

# **Submission on the principles and service standards for new homelessness legislation**

to the House of Representatives Standing  
Committee on Family, Community, Housing and  
Youth

**Shelter NSW**

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## **About Shelter NSW**

Shelter NSW is a non-profit social change agency that promotes the housing interests of low-income and disadvantaged people in New South Wales. Shelter's mission is to work for a just and equitable housing system.

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## Summary of recommendations

### **2.1 The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness.....4**

The following principles should be included in the new homelessness legislation:

- Principle 1: All Australians have access to affordable, safe, adequate, appropriate and sustainable housing.
- Principle 2: People who are homeless or at risk of homelessness must be treated with dignity and respect in a non-discriminatory way. The services provided to them must enhance their safety and autonomy, and maximise their self-reliance and social inclusion.
- Principle 3: People who are homeless or at risk of homelessness are entitled to contribute to the ongoing improvement of services, policies and programs.
- Principle 4: Where support services would enhance wellbeing and the sustainability of accommodation, priority should be given to the provision of tenancy management and support services by separate agencies.
- Principle 5: People who are homeless or at risk of homelessness who require long-term housing should be provided with access to long-term accommodation, rather than temporary accommodation.
- Principle 6: People who are homeless or at risk of homelessness should be provided with choices in the provision of support and other services.

### **2.2 The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights.....10**

The new homelessness legislation should require all levels of government to address social inclusion through services and linkages between services, as a means of addressing social isolation, preventing homelessness and breaking the cycle of recurrent homelessness.

Regarding the nationally consistent regulation of residential tenancy databases, the following principles should be included:

- people should not be unfairly listed in residential tenancy databases;
- people should be able to access the information that is held on them;
- people should have a right to challenge the information held and have inaccurate records updated; and
- penalties should be imposed for wrongful listings and the failure to remove inaccurate records.

### **2.3. The role of legislation in improving the quality of services for people who are homeless and at risk of homelessness.....11**

Separate and coordinated national minimum standards for different types of homelessness services (for example, crisis accommodation services and

homelessness outreach services) should be developed, as well as for mainstream agencies which provide services to people who are homeless and at risk of homelessness. The minimum standards should include a requirement for continuous improvement.

**2.4. The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas.....12**

The effectiveness of the new homelessness legislation will require:

- adequate funding for homelessness services and housing assistance;
- the inclusion of a broad definition of homelessness;
- annual reporting on progress under the legislation to the Commonwealth Parliament; and
- a review of the impact of Commonwealth legislation and policies which can cause and exacerbate homelessness, for example, the eight-week non-payment penalty for recipients of Newstart who fail to meet the conditions of their benefits.

**2.5. 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.....14**

The development of a regulatory model for the homelessness sector could utilise the following as starting points:

- the National Standards for Disability Services, the Australian National Disability Abuse and Neglect Hotline, and the Complaints Resolution and Referral Service, in the disability services sector; and
- the Charter of Residents' Rights and Responsibilities from the Department of Health and Ageing and the Aged Care Commissioner, from the aged care sector.

The House of Representatives Standing Committee on Family, Community, Housing and Youth is inquiring into the principles and service standards for new homelessness legislation. This submission addresses the matters in the inquiry's terms of reference.

## **1. Background to the inquiry**

The inquiry is taking place at a time of increased focus on homelessness and the insufficient supply of affordable housing by the Commonwealth Government and state and territory governments.

This inquiry provides a welcome opportunity for community input into the development of the initiative announced by the Commonwealth Government in its white paper on homelessness, *The road home*, in December 2008 – the enactment of new legislation to ensure that people who are homeless or at risk of homelessness receive 'quality services and adequate support'.<sup>1</sup>

The following features of the white paper in particular create a framework for shaping the new homelessness legislation:

- the two headline goals: to halve overall homelessness by 2020; and to offer accommodation to all rough sleepers who need it by 2020;<sup>2</sup>
- the three main strategies: early intervention to prevent homelessness; improving and expanding services responding to homelessness; and breaking the cycle of recurrent homelessness;<sup>3</sup>
- the Commonwealth Government's guiding principles in implementing the white paper, such as: preventing homelessness is important; social inclusion drives our efforts; clients need to be placed at the centre of service delivery and design; the safety and wellbeing of all clients is essential; the rights and responsibilities of individuals and families need to be protected; and joined-up service delivery needs joined-up policy.<sup>4</sup>

The white paper on homelessness is part of a suite of initiatives on housing assistance and homelessness which have been introduced by the Commonwealth Government since 2008 to address a range of housing needs and issues:

- the National Affordable Housing Agreement;
- the 'A Place to Call Home' scheme;
- the National Rental Affordability Scheme;
- the National Housing Supply Council;
- the Housing Affordability Fund;
- the First Home Savers Accounts;
- the National Partnership on Homelessness;
- the National Partnership on Social Housing;
- the National Partnership on Remote Indigenous Housing;
- the First Home Owner Boost;

- the Social Housing Initiative and funding for Defence Housing Australia as part of the National Partnership on the Nation Building and Jobs Plan;
- the revision of the Commonwealth Property Disposals Policy; and
- the National Housing Supply Council.

