



New South Wales Government

Department of Premier and Cabinet

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(homelessness legislation)
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Standing Committee on Family, Community, Housing and Youth
PO Box 6021
House of Representatives
Parliament House
CANBERRA ACT 2600

I refer to the *Inquiry into Homelessness Legislation* being conducted by the Commonwealth House of Representatives Standing Committee on Family, Community, Housing and Youth.

I am pleased to provide to the Committee the NSW Government submission, which addresses the Inquiry's Terms of Reference.

Yours sincerely


Vicki D'Adam
for John Lee
Director General

STANDING COMMITTEE
ON
25 SEP 2009
FAMILY, COMMUNITY,
HOUSING & YOUTH

NSW Government Submission

Parliament of Australia House of Representatives Standing Committee on Family, Community, Housing and Youth

Inquiry into Homelessness Legislation

28 August 2009

Introduction

The NSW Government is committed to reducing homelessness and to improving responses to people who are homeless or at risk of homelessness. The NSW Homelessness Action Plan 2009-2014 *A Way Home: Reducing Homelessness in NSW* sets the direction for statewide reform of the homelessness service sector to achieve better outcomes for people who are homeless or at risk of homelessness.

Part One of this submission provides some general background information on the initiatives and funding agreements currently in place in NSW aimed at improving outcomes for homeless people and people at risk of homelessness. This includes the NSW Homelessness Action Plan, and also the National Affordable Housing Agreement and associated National Partnerships under the Intergovernmental Agreement on Federal Financial Relations. The Intergovernmental Agreement on Federal Financial Relations recognises that States and Territories are primarily responsible for decisions around service delivery, and aims to replace Commonwealth prescriptions on service delivery by the States and Territories with a focus on the achievement by all levels of Government of mutually agreed objectives and outcomes.

Part Two of this submission raises questions about the rationale and scope for any new homelessness legislation for consideration by the Committee. Included in this is a question as to whether the proposed legislation is intended to regulate service quality solely for homelessness specific services, or whether it is intended to comprehend all services provided to people who are homeless or at risk of homelessness, including mainstream service provision. There are risks associated with both approaches. Regulating service quality for homelessness specific services could run counter to efforts to improve responses to homelessness through reforms across homelessness services and other specialist and mainstream services. A continuum approach involves addressing and preventing the causes of homelessness, as well as responding to crisis, and recognises the important role of both mainstream and specialist services. Regulating all services provided to people experiencing or at risk of homelessness could duplicate existing mechanisms for ensuring service quality and potentially conflict with existing legislative requirements.

Part Three of this submission provides information on specific issues relevant to the Terms of Reference for this Inquiry. In particular, the principles developed by the NSW Government to underpin the provision of services in NSW to people who are homeless or at risk of homelessness. The principles form part of the NSW Homelessness Action Plan and include partnerships across government and the community, a continuum approach focused on prevention and early intervention and sustainable solutions, respecting and protecting social, economic and civic rights, and flexible approaches that meet the needs of the individual.

The need for new homelessness legislation and/or national standards for homelessness service provision is expected to be considered by jurisdictions through the Housing Ministers' Conference. As such, it is hoped that the report of this *Inquiry into*

homelessness legislation will provide useful information and analysis to inform jurisdictions' consideration of this important issue.

PART ONE: BACKGROUND INFORMATION

NSW Homelessness Action Plan

The NSW Homelessness Action Plan 2009-2014 *A Way Home: Reducing Homelessness in NSW* sets out a vision for reducing homelessness in NSW. This vision is that people never become homeless, people who are homeless do not become entrenched in the system, and people who have been homeless do not become homeless again.

This vision includes effective and coordinated services where people have access to relevant homelessness services without having to negotiate complex pathways through multiple systems, and where there are seamless referrals and linkages to other services needed.

The Action Plan will reform how homelessness services are delivered in NSW, and will shift the focus away from crisis services as our primary response and towards services that prevent homelessness and provide long-term support to allow people to stay safely in their home. This includes a flexible approach whereby a range of support and accommodation models allow responses to be tailored to individual needs.

Historically, efforts to address homelessness have focused on helping people who are already homeless to find and secure accommodation. However, evidence supports the idea that intervening when people are at risk of becoming homeless and preventing homelessness from occurring improves outcomes for individuals as well as being a more effective use of resources.

The Action Plan includes a focus on assisting people who are at risk of homelessness and are leaving statutory care, custodial care, health services or disability services to secure appropriate accommodation and support.

There is a focus on support for women, children and young people at risk of homelessness because of domestic and family violence to escape violence while remaining in their homes or to otherwise obtain secure, safe housing according to their circumstances and needs.

There is also a focus on ensuring that staff within the service system understand the issues associated with Aboriginal homelessness and have the skills to meet the needs of the individual and their extended family.

The Action Plan recognises the important role of the non-government sector and other partners, including business, and makes improved partnerships a key action. The Action Plan also acknowledges the Australian Government as a key partner and the importance of Australian Government funding.

