



Inquiry into Homelessness Legislation

RYDON Submission

Introduction:

This response is prepared on behalf of the Regional Youth Development Officers' Network (RYDON), which has been operating since 1987. RYDON is a network of professionals who focus on community development for young people. The network's purpose is to

- promote coordination, cooperation and networking between providers of services to young people
- Lobby government and other relevant bodies on behalf of young people and providers of services to young people
- Support, organise and provide training for those working with young people
- Represent the interests of young people and those working with young people

RYDON covers the Local Government Areas of Cessnock, Dungog, Gloucester, Gosford, Great Lakes, Greater Taree, Lake Macquarie, Maitland, Merriwa, Murrurundi, Muswellbrook, Newcastle, Port Stephens, Scone, Singleton, and Wyong.

Due to the short time frames, we anticipate that the submission and the inquiry is just the beginning of the discussion and that the community sector, homeless people and the broader community can be part of creating the legislative basis for our shared vision of Ending Homelessness in Australia. Given that this process is the once-in-a-generation chance to end homelessness in Australia, we urge courage and good sense in the process to avoid the longing 'to do things quick' weigh against 'getting things done right'.

Summary:

The Key recommendation for the inquiry into homelessness legislation is for specific homelessness legislation that:

1. Ensures homelessness is firmly embedded in national policy;
2. Has a rights-based framework at its core;
3. Provides for quality service delivery that meets the 'diverse needs of people who may be experiencing homelessness';
4. Defines homelessness in a way which is understood and supported by the whole community;
5. Acknowledges homelessness is 'everybody's business' and therefore any legislation is broad and holistic in scope.

RYDON has used the broad cultural definition determined by Chamberlain & MacKenzie in the development of this submission. We would recommend that the inquiry also adopt these definitions when talking about homelessness.

Chamberlain and MacKenzie define homelessness by identifying three segments in the homelessness population

Primary Homelessness: People without conventional accommodation (living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter also known as rough sleeping).

Secondary Homelessness: (Moving around / temporary accommodation) People who move frequently from one form of temporary shelter to another, including: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with friends or relatives; and those using boarding houses on an occasional or intermittent basis.

Tertiary Homelessness: People living in single rooms on a medium to long-term basis. Residents of private boarding houses do not have separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; and they do not have security of tenure provided by a lease. They are homeless because their accommodation is inferior to the characteristics identified in the 'community standard'.

RYDON highlight this to avoid any attempt to design a legislative framework informed by an understanding of 'homelessness' as those sleeping rough or visibly homeless. Research shows that young people who experience homelessness tend to be not necessarily 'roofless' but 'couch-surfing', staying with friends or in other transient accommodation that lacks secure and adequate tenure. This is even more common in regional and rural areas. Young people are

the invisible face of homelessness and what we actually require is a framework that recognises the diversity in the homeless population.

RYDON would like the legislative inquiry to consider the specific adolescent development issues that impact on young people, families and communities and that must be taken into consideration in developing a “homelessness” legislation.

Once more RYDON places particular emphasis on the diverse needs of young people. Within this group, we see there are various considerations that must be acknowledged and responded to when we talk about young people. To a great extent, other legislation regarding homelessness tends to forget the specific needs and issues faced by young people. Here Australia can take a leading role.

It is important that any response must not be a one size fits all and any legislation must therefore enshrine that young people require a diverse response.

Homelessness Legislation: Key Recommendations

RYDON supports the National Youth Coalition for Housing (NYCH) Charter of Rights for young people and its fundamental principle that all people have access to human rights.

Human rights are the basic rights and freedoms to which all humans are entitled and are enshrined in the 30 articles of the Universal Declaration of Human Rights. Australia is a signatory to a number of human rights treaties, including;

- Convention on the Rights of the Child
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of all Forms of Racial Discrimination
- Convention on the Elimination of all Forms of Discrimination Against Women
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Australia under these United Nations conventions is required to implement and enforce these rights. In keeping with our obligations, any new homelessness legislation should unite these “big” human rights commitments with the rights of the current Act. In looking at homelessness through a broader human rights framework, a comprehensive set of principles can be developed for any new homelessness legislation.

Since 1994, the Supported Accommodation Assistance Act 1994 (SAA Act) has been Australia’s primary response to homelessness. This Act has also been an important showpiece of human rights legislation within Australia.

RYDON is concerned that a rushed government response in reforming legislation in this area runs the risk of losing the positives that Australia already has already gained in this area.