Those who are homeless are not just at the extreme end of housing need – without access to affordable, safe, secure, appropriate and long-term housing. They are also vulnerable to exclusion from resources, services and supports, employment, a sense of belonging and community, and a sense of control over the space in which they live<sup>5</sup>, as well as vulnerable to experiencing a complex range of disadvantages and needs.

The provision of supported accommodation for homeless people under the Supported Accommodation Assistance Program (SAAP) is governed by the *Supported Accommodation Assistance Act* 1994, and until 31 December 2008, funding for the program was provided under the SAAP V Agreement. From 1 January 2009, the National Affordable Housing Agreement replaced the Commonwealth–State Housing Agreement and the SAAP V Agreement, and the new agreement uses the term ‘homelessness services’ to describe services previously funded under SAAP.

The principles and service standards for the legislation which will replace the Supported Accommodation Assistance Act can play a critical role in preventing, reducing and responding to homelessness, and in meeting the white paper’s goals for 2020.

## **2. Response to the inquiry’s terms of reference**

Shelter NSW works to advance the housing interests of low-income and disadvantaged people in New South Wales. Our concern extends beyond ‘bricks and mortar’, and we also support:

- the role of consumer participation in helping to make the housing system stronger and fairer; and
- the strengthening of communities based on people’s needs coming first.

Shelter’s interest in the principles and service standards for the new homelessness legislation is framed by these factors.

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

We suggest the inclusion of the following principles in the new homelessness legislation.

We submit that the effectiveness of the homelessness legislation will be enhanced by the principles applying not only to homelessness services but also to mainstream services which provide services to people who are homeless or at risk of homelessness – for example, hospitals, Centrelink and the legal and educational systems.

This will help to create a consistent, whole-of-system response to homelessness which the white paper calls for in principles such as, ‘Homelessness must be seen as a shared responsibility’ and ‘Joined-up service delivery needs joined-up policy’.<sup>6</sup>

**Principle 1: All Australians have access to affordable, safe, adequate, appropriate and sustainable housing.**

Australia is a party to the International Covenant on Economic, Social and Cultural Rights, and Article 11 of the covenant states:

The States Parties to the present Covenant recognize 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 States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.<sup>7</sup>

The new homelessness legislation is an opportunity for the Commonwealth Government to fully comply with its obligations under the covenant.

We submit that the new homelessness legislation should include the above principle as part of its commitment to the white paper’s goals for 2020. This would also be consistent with the objective of the National Affordable Housing Agreement which states that ‘all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation’.

However we are concerned that it is relatively easy to commit to a principle of universal access to housing, but unless adequate resources are provided, the best of all principles can become inoperable.

A commitment to access to housing is also only meaningful if the following criteria for housing are taken into account:

- security of tenure;
- availability of services, materials (such as safe drinking water), facilities and infrastructure;
- affordability (people should not be left in poverty after they have met their housing costs);
- habitability (ensuring protection from the cold, heat, rain and other threats to health);
- accessibility (in terms of disability and life-cycle needs, and freedom from discrimination);
- location (enabling access to transport, services and other supports, and excluding polluted sites);



- appropriateness (in accordance with cultural and other factors)<sup>8</sup>;
- safety (in both physical and emotional terms); and
- sustainability (social, environmental and financial).

**Principle 2: People who are homeless or at risk of homelessness must be treated with dignity and respect in a non-discriminatory way. The services provided to them must enhance their safety and autonomy, and maximise their self-reliance and social inclusion.**

This principle is based on the principle in the white paper which states that the rights and responsibilities of individuals and families need to be protected.<sup>9</sup> It is also similar to the statement on the protection of the rights of those who are homeless and at risk of homelessness in the preamble to the Supported Accommodation Assistance Act, and the reference to the aim of SAAP being to ‘help people who are homeless to achieve the maximum possible degree of self-reliance and independence’ in subsection 5(2).

The above principle is based on an acknowledgement of the worth of each individual. We believe that a system which recognises this can contribute towards empowering people and supporting them to achieve their maximum degree of independence.

A study of SAAP clients indicated that whilst the most common requirement for ‘getting back on one’s feet’ was housing, resuming a measure of personal control over their lives was also significant.<sup>10</sup> Other facets of self-reliance can include assuming responsibility, confidence, acceptance of assistance, resilience, stability, life skills, problem-solving skills, knowledge of resources and supports, coping behaviours, substance use behaviours, establishing/restoring relationships, accessing support networks and connecting with broader networks.<sup>11</sup>

We suggest that the new legislation should include the above principle, as well as a requirement which is similar to subsection 1.1.3 of the Victorian Homelessness Assistance Service Standards – stating that people using homelessness services should be informed of their rights and responsibilities, and that the information should be presented in an appropriate and accessible way.

