



Submission No. 55

(homelessness legislation)

A.O.C. Date: 25/08/09

Submission to the Inquiry into the review of Homelessness Legislation

Standing Committee on Family, Community, Housing & Youth

August 2009

Recommendations

Recommendation 1:

The right to adequate housing should be enshrined in legislation. Such legislation would be the principal instrument under which other legislation related to housing and funding of service providers and support services would sit.

Recommendation 2:

A clear definition of homelessness must be developed which encapsulates a scope and complexity of homelessness that recognises that it is more than housing, but at the same time acknowledges the need for an appropriate dwelling.

Recommendation 3:

Homelessness legislation must be framed on human rights protections building on those rights already enshrined within the SAA Act 1994.

Recommendation 4:

The development of any national regulatory system for homelessness services must take into consideration all existing regulatory systems to avoid duplication and unnecessary administrative burden on service providers. We further recommend that adequate funds and resources must accompany any regulatory and continuous quality management systems implemented and that both government departments and non-government service providers are held accountable.

Recommendation 5:

Program funding and accountability requirements must have a degree of flexibility to allow a multidisciplinary approach and joined up service delivery response to the individual.

Recommendation 6:

The issue of fault or attributing blame should never be included in legislation or used to limit an individual's right to assistance. Regardless of how people become homeless, easy access to housing and support should be available to all who need it.

Recommendation 7:

Every effort must be made to avoid duplicating evidence and reporting requirements when creating new regulatory systems intended to achieve the same outcomes already required by existing government frameworks.

Introduction

"Speak up for people who cannot speak for themselves. Protect the rights of all who are helpless. Speak for them and be a righteous judge. Protect the rights of the poor and needy."

(Proverbs 31:8-9, Good News Bible)

The Salvation Army Australia Eastern Territory covers the geographic area of the Australian Capital Territory, New South Wales and Queensland. We operate crisis and medium term accommodation services; Moneycare financial counseling services; youth accommodation, education and training centres; family counselling and other service types, to support homeless and vulnerable people, in regions as far apart as Cairns in the North; Canberra in the South; Bondi in the East to Broken Hill and Mt Isa in the West. There has been consultation with all these services in the development of this paper.

We were very pleased to engage with government in the development of a national response to homelessness by submitting to *Which Way Home? A new approach to homelessness* ('the Green Paper') we now continue to engagement through this submission to further strengthen the government's stated commitment to improving the policy and service system response to homeless people through the development of sound legislative frameworks.

Our comment on the five terms of reference of this inquiry follows:

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

We believe that all legislation aimed at redressing homelessness should include (but not be limited to) the following:

- A Right to adequate housing
- A Right to health
- A Right to safety
- A Right to privacy
- A Right to education
- A Right to non-discrimination
- A Right to social security
- A Right to vote
- A right to employment

The *Supported Accommodation Assistance Act 1994 (SAA Act)* has provided some level of human rights protection. This legislation provided the foundation for the Supported Accommodation Assistance Program (SAAP). However that program was only able to accommodate 19% of homeless persons, leaving the remaining 81% of the nation's homeless population with no such protection under this legislative framework.¹

If the intent of the Australian Government's White Paper on homelessness² is to improve service delivery to homeless people and people at risk of homelessness by both the government and non-government service systems, then legislation must have clear and detailed principles to ensure this intent.

Clarity of meaning must be paramount within legislation. We strongly recommend a broad, non-discriminative definition of homelessness which encapsulates the scope and complexity of homelessness, recognising that it is far deeper than 'rooflessness', while at the same time acknowledging the need for an appropriate dwelling.

Recommendation 1:

The right to adequate housing should be enshrined in legislation. Such legislation would be the principal instrument under which other legislation related to housing and funding of service providers and support services would sit.

Recommendation 2:

A clear definition of homelessness must be developed which encapsulates a scope and complexity of homelessness that recognises that it is more than housing, but at the same time acknowledges the need for an appropriate dwelling.