The Action Plan establishes a series of concrete priorities, strategies and actions to achieve the following three strategic directions:

- Preventing homelessness: to ensure that people never become homeless.
- Responding effectively to homelessness: to ensure that people who are homeless receive effective responses so that they do not become entrenched in the system.
- Breaking the cycle: to ensure that people who have been homeless do not become homeless again.

Partnership with the Australian Government

The Australian Government is a key partner in NSW's response to homelessness. Through the Council of Australian Governments, all jurisdictions have negotiated a range of national agreements covering key service areas and reform priorities. The National Affordable Housing Agreement and associated National Partnerships, including the National Partnership Agreement on Homelessness, are consistent with the NSW Government's commitment to improve responses to homelessness and will support the implementation of the NSW Homelessness Action Plan.

Intergovernmental Agreement on Federal Financial Relations

The Intergovernmental Agreement on Federal Financial Relations came into effect on 1 January 2009. The Agreement implements a new framework for federal financial relations which will provide a robust foundation for jurisdictions to collaborate on policy development and service delivery, and facilitate the implementation of economic and social reforms in areas of national importance.

The Intergovernmental Agreement on Federal Financial Relations is focused on agreed outcomes and provides States and Territories with discretion in the allocation of funds. States and Territories are primarily responsible for decisions around service delivery, including what programs to deliver and how those programs are to be delivered. Key elements of the Agreement include the following.

- Collaborative working arrangements, including clearly defined roles and responsibilities and fair and sustainable financial arrangements.
- A focus on the achievement of outcomes through mutual agreement on objectives, outcomes and outputs.
- A commitment to improve service delivery and ensure Government is accountable to the community for the quality and efficiency of services it delivers and the outcomes achieved.
- Recognition that the States and Territories have primary responsibility for service delivery for many of the service sectors covered in National Agreements, and a commitment to clarify roles and responsibilities in the delivery of services.
- Replacing Commonwealth prescriptions on service delivery by the States and Territories with a focus on the achievement by all levels of Government of mutually agreed objectives and outcomes that improve the well-being of Australians, and a commitment that national agreements will not impose input controls on service delivery by the States and Territories.
- A commitment to National Agreements giving States and Territories more flexibility in how services are provided to achieve outcomes, and avoiding prescribing delivery mechanisms.

The Intergovernmental Agreement on Federal Financial Relations commits the Australian Government to the provision of ongoing financial support for States' and Territories' service delivery efforts through general revenue assistance, national specific purpose payments in key service delivery sectors, and national partnership payments for specified outputs, projects or reforms. The areas in which specific purpose payments are to be provided include affordable housing. States and Territories are required to spend each specific purpose payment in the relevant service sector, but have budget flexibility to allocate funds within that sector as they see fit to achieve mutually agreed objectives.

The Australian Government is providing \$6.2 billion nationally in base funding for affordable housing over the five years from 2008-09 to 2012-13. This funding is for a range of housing assistance measures including social housing, assistance to people in the private rental market, support and accommodation for people who are homeless or at

risk of homelessness, and home purchase assistance. NSW will receive \$1.9 billion over five years in base funding.

The Intergovernmental Agreement on Federal Financial Relations replaces other inter-governmental funding agreements, including the *Commonwealth-State Housing Agreement 2003-2008* and the *Supported Accommodation Assistance Program V Multilateral Agreement 2005-2010*¹. The Australian Government's *Federal Financial Relations Act 2009* provides for Australian Government funding to States and Territories, consistent with the Intergovernmental Agreement on Federal Financial Relations. As such, the *Supported Accommodation Assistance Act 1994*, which sets out specific funding and service delivery requirements for the Supported Accommodation Assistance Program, is no longer required as an instrument for funding.

National Affordable Housing Agreement and National Partnerships

The *National Affordable Housing Agreement* sets out the mutually agreed objectives, outcomes, outputs, roles and responsibilities, and performance indicators in relation to affordable housing. The Agreement's aspirational objective is that all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation. The Agreement's outcomes are as follows.

- People who are homeless or at risk of homelessness achieve sustainable housing and social inclusion.
- People are able to rent housing that meets their needs.
- People can purchase affordable housing.
- People have access to housing through an efficient and responsive housing market.
- Indigenous people have the same housing opportunities (in relation to homelessness services, housing rental, housing purchase and access to housing through an efficient and responsive housing market) as other Australians.
- Indigenous people have improved housing amenity and reduced overcrowding, particularly in remote areas and discrete communities.

The Australian Government is also providing additional funding nationally for social housing and homelessness under National Partnerships.

- The Nation Building Economic Stimulus Plan includes \$6.4 billion in new funding from 2008-09 to 2011-12 to States and Territories for the construction of around 20,000 new social housing dwellings nationally, as well as repairs and maintenance to existing dwellings. NSW is expected to receive funding for around 6,500 new social housing dwellings over the next three years, as well as upgrades to 31,000 dwellings.
 - The Australian Government has approved NSW's Stage One construction program which consists of 119 projects across NSW to deliver 858 new social housing homes by June 2010. 75% of the entire Nation Building new construction program of 6,500 new dwellings is to be completed by December 2010. NSW has already commenced 108 projects and completed 16 homes.
- The *National Partnership Agreement on Social Housing* establishes a social housing growth fund to increase the supply of social housing and provide increased opportunities for people who are homeless or at risk of homelessness to access secure, long term accommodation.