**Principle 3: People who are homeless or at risk of homelessness are entitled to contribute to the ongoing improvement of services, policies and programs.**

Consumer participation has a vital role to play in the development of solutions to homelessness – in making services, policies and programs more effective and relevant to the needs of the consumers.

People who have experienced homelessness or the risk of homelessness have first-hand experience of what works or doesn’t work. Sarah, a member of Street Care<sup>12</sup> (the first funded advisory group in New South Wales comprised of people who have experienced homelessness), described the role of consumer input in homelessness services in this way: ‘Homeless people are the experts’.<sup>13</sup>

Another member of Street Care, Adrian, has commented on the value of consumer expertise as well as the democratic right of those affected by decisions to participate in the decision-making process:

Homeless people should be involved because managers and workers at services, as well as governments, do not have all the answers. For all their good intentions the people often put in charge of coming up with and running services on our behalf don't understand what it is like to be homeless, to feel like you are as low as you can possibly go in life. In our experience we also know that many services and groups that advocate for homeless people feel as if people living on the street are incapable of having helpful input into the way services run. This simply is not true.

Perhaps, most importantly homeless people should be involved in the running of homelessness services because it is our right to do so! While this is not often recognised, homeless people having a say on decisions that directly affect them should not be seen as a privilege but rather as our human right.<sup>14</sup>

Consumer voices can be encouraged through a range of strategies, such as complaints procedures for grievances and appeals which are used to improve service delivery, and processes for encouraging feedback as part of standard practice, for example, during entry and exit interviews when people vacate emergency accommodation.

The mechanisms for consumer participation should be clearly communicated to those seeking assistance and exiting services, in an accessible and appropriate way.

Input from consumers can be encouraged not only by services in their design, communications and implementation of policies and procedures, but also by consumer consultations as part of service, policy or program reviews. For example, the Peer Education Support Program in Victoria facilitates consumer feedback as an independent body to provide input into service reviews. It also provides other services such as peer support, training, policy and practice development, and advocacy in relation to homelessness services.<sup>15</sup>

Direct consumer involvement in the provision of services is another method of consumer participation which can be effective. For example, a study of adults with severe mental illness who were disengaged from treatment indicated that during the early stages of treatment, peer providers were skilled in communicating understanding and acceptance to their clients, as well as increasing participation in treatment.<sup>16</sup>

Encouraging consumer participation is supported by the Commonwealth Government's 'Social inclusion principles for Australia'. The third principle, 'A greater voice, combined with greater responsibility', includes the following:

Individuals and service users must have a say in shaping their own futures and the benefits and services that are offered to them. Detailed feedback from users and community members and genuine and inclusive consultation are important sources

of information to improve policy settings and service delivery ... Organisations – both government and non-government – also have responsibilities to listen and respond, and to make sure their policies, programs and services help to build social inclusion.<sup>17</sup>

Encouraging consumer participation in decision-making processes is also encapsulated by the white paper's principle, 'Clients need to be placed at the centre of service delivery and design'.<sup>18</sup>

The role of consumer participation in contributing to empowerment and social inclusion is also important.

Zoe from the Peer Education Support Program described this process:

The ability to have a voice within a sector that has, in the past, been isolated from the experiences and feedback from the people that they are trying to assist has been an empowering experience. We are not only heard but we are appreciated and taken seriously, which in turn has made my ability to develop my own self-respect soar.

I have been able to finally feel that I am more than a consumer, I am a participant in this sector, not only helping myself to achieve the things in life that I deserve, but also paving the way for others like me to have better experiences and outcomes in the future.<sup>19</sup>

Another advantage of consumer participation in services, policies and programs is that it can aid healing and recovery from the trauma of the experience of homelessness.

Zoe from the Peer Education Support Program commented:

I have been able to transform my experiences into something positive, I have been able to transform what was a harrowing, and in many ways ongoing, experience into something that is positive and meaningful.<sup>20</sup>

**Principle 4: Where support services would enhance wellbeing and the sustainability of accommodation, priority should be given to the provision of tenancy management and support services by separate agencies.**

Some people who are vulnerable to homelessness are more likely to sustain tenancies if they are in receipt of support services to promote their wellbeing. A study of SAAP clients in Victoria indicated that even after accessing a public housing tenancy, one in four clients had an ongoing need for SAAP services, and one in five were unable to sustain their tenancy for more than a year.<sup>21</sup>

It is preferable for tenancy management and support services to be provided by separate agencies (with coordinated systems for communication between them), as this encourages a greater sense of independence for the consumer. The tenant is less likely to feel dominated by a single agency, as if his or her life is controlled or even 'owned' by that agency. The impact of a perceived or real power imbalance was

noted by a state housing authority housing policy officer in a report by the Australian Housing and Urban Research Institute:

There are potential tensions in service delivery if a Housing Department is both the provider of the bricks and mortar and the support services. Tenants may be reluctant to let the housing agency know of a problem for fear it will threaten their tenancy. From a housing provider perspective if it is made clear that the provider's role is to fix the doors, locks etc. and that the tenant pays their rent and the agency makes sure that tenants do pay their rent and that the provider has absolutely nothing to do with another agency that may be supporting tenants through financial or grief counselling or drug and alcohol issues, then this has more beneficial outcomes for clients.<sup>22</sup>

The provision of tenancy and support services by separate agencies can also mean that where a tenant is evicted or he or she chooses to leave the accommodation, there is a greater chance that access to support services can be maintained. A study of foyer accommodation (which combines housing for homeless young people with educational, training and other support services) in the United Kingdom has noted that it was difficult to continue providing support services after a young person had left foyer accommodation, particularly when he or she had been evicted.<sup>23</sup>

The separation of tenancy and support services can therefore provide a safety net where a person has been evicted or has chosen to leave, in continuing to support the person's wellbeing and in facilitating access to other, more suitable accommodation.

Also some groups of people who are vulnerable to homelessness are likely to move more often which can lessen the likelihood of consistent access to support services. For example, in an Australian study of people with a psychiatric disability, 40 per cent had moved five times or more over the decade prior to 2006, compared with 20 per cent of households comprised of people unaffected by disability.<sup>24</sup> The separation between tenancy and support services can thus enable a person who is hospitalised for mental health or other reasons to have continuity in the provision of support services.

**Principle 5: People who are homeless or at risk of homelessness who require long-term housing should be provided with access to long-term accommodation, rather than temporary accommodation.**

Access to long-term, rather than temporary, accommodation (with support services) can lead to better outcomes for people who are homeless or are at risk of homelessness. It is not necessary for people to be housed in temporary accommodation until they are considered 'housing-ready'.<sup>25</sup> Access to long-term accommodation can create the stability from which issues such as drug and alcohol or mental health issues can be more easily addressed.

Another advantage of providing access to long-term accommodation is that it can encourage social inclusion and participation in community activities.

The efficacy of this principle is dependent upon a sufficient supply of affordable, safe, secure and appropriate housing for people who are homeless or at risk of homelessness, where it is needed and close to transport, services and other supports.

**Principle 6: People who are homeless or at risk of homelessness should be provided with choices in the provision of support and other services.**

Choosing the providers of support and other services by people who are homeless or vulnerable to homelessness encourages independence, and also allows for personal preferences and changing needs and aspirations to be taken into account. This could include choosing a support worker as well as choosing the style of living arrangements (for example, whether to live alone or who to live with).<sup>26</sup>

Housing and support should be planned and implemented around individuals' needs and preferences, as per the white paper's principle: 'Clients need to be placed at the centre of service delivery and design.'<sup>27</sup>

This principle is linked to the principle concerning the separate provision of tenancy management and support services. The aim is empowerment – to enhance the skills and self-reliance of those who are homeless or at risk of homelessness, and to lessen the likelihood of a dependent relationship developing with a single service provider.

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

A study by the Australian Electoral Commission and the Institute for Social Research at Swinburne University found that only 54% of people who were homeless considered themselves to be regular or intermittent voters.<sup>28</sup> Lack of participation in the voting process by people who are homeless is just one example of social exclusion, and it is to be examined in the second green paper on electoral reform which is due to be released in 2009.<sup>29</sup>

The white paper on homelessness places the Commonwealth Government's response to homelessness in the context of building social inclusion.<sup>30</sup>

We submit that the new homelessness legislation should require all levels of government to address social inclusion, as a means of helping to prevent homelessness and breaking the cycle of recurrent homelessness. This is not just about the creation of services and programs for individuals and communities – it is also about improving linkages between services and programs, such as linkages between homelessness services and education, training and employment programs. Responsibility for encouraging social inclusion is relevant to government services as well as non-government services.

People who have experienced chronic homelessness often suffer extreme social isolation. Offering single-person accommodation in an area disconnected from

social and community networks, services and public transport is not enough, and contact only with paid service providers is not enough.<sup>31</sup> Encouragement and assistance to engage in economic, social and community life not only improves individuals' wellbeing – it can also help people and communities to boost their capacity to deal with crises and address issues which may arise in the future.

Regarding the scope of the new homelessness legislation concerning the area of rights, see Principle 2, above.

In relation to the rights of tenants, we support the development of nationally consistent regulation of residential tenancy databases, and the Commonwealth Government's review of the impact of 'without-grounds termination' clauses in tenancy agreements on homelessness and the lack of legislative protection for boarders and lodgers in some jurisdictions, as stated in the white paper.<sup>32</sup> Robust legislative protection of rights in these areas would contribute to the prevention of homelessness.