RYDON therefore strongly recommends a legislative approach that continues to build on the strengths and progress made by the SAA Act. The inroads into protecting the rights and interests of those at risk of or experiencing homelessness made by the current Act should be preserved in any new legislative response in this sector. Legislators also have an opportunity to build on the chances presented by the prospect of a much broader Act than that around a specific program to a broader response by all.

RYDON's vision is to see a Homelessness legislation which guarantees the rights of young people at risk or experiencing homelessness to quality services, the opportunity to participate in community life and enjoy fairness in their access to community resources.

Explicit homelessness legislation is one step in ensuring that homelessness is an issue that does not fall off the political agenda. The Act therefore must guarantee funding and the allocation of resources on a basis that is quarantined from political agenda.

Response to Terms of Reference

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

The following were seen as fundamental principles that should underpin any new legislation regarding homelessness were:

1. A basic right to appropriate accommodation *and* support; for everyone regardless of background or perceived cause of homelessness
2. Social justice *and* inclusion
3. A whole-of-government focus on service provision
4. Focus on safety and well-being
5. Quality services based on *diverse* needs
6. Respect for cultural backgrounds and beliefs
7. Respect for dignity of individuals, including developmental needs

RYDON felt that many of the aims and intent of the current SAA Act reflect many of the principles that currently – and should continue to - support the provision of services to Australians who are homeless or at risk of homelessness.

RYDON also believes it is highly desirable that an acknowledgement of the structural causes of homelessness should be included – or rather, retained (i.e.

the SAA Act principle of “reduction and amelioration of poverty”) - in any new legislation.

This reference to the broader structural causes of homelessness is critical and acknowledges that specialist homelessness services alone cannot end homelessness.

The bigger picture that needs to be included in the ‘new’ legislation needs to include the prevention of homelessness as well. This is only achieved when we address issues and causes of homelessness. While we agree that early intervention mechanisms need to be a part of the homeless service system this is not the same as prevention. Whilst diverting people into secure and affordable housing; and providing opportunities for education and employment is important it alone will not tackle some of the causal factors such as poverty, domestic violence, and child abuse.

Principle 1: A basic right to appropriate accommodation *and* support; for everyone regardless of background or perceived cause of homelessness

“All human beings are born free and equal in dignity and rights.”

RYDON supports the enactment of legislation that protects and ensures the human right to adequate housing, which incorporates a prohibition on forced evictions. This human right is contained in article 11(1) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Australia, as a party to this international treaty, has a duty to legislate to its citizens. Article 11(1) of the *ICESCR* provides as follows:

The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

RYDON believes that homelessness legislation should be framed openly within a rights-based framework, reflecting Australia’s commitment to the protection of human rights. It is essential that new legislation retain the rights dialogue contained in the existing Supported Accommodation Assistance Act 1994.

The human right to **appropriate shelter and support for every individual, regardless of background or perceived cause of homelessness**, should be the foremost principle underpinning homelessness legislation. Further, homelessness legislation should reflect the belief of human rights conversation and the six main instruments of human rights, to which Australia is party: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; Convention Against Torture; Convention on the Elimination of All Forms of Racial Discrimination; Convention

on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child

Principle 2: Social justice and inclusion

RYDON supports a move toward the concept of achieving 'social inclusion' for all. However the term and application of 'social inclusion' is still unclear. It is important that a broad interpretation of the concept of 'social inclusion' is reflected in legislation.

RYDON supports a broad interpretation of social inclusion, one that is beyond just economic participation and opportunity to participate in the work force. RYDON believes that social inclusion for the terms of a homelessness legislation needs to encompass 'providing people with the fundamentals of a decent life within their own community: opportunities to engage in the economic and social life of the community with dignity; increasing their capabilities and functioning; connecting people to the networks of local community; supporting health, housing, education, skills training, employment and caring responsibilities.'

Social Inclusion needs to recognise the diversity of people and geographical challenges. Isolation needs to be addressed as a major contributor to homelessness. A broad interpretation of the concept of social inclusion needs to underpin legislation in this area.

Importantly, it must be acknowledged that social justice will not necessarily follow social inclusion. Systemic disadvantage still exists in Australia – in burdensome eligibility requirements within welfare systems and many other examples. One of the risks of not enshrining social justice principles is the risk identified in imposing a positive duty to house. For example, Australia must take care to regulate standards of housing to avoid problems like those experienced in UK; and to not contribute to 'intentional homelessness' (i.e. situations where housing found inappropriate for individual's needs; not to contribute to social exclusion and isolation, for example where homeless young person housed away from support network due to limited resources)

Children and young people experiencing or at risk of homelessness are not accessing mainstream systems from a level playing field. This should be recognised and inform the development of legislation working toward achieving social inclusion and a streamlining of mainstream service provision. RYDON and the sector support for a Charter of Rights – enforceability through positive duty positioned with States and Territories.