¹ Where other agreements remain in force, the payment and financial arrangements in the Intergovernmental Agreement on Federal Financial Relations replace similar provisions in those agreements, and the arrangements in the Intergovernmental Agreement on Federal Financial Relations take precedence over any conflicting arrangements in other agreements.

- The *National Partnership Agreement on Remote Indigenous Housing* aims to improve housing amenity and reduce overcrowding and homelessness in remote Aboriginal communities.
- The *National Partnership Agreement on Homelessness* aims to reduce homelessness through initiatives in the areas of prevention and early intervention, breaking the cycle of homelessness, and a better connected service system.

Total funding from the Australian Government to NSW under the National Affordable Housing Agreement and related National Partnerships, including the Nation Building Economic Stimulus Plan, is expected to be around \$4.5 billion over the period 2008-09 to 2012-13.

The National Partnership Agreement on Homelessness commits the Australian Government and State and Territory Governments to working together to significantly reduce homelessness by 2013. The following high level benchmarks under the National Partnership are incorporated as the headline targets for the NSW Homelessness Action Plan.

- A 7% decrease in the number of Australians who are homeless by 2013.
- A one-third reduction in the number of Indigenous people who are homeless by 2013.
- A 25% decrease in the number of Australians who are sleeping rough by 2013.

Under the National Partnership Agreement on Homelessness, the Australian Government has allocated \$140 million over four years to projects designed to prevent and respond effectively to homelessness in NSW. The NSW Government is providing matching funding of \$143 million. This investment provides an important opportunity to trial new approaches and ways of working to achieve the objectives of the NSW Homelessness Action Plan, which incorporates initiatives funded under Year One of the NSW Implementation Plan for the National Partnership Agreement on Homelessness.

The National Partnership Agreement on Social Housing and the Nation Building Economic Stimulus Plan also make significant investment in responses to people who are homeless or at risk of homelessness. These agreements will increase the supply of social housing, and this will provide increased opportunities for people who are homeless or at risk of homelessness to gain or transition to secure and affordable accommodation.

Relationship to the Australian Government's Homelessness White Paper

The Australian Government's White Paper *The Road Home: A National Approach to Reducing Homelessness* sets out a target and plan to halve homelessness and offer supported accommodation to all rough sleepers who need it by 2020. The Australian Government has commenced work with other jurisdictions to deliver on its plan through the National Affordable Housing Agreement and associated National Partnerships under the Intergovernmental Agreement on Federal Financial Relations. Any further initiatives would also need to be negotiated between Governments.

PART TWO: RATIONALE AND SCOPE OF PROPOSED NEW LEGISLATION

Proposal for new homelessness legislation

As outlined above, the new funding arrangements under the Intergovernmental Agreement on Federal Financial Relations replace previous funding arrangements, including the Commonwealth-State Housing Agreement and the Supported Accommodation Assistance Program V Multilateral Agreement. As such, the Supported Accommodation Assistance Act, which sets out specific funding and service delivery requirements for the Supported Accommodation Assistance Program, is no longer required as an instrument for funding.

This Inquiry is considering the principles and service standards that could be incorporated in new homelessness legislation, building on the strengths of existing legislation, particularly the Supported Accommodation Assistance Act. The Australian Government made commitments around introducing new homelessness legislation in its White Paper *The Road Home: A National Approach to Reducing Homelessness*, including that service standards would be set out in the legislation. However, it should be noted that this proposal for new homelessness legislation does not currently form part of agreed inter-governmental directions on homelessness. The issues of the need for new homelessness legislation and/or national standards for homelessness service provision are expected to be considered by jurisdictions through the Housing Ministers' Conference.

Notwithstanding this, it is noted that new homelessness legislation could potentially take a range of forms, depending on the Australian Government's objectives and the particular issues to be addressed through legislation. It is suggested that this Inquiry give consideration to the following overarching questions about the rationale and scope of the proposed new homelessness legislation.

Rationale for the proposed legislation

It is suggested that this Inquiry consider what the overarching objective for the proposed new homelessness legislation is, and whether legislation is the most effective means for meeting this objective. The need for any new homelessness legislation should be established, consistent with best practice regulation principles. This includes that legislation and/or a regulatory approach is the most suitable option for delivering the Australian Government's objective.

The relationship between the legislation and the Intergovernmental Agreement on Federal Financial Relations should be clarified, noting that the Australian Government has introduced the *Federal Financial Relations Act 2009* as the mechanism for Australian Government funding to States and Territories consistent with the Agreement.