With respect to the regulation of residential tenancy databases, we submit that the following principles should be included:

- people should not be unfairly listed in residential tenancy databases;
- people should be able to access the information that is held on them;
- people should have a right to challenge the information held and have inaccurate records updated; and
- penalties should be imposed for wrongful listings and the failure to remove inaccurate records.

### **2.3. The role of legislation in improving the quality of services for people who are homeless and at risk of homelessness**

*Counting the homeless, Australia, 2006* reports that only 20% of the homeless population in Australia was staying in SAAP accommodation on Census night in 2006.<sup>33</sup> *The road home* acknowledges the important role of mainstream services in identifying homelessness and actively responding, and highlights the need for specialist and mainstream services to work together.<sup>34</sup>

We suggest that the new homelessness legislation can improve the quality of services for people who are homeless or at risk of homelessness by requiring the development of separate and coordinated national minimum standards for different types of homelessness services (for example, crisis accommodation services and homelessness outreach services), as well as mainstream agencies which provide services to people who are homeless and at risk of homelessness. The standards should be developed following extensive consultation with homelessness and mainstream services which deliver services to people who are homeless or at risk of homelessness, as well as consultation with people who are homeless or at risk of homelessness.

Sub-subsection 5(4)(f) of the Supported Accommodation Assistance Act sets out the requirement for the development of grievance and appeals procedures, and the development of charters of clients' rights and responsibilities. We submit that the minimum standards for homelessness services should include these two requirements, and that both should be clearly and appropriately communicated to consumers.

Clause 6.7.2 of the SAAP V Agreement sets out a requirement for the promotion of innovation and continuous improvement of homelessness services, and we support the inclusion of a requirement for continuous improvement in the minimum standards.

However continuous improvement requires continuous resourcing. We urge the Commonwealth Government to ensure that the funding of services for people who are homeless or at risk of homelessness is sufficient to enable the white paper's goals for 2020 to be met – including ensuring adequate funding for the services which are funded under the National Partnership Agreement on Homelessness after the expiry of the agreement on 30 June 2013.<sup>35</sup>

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

Our focus is on factors which we submit will influence the effectiveness of the new homelessness legislation.

### **Funding**

Because of issues related to funding and the need to ration resources, it has not been possible for homelessness and housing assistance services to meet the needs of all Australians who are homeless or at risk of homelessness. In addition the social housing system has been unable to grow to meet demand and as a consequence, many households needing affordable housing are now at risk of homelessness. We also draw your attention to our earlier comment concerning the need for adequate funding to ensure the effectiveness of the new homelessness legislation.

### **Definition of homelessness**

The effectiveness of the new legislation is also dependent on how homelessness is defined. A broad definition of homelessness is required, and the legislation needs to clearly indicate who is entitled to receive services.

With respect to the definition of homelessness, we suggest that:

- the definition must not be limited to rough sleepers and those residing in temporary accommodation (in place of long-term housing);
- children who accompany adults to homelessness services should be recognised as clients in their own right, to assist with the effective provision

of services to them (although SAAP was not designed with the needs of children in mind<sup>36</sup>, 76,900 children accompanied adults in SAAP services in 2008–2008<sup>37</sup>);

- people who are at risk of homelessness should be included (in order to capture the white paper's focus on the prevention of homelessness), including specific reference to:
  - people who are currently housed and who are experiencing or are at risk of domestic, family or other violence or abuse; and
  - people who are soon to exit statutory, custodial care and hospital, mental health and drug and alcohol services and do not have access to adequate housing;
- acknowledgements of the physical, spiritual and cultural dimensions of the experiences of homelessness by Aboriginal and Torres Strait Islander peoples and the legacy of colonisation should be included (because Aboriginal and Torres Strait Islander peoples are more likely to experience homelessness than others in Australia, the causes and context of their homelessness cannot be understood without reference to the impact of colonisation on their families and communities, and they have specific needs which must be addressed if their high rates of homelessness are to be reduced);<sup>38</sup> and
- housing should be judged to be adequate where the following factors (which were mentioned in relation to Principle 1, above) are taken into account:
  - security of tenure;
  - availability of services, materials (such as safe drinking water), facilities and infrastructure;
  - affordability (people should not be left in poverty after they have met their housing costs);
  - habitability (ensuring protection from the cold, heat, rain and other threats to health);
  - accessibility (in terms of disability and life-cycle needs, and freedom from discrimination);
  - location (enabling access to transport, services and other supports, and excluding polluted sites);
  - appropriateness (in accordance with cultural and other factors)<sup>39</sup>;
  - safety (in both physical and emotional terms); and
  - sustainability (social, environmental and financial).

### **Reporting on homelessness**

How the effectiveness of the new homelessness legislation is to be determined is critical.

Only 20% of the homeless population in Australia was staying in SAAP accommodation on Census night in 2006.<sup>40</sup> Members of the homeless population who were staying in boarding houses, those who were staying with friends and relatives and those staying in improvised dwellings and sleeping out were not covered by the reporting under SAAP.