Principle 3: A whole-of-government focus on service provision

The new Homelessness Act must acknowledge the increased role of the mainstream service system. Given that it is approximated that only 15% of all homeless people enter specialist services, it is clear that all government departments including but not limited to Child Protection, Housing, Health and Justice etc also need to be covered by the Act.

If (as stated in the White Paper *The Road Home*) homelessness is everybody's business, we must ensure homeless people (or those at risk of homelessness) have the right to minimum quality standards of service from ALL service providers. This includes mainstream government departments. This has the potential for the entire community of services across all levels to unshackle their thinking from 'program' based response belonging to specialist homelessness services and to shake off idea that response for homelessness people must follow a traditional pathway of 'crisis' – 'mid-term' – 'long-term'.

Principle 4: Focus on safety and well-being

Ensuring quality of service amongst specialist homeless service providers is important, but we risk missing the majority of the homeless population who don't access these services. Given the increased role of mainstream departments as outlined in the White Paper, it makes sense any regulations are applicable to anywhere homeless people or those at risk of may access assistance.

Safety and well-being for all members of the community is a human right. B legislation containing this principle we can ensure a safe environment within all levels of service delivery (Government, Non-Government and business) that would include a seamless transition between services and models. The needs to be legislated funding linked to coordination of services in all local communities, especially regional, rural and remote regions.

Principle 5 Quality services based on *diverse* needs

Principle 6: Respect for cultural backgrounds and beliefs

Principle 7: Respect for dignity of individuals including developmental needs

There is a strong link between these three principles, but each is also important to include in its own right.

RYDON believe that those at risk of or experiencing homelessness should be involved as far as possible in decision making and responses. 'A 'rights-based approach' to homelessness involves homeless people being at the centre of decision making that affects them. As such, legislation developed in this area should be developed with ongoing consultation with those it seeks to protect. The consultation of homeless and at risk persons, as well as sector workers, is essential to achieve a just and balanced legislative response to homelessness. As we said earlier we see this opportunity as the beginning of an ongoing dialogue.

One important element of the principles above is to have a clear definition of homelessness and policy responses that:

- does not exclude some client types e.g. young people, those with a mental health issues, Aboriginal or Torres Strait Islanders, refugees or new arrivals etc

- covers early intervention, at risk and homeless persons
- supports a 'no wrong door' policy
- supports 'no fault'
- fits with other legislation
- Inclusiveness tailored to individual client needs as
- decision making should be, as far as possible, in the hands of the client
- Outcomes measured on tailored client results and not on external standards
- Flexibility – as an individual's needs change
- Client-focused approach based on respect/dignity

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

RYDON proposes that new national homelessness legislation needs to stand alone. The new legislation must be nationally consistent and accountable by all government, non-government and business. For example include the ability to prosecute public authorities for failure to comply with minimum standard requirements or failure to provide shelter as a fundamental entitlement

The scope of response to homelessness would be too limited should it be inserted into an existing legislative instrument or combined with a housing legislation or social inclusion legislation.

If homelessness as according to 'The Road Home' is "everybody's business", the scope of any legislation needs to link to all government initiatives and the ongoing National consultation on Human Rights may raise some applicable issues relevant to this inquiry into homelessness legislation

Once again we reiterate that RYDON supports a broad interpretation of social inclusion one that is beyond just economic participation and opportunity to participate in the work force.

The scope of homelessness legislation should include early intervention, prevention and needs to be linked to rights and activity promoting social inclusion

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

It is essential that homelessness legislation provides for quality services. We question the reference to '*improving*' the quality of service as perhaps a view that current homeless services are not delivering quality services. In NSW, specialist homeless services under the DoCS performance management framework (PMF) are required to demonstrate compliance with a set of Good Practice Guidelines.

RYDON strongly believes that legislation can play an essential a role in ensuring a level of quality service to young people experiencing or at risk of homelessness

To ensure quality of service for people who are homeless or at risk of homelessness needs to occur with the understanding that the following conditions within a legislative framework is met....

1. That accreditation or standards are not just for specialist homelessness services, but for that work with homeless people including mainstream services. Legislation of standards applies to anyone providing services to homeless people
2. Accreditation processes are supported and resources. Accreditation can be time and resource intensive and would require a commitment to adequately resource services going through the process.
3. People who are at risk or experiencing homelessness must have the security of a guaranteed standard of service should they need to enter assisted accommodation and other services provided for by the legislation. Of concern is the fact that 'people are reported to not complain about substandard accommodation, because they have nowhere else to live if they are evicted as a result of the complaint.' Legislation should provide not only for minimum service standards, but also for grievance mechanisms that clients of the sector can follow free from the threat of adverse repercussions on their housing situation.