As outlined above, the Intergovernmental Agreement on Federal Financial Relations replaces other inter-governmental funding agreements, including the *Supported Accommodation Assistance Program V Multilateral Agreement 2005-2010*, and provides funding for a range of housing assistance measures including support and accommodation for people who are homeless or at risk of homelessness. Given that the Australian Government is no longer funding States and Territories to deliver a specific homelessness program, the need for specific legislation to replace the Supported Accommodation Assistance Act as an instrument for funding is not evident. Consideration of the possible content of homelessness legislation should take into account the potential for specific legislation of this type to obscure the broader focus of the Intergovernmental Agreement on Federal Financial Relations on reducing prescriptions on service delivery and removing input controls from the Australian Government's funding arrangements with the States and Territories.

There is also a need to clarify the basis on which the Australian Government is regulating service delivery to homeless people, in light of not only its constitutional powers but also the agreed roles and responsibilities in the National Affordable Housing Agreement which clarifies that States and Territories are responsible for housing and homelessness services, administration and delivery.

Scope of the proposed legislation

It is suggested that this Inquiry consider whether the proposed new homelessness legislation is intended to govern only homelessness specific services, or whether it is intended to cover all services that are accessed by people who are homeless or at risk of homelessness including specialist and mainstream services (eg. health care and employment services).

The NSW Homelessness Action Plan recognises that services and support for people who are homeless or at risk of homelessness are provided by a wide range of government agencies, non-government organisations and community organisations. Responses to homelessness in NSW can be broadly grouped into the following three types of services.

- *Specialist homelessness services* provide crisis and ongoing support to homeless people and have expertise in supporting homeless people. To date, most specialist homelessness services in NSW have been funded under the Supported Accommodation Assistance Program.
- *Specialist services* provide services and support for people with particular issues such as those living with mental health issues, drug and alcohol issues or a disability. Other specialist services work with people who need tenancy assistance or support to escape domestic or family violence. Specialist services provide support to groups of people within the wider community, many of whom are homeless or at increased risk of homelessness because of their support needs. Specialist services are provided by a range of Government agencies and non-government organisations.
- *Mainstream services* are those services used by everyone in the community and are predominantly provided by Government agencies. Mainstream services include hospitals and health services, Centrelink and universal employment services, educational facilities, the legal, policing, correctional and juvenile justice systems, family and children's services and aged care services.

Specialist homelessness services, specialist services, and mainstream services are not always clearly separated in practice. For example, mainstream services can run specialist homelessness programs.

Homelessness specific services

If the intention is to regulate only homelessness specific services, consideration should be given to how this can be achieved without limiting States and Territories ability to deliver on reforms, including changes to the service system to move away from crisis responses and to improve coordination between crisis, specialist and mainstream services. This could be made difficult if legislation locks States and Territories into the delivery of a specific program or programs and/or specific service delivery methods for these programs.

The NSW Homelessness Action Plan will reform how homelessness services are delivered in NSW, and will shift the focus away from crisis services as our primary response and towards services that prevent homelessness and provide long-term support to allow people to stay safely in their home. There is a risk that legislation focused on specialist homelessness services could conflict with or even undermine broader efforts to deliver a whole of government response to clients who are homeless or at risk of homelessness.

In particular, it is expected that efforts to move toward greater use of prevention and early intervention responses will result in greater levels of involvement from specialist services and mainstream services in meeting the needs of people who are at risk of homelessness. A legislative focus on only specialist homelessness services would appear to be at odds with this increased emphasis on delivering an effective response across the service system.

Consideration should also be given to whether the case for national legislation and/or uniform standards in homelessness services has been established adequately. Although the benefits and costs of uniform regulation need to be considered on a case by case basis, generally, there is a case for uniformity where inter-state providers of goods or services face duplicative or conflicting requirements that place undue compliance burdens on providers. This does not appear to be the case in relation to homelessness services.

In considering the need for national legislation and/or standards, it should also be recognised that States and Territories have primary responsibility for service delivery in this area, and have already committed to improving outcomes and reforming homelessness services.

The NSW Homelessness Action Plan emphasises the need to support people at critical times in their lives to prevent homelessness occurring and to provide flexible responses to homelessness that meet the needs of the individual. There is a risk that imposition of standards could result in rigidities in the service system that inhibit timely and customised responses. The specialist homelessness services sector is comprised of a large number of non-government providers, some of which specialise in provision to specific target groups (such as women escaping domestic violence).

It should also be noted that the evidence base on efficacy of interventions is not yet well established. There is a need for a greater focus on establishing what works, rather than prescribing requirements that may not be based on sound evidence or may not have sufficient in-built flexibility to respond to individual or local needs or changing circumstances.

The NSW Homelessness Action Plan includes a focus on developing and implementing data collection and analysis systems to monitor and improve responses to homelessness. Efforts to improve data collection and the evidence base for effective homelessness interventions may be of greater benefit in improving outcomes for homeless people than legislated service provision standards.

All services

If the intention is to regulate all services accessed by homeless people or people at risk of homelessness, there is a risk that the legislation would end up applying to a very wide range of services – many of which provide services to a broader range of clients than those experiencing or at risk of homelessness.