We support the inclusion in the new homelessness legislation of a requirement for an annual report to the Commonwealth Parliament:

- evaluating progress towards the white paper's goals;
- covering the full spectrum of the homeless population (that is, not limited to people utilising homelessness services);
- evaluating outcomes from and activities by homelessness services and mainstream agencies which provide services to people who are homeless and at risk of homelessness; and
- assessing progress towards the realisation of the right to adequate housing.

### **Impact of Commonwealth legislation and policies on homelessness**

We believe that the creation of new homelessness legislation should be accompanied by an overhaul of Commonwealth legislation and policies which can cause and exacerbate homelessness, for example, the eight-week non-payment penalty for recipients of Newstart who fail to meet the conditions of their benefits. A report by the Department of Employment, Education and Workplace Relations found that half the people who had received an eight-week penalty could not afford to pay their rent on time, and 2400 of those were evicted.<sup>41</sup>

### **2.5. 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 *Disability Services Act* 1986 governs the provision of services for people with disability, and its goals include responding to the needs and aspirations of people with disability and supporting increased independence and integration in the community. The *Disability Discrimination Act* 1992 governs the rights of people with disability, and the Australian Human Rights Commission is charged with protecting the rights of people with disability and those advocating on their behalf.

The National Standards for Disability Services are made under the Disability Services Act and are comprised of the following standards:

- Standard 1: service access – each consumer seeking a service has access to a service on the basis of relative need and available resources;
- Standard 2: individual needs – each person with a disability receives a service which is designed to meet, in the least restrictive way, his or her individual needs and personal goals;
- Standard 3: decision-making and choice – each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the services he or she receives;

- Standard 4: privacy, dignity and confidentiality – each consumer’s right to privacy, dignity and confidentiality in all aspects of his or her life is recognised and respected;
- Standard 5: participation and integration – each person with a disability is supported and encouraged to participate and be involved in the life of the community;
- Standard 6: valued status – each person with a disability has the opportunity to develop and maintain skills and to participate in activities that enable him or her to achieve valued roles in the community;
- Standard 7: complaints and disputes – each consumer is free to raise and have resolved, any complaints or disputes he or she may have regarding the agency or the service; and
- Standard 8: service management – each agency adopts sound management practices which maximise outcomes for consumers.<sup>42</sup>

The National Standards for Disability Services apply to all services funded through the National Disability Agreement, which replaced the Commonwealth State Territory Disability Agreement from 1 January 2009.

We suggest that the National Standards for Disability Services could make a good starting point for the formulation of standards for people who are homeless or at risk of homelessness under the new homelessness legislation. In particular, we suggest that Standard 3 could be amended to include a reference to maximising self-reliance, and Standard 6 could be revised to include a reference to enhancing social inclusion.

The abuse and neglect of people with disabilities using government funded services can be reported to the Australian National Disability Abuse and Neglect Hotline, an Australia-wide telephone service. The Complaints Resolution and Referral Service assists with complaints about services funded under the Disability Services Act, including business services, Disability Employment Network Services, advocacy services, targeted Support Services and Vocational Rehabilitation Services (VRS).

We submit that these two services provide useful models for the creation of mechanisms for responding to complaints regarding the receipt of services by people who are homeless and at risk of homelessness.

With respect to the development of a charter of rights and responsibilities for people utilising homelessness services, we suggest that the Charter of Residents’ Rights and Responsibilities from the Department of Health and Ageing could provide a starting point:

- A. Each resident of a residential care service has the right:
  - to full and effective use of his or her personal, civil, legal and consumer rights;
  - to quality care which is appropriate to his or her needs;
  - to full information about his or her own state of health and about available treatments;
  - to be treated with dignity and respect, and to live without exploitation, abuse or neglect;

- to live without discrimination or victimisation, and without being obliged to feel grateful to those providing his or her care and accommodation;
- to personal privacy;
- to live in a safe, secure and homelike environment, and to move freely both within and outside the residential care service without undue restriction;
- to be treated and accepted as an individual, and to have his or her individual preferences taken into account and treated with respect;
- to continue his or her cultural and religious practices and to retain the language of his or her choice, without discrimination;
- to select and maintain social and personal relationships with any other person without fear, criticism or restriction;
- to freedom of speech;
- to maintain his or her personal independence, which includes a recognition of personal responsibility for his or her own actions and choices, even though some actions may involve an element of risk which the resident has the right to accept, and that should then not be used to prevent or restrict those actions;
- to maintain control over, and to continue making decisions about, the personal aspects of his or her daily life, financial affairs and possessions;
- to be involved in the activities, associations and friendships of his or her choice, both within and outside the residential care service;
- to have access to services and activities which are available generally in the community;
- to be consulted on, and to choose to have input into, decisions about the living arrangements of the residential care service;
- to have access to information about his or her rights, care, accommodation, and any other information which relates to him or her personally;
- to complain and to take action to resolve disputes;
- to have access to advocates and other avenues of redress; and
- to be free from reprisal, or a well-founded fear of reprisal, in any form for taking action to enforce his or her rights.

