities is to make the disability-specific regulation a lower priority for industry participants and to make the achievement of compliance with the disability-specific regulation less straight forward. It also emphasizes the exclusion faced by people with disability.

By contrast, the Canadian Government has given responsibility in respect of disability access in public transport to the department with primary responsibility for public transport, the Canadian Transportation Agency (CTA). This enables issues of access and

⁸ PIAC submission: People with disability – from recipients to full and active participants: Response to the National Disability Strategy Discussion Paper. 1 December 2008

<http://www.piac.asn.au/publications/pubs/08.12.01-PIAC%20Sub%20on%20NDS%20copy.pdf>

barriers to access and participation to be dealt with in the context of all-of industry regulation. This benefits industry, the regulatory process and people with disability, as there is only one place to go to find out about rights and responsibilities in respect of public transport. It also enables the relevant disability and human rights bodies to provide independent and impartial input to the development and review of the effectiveness of policies and programs.

Recommendation 12

All government agencies and instrumentalities responsible for providing, building or designing services for people who are homeless or at risk of homelessness must be responsible and accountable for their operations.

The development of new standards needs to be developed in consultation with the community sector and needs to be quite specific to homelessness. The standards should have a greater focus on quality of service delivery as opposed to a risk management framework for services. It must be noted that standards do not necessarily improve practice - any homeless response needs to be coupled with a strong resourcing framework for the workforce.