Many specialist and mainstream services already have service delivery principles or service standards in place, including regulated service standards or accreditation systems. The need for the homelessness legislation to further regulate these broader services would need to be established in light of the existing mechanisms in place for ensuring quality service delivery in these sectors. Further regulation could impose additional compliance costs, and potentially create a need for additional funding.

If all services accessed by homeless people were regulated under the proposed new homelessness legislation, the delineations between the homelessness legislation and other service standards and regulation of specialist and mainstream services would need to be clear. There is a risk that the proposed homelessness legislation would duplicate or conflict with existing service standards or other legislative requirements. There is also a risk that the proposed homelessness legislation would have unintended impacts on agencies' broader service delivery.

Consideration should also be given to the extent to which Australian Government legislation is an effective tool for driving improved service delivery to people who are homeless or at risk of homelessness. Alternative avenues include existing legislation and service standards, as well as policy directions, service reforms and cultural change. The NSW Homelessness Action Plan commits to a range of improvements to service delivery and includes principles to underpin the provision of services in NSW to people who are homeless or at risk of homelessness. These principles are outlined in Part Three of this submission.

Consideration should also be given to the extent to which any regulation is intended to capture the non-government and private sectors. For example, homeless people may face a range of barriers in the private housing market including lack of affordability, discrimination (on the basis of homelessness or other factors such as income, age, race, etc.), and lack of assistance where needed to sustain tenancies.

PART THREE: TERMS OF REFERENCE

Elements of the Supported Accommodation Assistance Act

A key element of the *Supported Accommodation Assistance Act 1994* is that it outlines a framework for homelessness service provision with an emphasis on protecting the dignity and human rights of individuals experiencing homelessness. The Act's Preamble explicitly draws on universal human rights standards in affirming the role of government in redressing social inequality. The Preamble states that Australia recognises and seeks to protect the universal human rights and fundamental freedoms of all of its citizens, including people who are homeless or at risk of homelessness, and makes specific reference to international human rights instruments.

The Preamble outlines principles to guide service quality and treatment of individuals, including the following.

- 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 marginalized groups in society, and responses to their needs should aim to empower people experiencing homelessness and maximise their independence.
- That responses to homelessness should be provided in a way that respects homeless people's dignity as individuals, enhances their self-esteem, is sensitive to their social and economic circumstances, and respects their cultural backgrounds and beliefs.
- That legislation relating to homeless people should focus on the individual needs of people experiencing homelessness.

- That the Australian Government should work cooperatively with States and Territories to ensure people who are homeless or at risk of homelessness are given opportunities to redress their circumstances and that their universal human rights are not prejudiced by the manner in which services are provided to them.

The Preamble to the Supported Accommodation Assistance Act is not legally enforceable. However, its focus on the effects of homelessness on individuals and the importance of developing service responses that recognise this has provided a useful platform to influence and improve responses to homelessness. New South Wales notes, however, that under the National Affordable Housing Agreement and its associated national partnerships, governments have given commitments that in some respects go beyond the sentiments of the Preamble. For example, under the NAHA governments have committed to reducing the rate of homelessness.

The aspirations outlined in the Preamble, including the safeguarding of clients' rights and responsibilities, are reflected in Section 5 of the Act which requires the Supported Accommodation Assistance Program to:

- provide transitional supported accommodation and related support services to homeless people;
- assist people who are homeless or at risk of homelessness to achieve the maximum possible degree of self-reliance and independence;
- help people who are homeless to obtain long-term, secure and affordable housing;
- promote the dignity of people experiencing homelessness and the fact that homeless people are entitled to opportunities that will enable them to participate fully in community life; and
- encourage innovation in the provision of services to people who are homeless.

While ever Section 5 of the Act is considered useful, it has contributed to an over-expectation of what the Supported Accommodation Assistance Program can achieve, particularly given that the program is not responsible for, or able to deliver, the provision of long-term, secure and affordable housing. Aspirations of this nature would be better suited to broader homelessness legislation.

Much of the Supported Accommodation Assistance Act is largely concerned with the administration of the Supported Accommodation Assistance Program and the Supported Accommodation Assistance Program V Multilateral Agreement. As outlined above, the Australian Government no longer funds the Supported Accommodation Assistance Program and, as such, these administrative and funding provisions are now redundant. The Supported Accommodation Assistance Act has supported accountability in the provision of Supported Accommodation Assistance Program services, and a focus on monitoring program outcomes. However the Act is programmatic and prescriptive. By comparison, the Intergovernmental Agreement on Federal Financial Relations includes a focus on achievement of results while also providing States and Territories with discretion in service delivery.

Section 4 of the Supported Accommodation Assistance Act includes a definition of homelessness for the purpose of the Supported Accommodation Assistance Program. The NSW Homelessness Action Plan notes that there is a range of views about what constitutes homelessness, and that the definition most commonly used is that developed by Chamberlain and MacKenzie for the Australian Bureau of Statistics (ABS). The NSW Homelessness Action Plan nevertheless recognises that the ABS definition does not fully capture the experience of homelessness or the risk factors that may result in homelessness. New South Wales suggests that the Committee take into consideration the difficulties associated with defining homelessness in making its recommendations on the possible content of homelessness legislation.