RYDON is not confident that focusing on accreditation as an end in itself will substantially effect a reduction in homelessness nor lead to improved outcomes for clients - particularly without increased resources. One concern held is the risk of standards of assisted accommodation slipping to conform to requirements of legislation – that housing, in providing a roof for those experiencing homelessness, may become the sole pursuit addressed in practice following the enactment of legislation in this area.

A review of approaches taken by international jurisdictions has revealed a similar problem. In the UK, where the Housing Act places a duty on local government authorities to provide housing for those in need, 'housing' has been interpreted as solving the "rooflessness" issue. In this context, eligible individuals may be housed in short-term unsustainable accommodation such as bed and breakfast or hotels. Targets and quantity driven service specifications can be unhelpful and encourage taking the easy cases. This approach of providing a short-term solution to "rooflessness" is, in RYDON's opinion, harmful to the overarching goal of ending homelessness on a permanent and sustainable basis in Australia.

If there is an introduction of standards and accreditation within the new legislation then there need to be a grievance process possibly with a defined role for an Ombudsman that protects and promotes a voice for the homeless.

But even more important than standards and accreditation is a new homelessness legislation that strengthens local community and provides a framework that supports a strong network of service providers working together to address homeless issues.

Homelessness legislation in Australia should seek to protect universal human rights. Accreditation and consistency of service provision is important, but drastically improved funding and recognition of the work already being done in the sector is equally important.

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

RYDON welcomes the opportunity for innovation and development that new homelessness legislation provides. RYDON is however concerned by the possibility that the government, in looking to the new, may overlook the positive parts of existing legislation governing homelessness services in Australia.

RYDON believes that the Supported Accommodation Assistance Act 1994 (the SAA Act) has served Australia and homeless young people well. This has been reflected in the evaluations of the Supported Accommodation Assistance Program (SAAP) over 5 year periods since the program's inception in the 1980's. Research, including the AHURI report 'Recent International and National Approaches to Homelessness,' supports the value of SAAP, and notes that Australia has a much more advanced response to addressing homelessness than countries in Europe, the UK and the USA.

The Preamble to the SAA Act provides the following elements which RYDON feel are important to maintain in a new legislation:

- That Parliament recognises the need to redress social inequalities and to achieve a reduction in poverty;
- That homeless people form one of the most powerless and marginalised groups in society.....aims to empower people experiencing homelessness and maximise their independence;
- That Australia recognises and seeks to protect the universal human rights and fundamental freedoms, including people who are homeless or at risk of homelessness, making specific reference to six international human rights instruments; and
- That legislation relating to homeless people should focus on the individual needs of people experiencing homelessness and their right to non-discrimination and equality.
- That there must be community consultation mechanisms in terms of the development of policies relating to, or impacting on, people who are homeless or at risk of homelessness.

The other important element of the SAA Act 1994 is that it 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 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.

These safeguards should be maintained and strengthened by new homelessness legislation.

International Approaches: Lessons Learned

The United Kingdom has a long history of having homelessness responses based in legislation. There are a number of concerns about following some of the UK positions within an Australian context.

RYDON strongly believes that we need more than a *Housing Act* in Australia. Legislation must be developed that specifically protects the rights and interests of all individuals experiencing or at risk of homelessness. In both the UK and South Africa the Housing Act models have fallen short of this wider vision.

Some of the key areas of concern by utilising these Housing Acts include:

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 (i.e. rough sleeping) are counted in homelessness statistics, this will lead to solutions and policies that only tackle half the problem. In the UK only those who are eligible for assistance, unintentionally homeless and in priority needs are counted and therefore in the homeless statistics – those who are intentionally homeless, not in priority need and ineligible for assistance are not counted.
2. ***Tackling the causes of homelessness*** - the UK legislation 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. ***Priority need and vulnerability*** - Young people were particularly disadvantaged due to the fact that they were not in the initial priority allocation under the UK Act. This was changed in England with the introduction of the Homelessness Act 2002 where young people were included in the priority group. It is interesting to note that most UK countries now all include certain groups of young people in the priority group. Scotland is the most progressive in terms of young people 18 -20

as they take into account risk factors over and above the 'leaving care' category. These factors include young people at risk of exploitation and substance misuse. Young people have however been deterred as they fear that they will not be prioritised and encouraged to return home.