B. Each resident of a residential care service has the responsibility:

- to respect the rights and needs of other people within the residential care service, and to respect the needs of the residential care service community as a whole;
- to respect the rights of staff and the proprietor to work in an environment which is free from harassment;
- to care for his or her own health and well-being, as far as he or she is capable; and
- to inform his or her medical practitioner, as far as he or she is able, about his or her relevant medical history and his or her current state of health.<sup>43</sup>

Under the *Aged Care Act 1997*, the Aged Care Commissioner can:

- review certain decisions made by the Aged Care Complaints Investigation Scheme and examine complaints about the scheme's processes for handling matters;

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- examine complaints about the conduct of the Aged Care Standards and Accreditation Agency and the conduct of persons carrying out audits, or making support contacts, under the *Accreditation Grant Principles 1999*; and
- examine matters on the commissioner's own initiative.

The new homelessness legislation could feature the creation of a similar role for an independent commissioner for the investigation of complaints against homelessness and mainstream services by people who are homeless or at risk of homelessness.

In summary, we believe that both the disability services and aged care regulatory models could be applicable to a process of developing a regulatory model for the homelessness sector, which involves consultation with the sector.

## Endnotes

- <sup>1</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, 2008, pp. 44 and 63.
- <sup>2</sup> *ibid.*, p. 17.
- <sup>3</sup> *ibid.*, p. 15
- <sup>4</sup> *ibid.*, p. 19.
- <sup>5</sup> For some rough sleepers, public spaces may come to be equated with a 'home' and so it can be useful to frame homelessness as a losing of one's sense of control over or legitimacy in the space in which one lives (A Coleman, 'Five star motels: spaces, places and homelessness in Fortitude Valley, Brisbane', PhD thesis, School of Social Work and Social Policy, University of Queensland, St Lucia, 2000, p. 40, cited in P Memmott, S Long, C Chambers and F Spring, 'Categories of Indigenous 'homeless' people and good practice responses to their needs', Australian Housing and Urban Research Institute, final report no. 49, 2003, p. i). Whether or not people living in public spaces consider themselves to be homeless is a complex issue (Department of Families, Community Services and Indigenous Affairs, 'Indigenous homelessness within Australia', 2006, p. 22).
- <sup>6</sup> *ibid.*
- <sup>7</sup> International Covenant on Economic, Social and Cultural Rights, Office of the United Nations High Commissioner for Human Rights: viewed 11 August 2009, <<http://www2.ohchr.org/english/law/cescr.htm#art11>>.
- <sup>8</sup> Office of the High Commissioner for Human Rights, 'The right to adequate housing (Article 11(1): 13/12/91; CESCR general comment 4', 1991, [8].
- <sup>9</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, p. 19.
- <sup>10</sup> T Eardley, D Thompson, C Cass and A Dadich, with M Neale, 'Measuring the impact of SAAP-funded homelessness services on client self-reliance', Social Policy Research Centre of University of New South Wales, report for SAAP National Coordination and Development Committee, 2008, p. xii.
- <sup>11</sup> N Kunnen and R Martin, "'Getting back on my feet': exploring self-reliance in the context of supported accommodation and homelessness', Australian Housing and Urban Research Institute, final report, 2004, p. iv.
- <sup>12</sup> Street Care is funded by the City of Sydney and supported by the Homeless Persons' Legal Service (which is a joint initiative of the Public Interest Advocacy Centre and the Public Interest Law Clearing House in New South Wales).
- <sup>13</sup> Sarah spoke at a forum entitled 'Never about us without us', hosted by Street Care and Homelessness NSW on 3 August 2009. The event took place at the Ozanam Learning Centre in Sydney and was part of Homeless Persons Week.
- <sup>14</sup> Street Care, 'Homeless not hopeless: the role of homeless people in service delivery', *Parity*, vol. 24, 2009 (forthcoming).
- <sup>15</sup> The Peer Education Support Program is a program of the Homelessness Advocacy Service, which is part of the Council to Homeless Persons in Victoria: viewed 7 August 2009, <[http://www.chp.org.au/has\\_pesp.shtml](http://www.chp.org.au/has_pesp.shtml)>.
- <sup>16</sup> D Sells, L Davidson, C Jewell, P Falzer and M Rowe, 'The treatment relationship in peer-based and regular case management for clients with severe mental illness', *Psychiatric Services*, 57(8), (2006), pp. 1179–1184, at p. 1183.
- <sup>17</sup> Australian Social Inclusion Board, 'Social Inclusion Principles for Australia', p. 2: viewed 14 August 2009: <<http://www.socialinclusion.gov.au/Principles/Documents/SIPrinciples.pdf>>.
- <sup>18</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, p. 19.
- <sup>19</sup> Peer Education Support Program, *ibid.*
- <sup>20</sup> *ibid.*
- <sup>21</sup> Hanover Welfare Services, 'Use of SAAP services by people living in public housing', 2006, p. 55.