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

The NSW Government has made significant commitments to improving service delivery, for the benefit of all people in NSW, through the NSW State Plan. The NSW Government has also developed principles to underpin the provision of services to people in NSW who are homeless or at risk of homelessness.

The NSW Homelessness Action Plan includes the following set of principles, which were developed in collaboration with partners in the non-government sector.

- 1. Our response to homelessness requires a whole-of-government and whole-of-community partnership approach.** Our response will draw on the strengths of all levels of government, the not-for-profit, community and private sectors and will respect each other's experience, expertise, roles and ideas.
- 2. Our response to homelessness requires a continuum approach focused on prevention and the provision of long-term and sustainable housing solutions.** A continuum approach recognises the importance of addressing and preventing the causes of homelessness and providing sustainable responses as well as responding to crises. We understand the important role that both mainstream and specialist support systems have to play in intervening early to prevent homelessness.
- 3. Our response to homelessness requires a focus on critical points in people's lives.** Evidence tells us that people are more vulnerable to homelessness when they experience significant changes in their lives such as relationship or family breakdown, moving between education and employment and leaving institutional settings. Our responses will focus on supporting people who are at risk of becoming homeless at critical times in their lives to prevent homelessness from occurring.
- 4. Our response to homelessness will respect and protect the social, economic and civic rights of people who are homeless or at risk of homelessness.** People who are homeless or who are at risk of homelessness have the same rights as every other member of the community and these rights must be protected and respected. Our responses to homelessness will treat people with respect and dignity and respect each person's right to participate fully in community life, access support through the service system, have safe and secure housing and support when it's needed, and be safe and to live lives free of violence and discrimination. We also recognise and value the right of the individual to participate in decision-making processes about their own future.
- 5. Our response to homelessness will be based on flexible approaches that meet the needs of the individual.** Not all people who are homeless or at risk of homelessness are the same. Each person faces a unique set of circumstances and challenges and our responses must take into consideration the many factors that are specific to each individual such as a person's age, gender, family circumstances, language and cultural background.
- 6. Our response to homelessness must be delivered in the context of other policies and initiatives.** The NSW Government's response to homelessness will be linked to strategies and actions that are already in place under the *NSW State Plan*, the National Partnership Agreement on Homelessness and other State and Commonwealth policies and strategies. It is essential that our responses are linked to make the best possible use of the resources available to address homelessness.
- 7. Our response to homelessness must be guided and informed by evidence.** In order to make good decisions about service design and delivery, we need to develop and implement data collection and analysis systems that tell us whether our responses are effective, and how we might improve those responses.

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

Through the Council of Australian Governments, the NSW Government, Australian Government, and other States and Territories have committed to addressing the issue of social inclusion. This has been embodied in the objectives and outcomes of the National Affordable Housing Agreement and associated National Partnerships, including the National Partnership Agreement on Homelessness.

It is noted that homelessness can be linked to a wide range of human rights violations, including housing issues. The Australian Government has held a National Human Rights Consultation aimed to seek a range of views from across Australia about the protection and promotion of human rights. The National Human Rights Consultation Committee's report to the Australian Government is due on 30 September 2009. The Committee has been asked to identify options for the Government to enhance the protection and promotion of human rights.

Where recommendations from the National Human Rights Consultation give rise to implications for States and Territories, the Australian Government should consult States and Territories in considering those recommendations.

The extent to which the proposed homelessness legislation is aimed at enshrining or protecting specific human rights is not clear. While the Australian Government's White Paper and Terms of Reference for the Inquiry have a focus on service improvement, there are also references to broader human rights issues.

While legislation can be a powerful tool from which to underpin changes to policy and practice, the right to housing can not be secured simply through legislation, and requires commitments such as increased funding for social housing and/or significant reforms across social and economic areas including housing, employment and income support.

The difficulties associated with relying on a legislative approach to the achievement of rights are demonstrated by an examination of the complexity of housing and homelessness issues for the following specific groups.

Aboriginal people's experience of homelessness

Aboriginal people are particularly impacted by homelessness and are over-represented in the homeless population.

Homelessness is an issue for Aboriginal people in urban, regional and remote locations. In NSW, the Aboriginal homelessness rate is 134 per 10,000 people, compared to 39 per 10,000 people for the non-Indigenous population². Aboriginal people are over-represented in the crisis accommodation system. Aboriginal people also face a range of housing problems including overcrowding and affordability stress.

Poor housing outcomes for Aboriginal people are associated with other dimensions of disadvantage such as low workforce participation, low educational achievement, poor health, family violence, and contact with the criminal justice system.