Under the UK Act it has also been found that people from CALD backgrounds including migrants and refugees are particularly disadvantaged as they are excluded from any assistance under the Act. The issues regarding eligibility have fluctuated through the different UK acts.

There has also been some concern expressed about the paper based process of determining vulnerability.

4. ***Standards of temporary accommodation*** - In the UK there have been significant concerns about the standards of temporary accommodation. In particular there has been strong concern about the use of private provision through Bed and Breakfast places especially for young people 16 – 17 years of age. Further people are staying for extended periods of time due to the lack of appropriate housing options.

We need to ensure any new homelessness legislation we develop learns from other countries but must also ensure that any legislation meets Australian conditions and aspirations. By looking at international legislations and systems, Australia should be able to:

- i) identifying difficulties in data collection:
 - Lack of suitability of current practices
 - Lack of coordination between state/federal reporting
 - Misplaced value on legislative structures with good reporting and evaluation measures, where other legislative structures exist with better content yet troublesome reporting
- ii) Coordination of services; government and non-government service providers must be accountable to the same standards of practice
- iii) Definitions around homelessness:
 - Impact of labels on client groups – differentiation between operational definition and how a person might define his or her status
 - Impact of labels such as 'primary' 'secondary' 'tertiary' homelessness – this kind of allocation of funds or provision of services

We need to consider and keep in mind when looking at what others do, how different legislation may or may not work with Australian people in Australian conditions.

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.

RYDON is keen for a new Homelessness legislation to provide a standard for all agencies that may work with homeless or at risk of homelessness people. One way of doing this is for the new legislation to have an ability to influence other Acts and regulations to make them “homelessness proof” such as a Charter for all agencies where homelessness is not an outcome and there are no pathways that lead to homelessness and agencies are accountable.

There are currently a range of other regulatory systems (just in NSW just for specialist homelessness services) at play that services need to comply with depending on the range of service activities that they are undertaking. These include, but are not limited to:

- *Housing Act* NSW- Community housing standards
- *Children and Young Persons (Care and Protection) Act* NSW - Child Protection licensing and regulations processes
- Office of the Children’s Guardian – Quality Management System.

There needs to be some streamlining of standards and regulatory processes. An issue which arose from consultation was the difficulties experienced by smaller funded services struggling to achieve accreditation in a complex, under-resourced environment. Consideration needs to be given to having levels of compliance based on the size of the service. When considering accreditation issues, there would be a benefit to work out ways to cross credit across a range of regulations from a variety of field to prevent double workloads to meet accreditation.

RYDON supports the need for standards of service delivery in services. In the past, RYDON notes that the homeless service system has had a set of minimum standards. Drafted in 1993, these are now quite dated. 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 networking and professional development opportunities for the workforce.**

There should be a mandate for consultation within the new legislation and any accompanying regulations – services, community and most importantly people who are homeless or at risk of homelessness should be involved in whole reform process.

Concluding Remarks

To recap on the important point of this submission is that the new legislation overseeing homelessness needs to be an overarching Act with other legislation that will be responsive to it. We need to retain human rights aspects of SAA Act And focus on the basic human right for safe shelter and support. Some of the other points include:

- A need to maintain focus on causes and prevention of homelessness for all people without any exclusions
- A legislation that encourages an integrated service system with a no wrong door philosophy
- Legislation applies to *anyone* providing services to homeless people, including mainstream services
- Standards for services
- The scope for innovation should not be overlooked or made difficult within the legislative framework
- Legislate for consistent funding: this recognises a clear link between secure funding and quality improvement
- Homelessness proofing – a process where any policy or new legislations need to ensure they do not increase the homelessness levels amongst any particular group or at risk category.

Any new homelessness legislation would become meaningless if there are no enforceable provisions embedded within it.

RYDON suggests the amendment of Anti-Discrimination legislation to prohibit discrimination on the basis of social status. A relationship between the Homelessness Act and Anti-Discrimination legislation would provide avenues for individuals protected under the Act to instigate a complaints process.

The Act must also provide for accountability on behalf of the Minister. This could be achieved by a reporting mechanism requiring annual reporting to Parliament with specific reference to targets set by Federal and State governments.

There is also a strong need to change community attitudes to homelessness and have high level support for more positive outcomes e.g. There are different outcomes for owner occupiers and tenants as a result of unacceptable behaviours or mental illness; also development applications are often refused for housing providers because of community attitudes to public housing tenants in the neighbourhood.

Finally, new legislation must provide for ongoing consultation with the community. It is essential that homeless and at risk young people have a say in what is decided in their interests