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

The Government's commitment to a social inclusion agenda is very much welcomed by The Salvation Army as we are also committed to ensure the full participation of all individuals in all aspects of social and economic life, insofar as their personal physical, emotional and mental capacities will allow. Fair and reasonable assessment as to the individual's capacity to participate will not force an unreasonable expectation of

¹ Chamberlain C, MacKenzie D 2009. Counting the homeless 2006: Cat. no. HOU 204. Canberra: AIHW. © Commonwealth of Australia 2009

² *The Road Home: A national approach to ending homelessness, December 2008 Australian Government*

participation upon that individual and that non-participation will not give rise to unjust and harsh exclusionary penalties. We believe that addressing issues of homelessness should form a core part of any Government social inclusion framework which gives just consideration to an inalienable right to a home. It is imperative therefore, that any legislation to address homelessness must come from a place of inclusion that has human rights as its foundation stone.

Human Rights, an Essential Part of Everyday Life

Eleanor Roosevelt, the Chairperson of the United Nations Commission on Human Rights that drafted the Universal Declaration of Human Rights, said;

“Where after all, do human rights begin? In small places close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works...Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”³

The question then becomes; where do human rights begin for those who have no home?

“The Declaration⁴ has a moral power which is of enormous weight and influence. The statement of the rights represent a goal, or a standard, to which every man can look and with which he can compare what he in fact enjoys. The fact that no country was prepared to vote against the Declaration indicates its compelling moral force.”
H. V. Evatt, former Deputy Prime minister of Australia 1949⁵

“The protection of human rights to promote the dignity of the individual is too important a matter for symbolic gestures alone. It is only through the pursuit of practical and effective efforts to promote human rights that we show our real commitment to the welfare of individuals and society.”
Alexander Downer, former Australian Minister for Foreign Affairs.⁶

Recommendation 3:

Homelessness legislation must be framed on human rights protections building on those rights already enshrined within the SAA Act 1994.

³ Quoted at <http://www.humanrights.org.au/human-rights.htm>

⁴ Refers to the [Universal Declaration of Human Rights \(1948\)](#)

⁵ <http://humanrights.org.au/quotes.htm>

⁶ Ibid.

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

The Salvation Army supports the concept of continuous quality improvement and sees that this proposed new national homelessness legislation would have a role in ensuring a high standard of service delivery. However, we believe that any homelessness regulatory system developed must take into consideration the other regulatory systems already in place. Many multi-faceted organisations such as The Salvation Army are already subject to quality assurance and regulatory systems, for example: Aged Care; Child Care; Disability Services and Community Housing.

Therefore we strongly advocate for synchronisation between these and future regulatory systems to eliminate repetitive reporting and therefore limit the burden of administration duplication which will in turn lessen the administrative burden. We see that this could be achieved in conjunction with the 'joined-up' approach advocated within Chapter Four of *The Road Home*.

We also identify a need for adequate funds and resources to accompany any regulatory and continuous quality management systems implemented. The provision of adequate resources acknowledges the significant impact of regulation on administrative procedures for service providers and is essential to ensure compliance.

Because this proposed legislation is to replace the SAA Act 1994, we recommend that any new legislation must ensure that both government and non-government services are bound to the new legislation. This is to maintain a key strength of the SAA Act which legislates for a 'minimum' response for a marginalised group of people who fall through the cracks of other service systems.

The Road Home outlines an intention to remodel the service system to create a seamless and joined up response resulting in a 'no wrong door' approach to service delivery. It further identifies that an overarching policy framework is needed to guide all government approaches to addressing homelessness in a flexible and person centred way.

Therefore we recommend that program funding and accountability requirements must also have a degree of flexibility to allow a multidisciplinary approach and joined up service delivery response to the individual.

Recommendation 4:

The development of any national regulatory system for homelessness services must take into consideration all existing regulatory systems to avoid duplication and unnecessary administrative burden on service providers. We further recommend that adequate funds and resources must accompany any regulatory and continuous quality management systems implemented and that both government departments and non-government service providers are held accountable.

Recommendation 5:

Program funding and accountability requirements must have a degree of flexibility to allow a multidisciplinary approach and joined up service delivery response to the individual.