Addressing homelessness in the Aboriginal population therefore requires the involvement of all levels of Government, and a wide range of government agencies, non-government organisations and local communities. Through *Two Ways Together*, the NSW Aboriginal Affairs Plan 2003-12, New South Wales already has in place overarching arrangements

² Chamberlain C, MacKenzie D, 2009: Counting the homeless 2006: New South Wales, Cat. no. HOU 204, Australian Institute for Health and Welfare, Canberra

for the coordination of service provision to Aboriginal people. The national Indigenous agreements reached through COAG more recently provide increased opportunities to develop a coordinated approach to addressing Aboriginal disadvantage including in areas such as housing, education and health. New South Wales is committed to achieving through these national efforts a greater focus on prevention and early intervention and sustainable long term solutions.

Effective services to Aboriginal people must be culturally appropriate, with policies and programs reflecting Aboriginal people's needs. Addressing homelessness for Aboriginal people involves both meeting the needs of the individual and taking into account extended family and community networks. Responses to Aboriginal homelessness need to reflect an understanding of the issues associated with Aboriginal homelessness including both experiences that are in common with the broader homeless population (mental health, family breakdown, etc) and the specific acknowledgement and appreciation of Aboriginal identity and culture as well as experiences such as racism and dispossession.

There is a need for improved data collection and analysis to better understand the causes and experiences of homelessness for Aboriginal people.

The involvement of Aboriginal communities and Aboriginal non-government organisations should be promoted and supported through governance and capacity building, partnership approaches, and consultation and negotiation with Aboriginal communities and peak organisations.

Homelessness among children and young people

Responses to homelessness require a focus on the specific needs of children and young people who are homeless or at risk of homelessness. In particular, the needs of young people who are homeless individuals, rather than part of a family group, need to be considered. For young people, including Aboriginal young people, education, employment and being connected to community are protective factors against homelessness.

Effectively responding to homelessness for young people involves addressing factors that may put young people at risk of homelessness. For example, young people under the age of 21 in receipt of Youth Allowance are not eligible for Commonwealth Rental Assistance (CRA), unlike older people (over the age of 21) on Newstart allowance. This results in inadequate financial support for young people to meet the costs of private rental housing. Housing affordability pressures can exacerbate other problems and increase the risk of homelessness. This is of particular concern where the young person has complex needs.

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

The NSW Government, along with the Australian Government and other States and Territories, has made a strong commitment to improve responses to homelessness through the National Affordable Housing Agreement and associated National Partnerships. However, the need for legislation to facilitate improvement in the quality of services for people who are homeless or at risk of homelessness has not yet been established. As mentioned above, it is expected that jurisdictions will consider the need for new homelessness legislation and/or national standards through the Housing Ministers' Conference.

As outlined above, the NSW Government has made significant commitments to improve service delivery and has developed principles for delivering services to people who are homeless or at risk of homelessness. These principles include flexible approaches that

meet the needs of the individual and respecting and protecting social, economic and civic rights.

Improvements to specialist homelessness services

As mentioned above, there is a need for clarity on whether the proposed homelessness legislation is intended to govern only homelessness specific services, or whether it is intended to cover all services that are accessed by people who are homeless or at risk of homelessness including mainstream services (eg. health care and employment services).

Notwithstanding this, if the intention of the proposed legislation is to improve the standard of homelessness specific services, the need for national regulation of homelessness specific services would need to be established. Other options for improving the standard of homelessness specific services, including non-legislative options, should also be considered.

As mentioned above, the case for national standards for homelessness services is not evident. States and Territories have primary responsibility for service delivery in this area, have existing arrangements in place to ensure service quality, and have already committed to improving outcomes for people experiencing or at risk of homelessness and to reforming homelessness services.

Any standards or other forms of regulation on the quality of services to homeless people or people at risk of homelessness would need to be outcomes-focused and non-prescriptive in order to be applicable to different services. As mentioned above, the specialist homelessness services sector is comprised of a large number of non-government providers, some of which specialise in provision to specific target groups (such as women escaping domestic violence).

As specialist homelessness services are generally provided by contracted non-government organisations, other options available include States and Territories contractual arrangements for funded services. If the need for a national service quality system was established, it is suggested that reciprocal recognition of States' and Territories' existing service quality frameworks should be considered as an option. This would also be an effective mechanism for removing any regulatory burdens arising if there are any inter-state providers of homelessness specific services facing conflicting or duplicative requirements in different States and Territories.

An overview of the current service quality framework for Supported Accommodation Assistance Program services funded by the NSW Department of Human Services (Community Services) follows.

Service quality framework for Supported Accommodation Assistance Program services
Community Services supports service quality primarily through funding program guidelines and standards, and performance based contracting. Monitoring of service quality is primarily undertaken through Community Services' *Performance Monitoring Framework for Funded Services (2006-07)* for service contracts, including *Good Practice Guidelines for Funded Services (2006)*.

Community Services' *Supported Accommodation Assistance Program Guidelines (2007)* ensure that the purpose and parameters of the funding program are clearly articulated, enabling the Department and service providers, as well as service users and the community, to be clear about what is being funded and why. The Guidelines are linked to Community Services' Corporate Plan and results logic, mapping the range of outcomes required to achieve the overarching corporate goal that children, families and communities are safer, healthier and more resilient.