- <sup>22</sup> D Habibis, R Atkinson, T Dunbar, D Goss, H Eastshope and P Maginn, 'A sustaining tenancies approach to managing demanding behaviour in public housing: a good practice guide', Australian Housing and Urban Research Institute, AHURI final report no. 103, 2007, p. 27.
- <sup>23</sup> D Quilgars and I Anderson, 'Addressing the problem of youth homelessness and unemployment: the contribution of foyers', cited in R Burrows, N Pleace and D Quilgars (eds), *Homelessness and Social Policy*, Routledge, London, 1997, pp. 216–228, at p. 224.
- <sup>24</sup> A Beer and D Faulkner, 'The housing careers of people with a disability and their carers', Australian Housing and Urban Research Institute, research and policy bulletin, 2009, p. 1.
- <sup>25</sup> F Reynolds, 'To examine programs that assist vulnerable and complex chronically homeless people', Winston Churchill Memorial Trust of Australia, 2008, p. 38.
- <sup>26</sup> *ibid.*, p. 40.
- <sup>27</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, p. 19.
- <sup>28</sup> Australian Electoral Commission, 'Electoral engagement of the homeless', research report no. 6, 2005, p. 7.
- <sup>29</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, p. 55.
- <sup>30</sup> *ibid.*, p. 19.
- <sup>31</sup> F Reynolds, p. 40.
- <sup>32</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, p. 27.
- <sup>33</sup> C Chamberlain and D MacKenzie, *Counting the homeless, Australia, 2006*, Australian Bureau of Statistics, 2008, p. 21.
- <sup>34</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home*, p. 33.
- <sup>35</sup> Under paragraph 9 of the National Partnership Agreement on Homelessness, the agreement will expire on 30 June 2013, subject to the completion of a review by COAG three years after its commencement, unless terminated under paragraph 36, which states: 'State and Territory proposals for matching funding from their 2008–09 budgets will be assessed by the Commonwealth and, where agreed, included in bilateral implementation plans'.
- <sup>36</sup> K Norris, D Thompson, T Eardley and S Hoffman, 'Children in the Supported Accommodation Assistance Program (SAAP)', Social Policy Research Centre, final report, 2005, p. xi.
- <sup>37</sup> Australian Institute of Health and Welfare 'Homeless people in SAAP: SAAP National Data Collection annual report 2007–08, Australia', cat. no. HOU 191, 2009, p. 15.
- <sup>38</sup> As at the 2006 Census, 2.4% of the population were identified as 'Indigenous', but 17% of SAAP clients were Aboriginal and Torres Strait Islander peoples in 2005–06 (C Chamberlain and D MacKenzie, p. 29). The experiences of homelessness by Aboriginal and Torres Strait Islander peoples can differ from those of other Australians, due to the distinct causes and contexts for their experiences. Keys Young have formulated five types of homelessness experienced by Aboriginal and Torres Strait Islander peoples which cover: spiritual homelessness (relating to separation from traditional land or family); overcrowding; relocation and transient homelessness (due to mobile lifestyles as well as the necessity of a larger proportion of Aboriginal and Torres Strait Islander peoples having to travel to obtain services); escaping unsafe homes; and lack of access to stable housing. Compared to homelessness experienced by others, homelessness experienced by Aboriginal and Torres Strait Islander peoples is a broader issue because it encompasses the experiences of individuals, families and communities, as well as the intergenerational impact of colonisation and dispossession (Keys Young, 'Homelessness in the Aboriginal and Torres Strait Islander context and its possible implications for the Supported Accommodation Assistance Program', Department of Family and Community Services, 1999, pp. iv, 129).
- <sup>39</sup> Office of the High Commissioner for Human Rights, [8].
- <sup>40</sup> C Chamberlain and D MacKenzie, p. 21.
- <sup>41</sup> S Peatling, 'Centrelink penalty adding to homelessness', *Sydney Morning Herald*, 21 January 2009: viewed 14 August 2009: <<http://www.smh.com.au/news/national/centrelink-penalty-adding-to-homelessness/2009/01/20/1232213646798.html>>.

<sup>42</sup> Department of Families, Housing, Community and Indigenous Services, 'National Standards for Disability Services', p. 8: viewed 14 August 2009: <<http://www.fahcsia.gov.au/sa/disability/standards/Documents/nsds1993.pdf>>.

<sup>43</sup> Department of Health and Ageing, 'Charter of Residents' Rights and Responsibilities': viewed 14 August 2009: <<http://www.health.gov.au/internet/main/publishing.nsf/content/ageing-publicat-resicharter.htm>>.