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

In Australia:

The Supported Accommodation Assistance Act 1994 provided some level of protection for less than one quarter of the 105,000 Australian men, women and children seeking assistance because of homelessness. New homelessness legislation must maintain the safeguards contained within the SAA Act while expanding the protections to include all who are homeless or at imminent risk of homelessness.

The SAA Act's purpose was to grant financial assistance to the states and territories to deliver the Supported Accommodation Assistance Program. SAAP has been in operation since the mid eighties, with external reviews undertaken every five years. These reviews have consistently shown that SAAP has been successful in developing broad and effective responses for many who have been fortunate enough to gain access to its services.

In Queensland, the *Community Services Act 2007* (the CSA) began operating on 31 March 2008 and applies to all funded services across Queensland and in particular services funded through SAAP. This legislation outlines contractual obligation, under

eleven Standards for Community Services. This state's Strengthening Non-Government Organisations strategy provides resources and support to increase the capacity of the non-government sector, in delivering a continuous cycle of improvement and therefore more responsive service system, under this new legislation. As 2008 - 2010 is the self-assessment and improvement stage, in preparation for commencement in 2011, the success or otherwise of this strategy is yet to be known.

United Kingdom:

The United Kingdom has had legislation for homelessness since 1977. At that time it was considered as progressive, landmark legislation. However, the use of terminology such as, 'temporary accommodation'; 'priority need' and notably; 'intentional homelessness' has caused concern and debate across the UK. Questions continue regarding who can reasonably be described as homeless, the issue of fault, and who should receive help.⁷

Challenges arising from the legislation continue to fuel current debate in the following areas:

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 and addressed. Only counting those who are roofless, that is, rough sleeping, will lead to solutions and policies that only tackle half the problem. For example, in the UK – those deemed 'intentionally homeless', not in priority need and ineligible for assistance are not counted in the homelessness statistics.

2. Tackling the causes of homelessness

Discussion regarding government policy approaches - focuses too much on pre-crisis intervention without enough focus on preventing the structural causes of homelessness.

These structural issues include 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.

3. Retention of the low threshold for interim accommodation

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

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 was lobbied for. The *Housing Act 1996* extended priority to those who have spent time in prison or in the armed forces so that they no longer need to pass the vulnerability test.

Notably, young people were particularly disadvantaged because they were not in the initial priority allocation. In England, the introduction of the *Homelessness Act 2002* finally included young people in the priority group.

In Scotland young people aged 18 -20 receive priority based on risk factors such as exploitation and substance misuse.

As further social exclusion factors are highlighted, priority eligibility criteria have been extended.

5. Standards of temporary accommodation

Significant concerns are held for the standards of temporary accommodation and the question is raised 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. The McKinney-Vento Homeless Education Assistance Act 2001 was later added as an extension. Funding to meet the demand is a critical issue for America along with the need for 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 McKinney-Vento reauthorisation 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.

Recommendation 6:

The issue of fault or attributing blame should never be included in legislation or used to limit an individual's right to assistance. Regardless of how people become homeless, easy access to housing and support should be available to all who need it.

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 homeless sector.

For The Salvation Army Australia Eastern Territory whose homelessness and community services work crosses the state and territory jurisdictional boundaries of the Australian Capital Territory, New South Wales and Queensland, the scope of our work commits us to various compliance and regulatory regimes of these three jurisdictions and also Commonwealth Government legislation.

We have not undertaken the huge task of comparing the various legislative and regulatory models in detail. However we would suggest that because all frameworks are aimed toward improvement in quality of life through accountable, transparent governance and quality service delivery practices to groups of vulnerable people, it would logically follow that there would be elements of each that would be applicable to any legislative frameworks developed in any human service. This further emphasises the necessity for consultation and collaboration across both government and non-government service systems in the development of new homelessness legislation.

As stated in our recommendation number five, in the development of any national regulatory system for homelessness services there must be consideration of all existing regulatory systems to avoid duplication and unnecessary administrative burden on service providers from the view point of time, effort and financial costs. We further recommend that adequate funds and resources must accompany any regulatory and continuous improvement / quality management systems which may be implemented.

Recommendation 7:

Every effort must be made to avoid duplicating evidence and reporting requirements when creating new regulatory systems intended to achieve the same outcomes already required by existing government frameworks.