The Supported Accommodation Assistance Program plays a major role in achieving that outcome, providing services to those people who are homeless in our community or are at risk of becoming homeless. The Guidelines link the results expected from Community Services' funding programs and the funding processes. They outline the results for the Supported Accommodation Assistance Program, the activities that are expected to lead to these results, and the performance measures that need to be incorporated into agreements with service providers.

Community Services' *Supported Accommodation Assistance Program Service Framework (2001)* provides the basis for the Department and agencies to negotiate the way that services will be provided to clients of Supported Accommodation Assistance Program services. The Framework aims to ensure that services provided by agencies meet mutually identified community needs. The Framework also aims to ensure that processes are in place to promote quality in the provision of services, positive client outcomes, and accessible, appropriate and efficient services. The Framework also includes provision for the *Supported Accommodation Assistance Program Standards, 1998*.

Performance monitoring of funded contracts aims to produce better outcomes for clients and communities. It relies on an effective and productive relationship between the Department and service providers, and produces information that will assist service providers with their own continuous improvement strategies.

The Performance Monitoring Framework is a systematic process to review the practice of Community Services' funded service provision against expectations outlined in the organisation's service agreement, service specifications and the Good Practice Guidelines. Results based service specifications enable the Department to quantify the type and level of service provision purchased and the results expected of services. The Good Practice Guidelines support the provision of quality services and client outcomes, delivered by well managed and accountable organisations. The aim of the Framework is to ensure that services are meeting their contractual requirements, delivering quality services and achieving results at their contracted level. The Framework identifies any shortfalls that may be occurring, and puts in place a performance improvement plan to assist services to meet their contractual obligations and outcomes.

Supported Accommodation Assistance Program service quality in NSW is also supported through a range of policy directions aimed at improving service quality, which incorporate the principles of equity, access, participation and rights.

Delivering agreed outcomes and reform directions

To achieve high level outcomes agreed by all jurisdictions, including agreed national benchmarks for reducing homelessness, jurisdictions require sufficient flexibility in decisions on funding, programs and program criteria. The new framework for Federal Financial Relations was established for this purpose. Any legislative prescriptions around specific programs to be delivered by States and Territories, specific services to be delivered through those programs, or prescriptions or input controls on service delivery would be inconsistent with the agreed inter-jurisdictional funding arrangements.

As outlined above, a key focus of the NSW Homelessness Action Plan is to shift the focus away from crisis services as our primary response to homelessness and towards services that prevent homelessness and provide long-term support to allow people to stay safely in their home. Another key reform focus is to improve coordination between homelessness services, specialist services and mainstream services.

Delivering on these reforms could be made difficult if legislation locks States and Territories into the delivery of a specific program or programs and/or specific service

delivery methods for these programs. In particular, a scenario where specialist homelessness services are locked into crisis responses needs to be avoided. Similarly, there is a need to avoid imposition of standards to one part of the service system that could conflict with reforms aimed at ensuring the service sector works together as a whole.

National Performance Reporting Framework

A new National Performance Reporting Framework is being developed under the Intergovernmental Agreement on Federal Financial Relation, focused on high-level performance measures in National Agreements. The National Performance Reporting Framework will focus on the achievement of results, efficient service delivery, and timely provision of publicly available performance information.

The new National Performance Reporting Framework will provide information on achievement by all levels of Government against mutually agreed objectives, with a focus on community outcomes, and will encompass agreed performance indicators and benchmarks on homelessness.

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

It is understood that legislation addressing homelessness plays a role in strategies to respond to and prevent homelessness in some jurisdictions, such as the United Kingdom. However, it is important to recognise that legislation can not in itself resolve or prevent homelessness. There are a wide range of elements that comprise an effective response to homelessness. These include the need for a more integrated service system and responsive programs tailored to the needs of homeless people, as well as access to housing and other support services. For example, in the case of the United Kingdom, legislative provisions governing homelessness form part of a broader homelessness policy framework, and effective responses to homelessness are underpinned by a large and sustainable social housing sector.

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

Regulation of community housing providers

Under the *NSW Housing Act 2001* a community housing provider must be registered to receive assistance from Housing NSW. This includes assistance from Housing NSW to providers of crisis accommodation. For a provider to attain this registration, the provider is required to demonstrate a commitment to providing community housing consistent with the Housing Act and the Regulatory Code under the *Housing Regulation 2009*.

One of the performance requirements for registration is that service providers must develop and maintain arrangements that are adequate, in the opinion of the Registrar, to ensure residents with support needs receive appropriate support and, if relevant, are able to maintain their tenancies.

Regulatory frameworks for specialist service providers

As mentioned above, a number of specialist service providers are impacted by specific legislation, including providers of aged care, child care and disability services. The principles and requirements set out in these legislative frameworks capture people experiencing or at risk of homelessness where they also fall into these client groups. If

the proposed new homelessness legislation were to apply to a broad range of services, consideration could be given to recognising existing regulatory frameworks, including registration or accreditation systems, at either the Commonwealth or State level. This would assist in minimising regulatory burden on non-government organisations in sectors where service providers provide services to homeless people, but are already subject to specific regulation.