

## 1. Introduction

Thank you for the opportunity to comment on the exposure draft of the Homelessness Bill 2012.

The PILCH Homeless Persons' Legal Clinic (**HPLC**) and Council to Homeless Persons (**CHP**) welcome the Commonwealth Government's decisions to make 'tackling homelessness a major priority' and to introduce the Bill to 'underpin the national response to homelessness'.<sup>i</sup>

Given the role the Bill is intended to play in the national response to homelessness, the HPLC and CHP recommend amendments to strengthen the Bill's purpose, consistent with the Australian Constitution. Our comments and recommendations in relation to the Bill are set out below.

## 2. The Bill does not create legally enforceable rights or obligations

The object of the Bill is to increase recognition and awareness of people experiencing or at risk of homelessness. However, a shortcoming of the Bill is that it does not create any legally enforceable rights or obligations.<sup>ii</sup>

## 3. The Bill is disconnected from the existing homelessness policy and legal framework

The HPLC and CHP are concerned the Bill will have no substantive impact on the issue of homelessness because it is a symbolic document with no connection to the existing framework of law, policy and intergovernmental agreements that govern homelessness funding and service delivery. At present, there is no clear link between the Bill and the funding arrangements for housing and homelessness services.

The Commonwealth provides financial support to the States and Territories, including for spending on service delivery sectors, under the *Federal Financial Relations Act 2009* (Cth). The Commonwealth, State and Territory governments have agreed an overarching framework for the funding of services provided by States and Territories across service delivery sectors, including the housing sector, in the Intergovernmental Agreement on Federal Financial Relations (**IGA FFR**). Further, schedules attached to the IGA FFR establish:

- Specific arrangements concerning the provision of housing and homelessness services (see the National Affordable Housing Agreement (**NAHA**) at Schedule F); and
- Arrangements to facilitate reforms to reduce homelessness (see the National Partnership Agreement on Homelessness (**NPAH**) at Schedule G).

For the Bill to more effectively impact homelessness, it must be connected to these laws and agreements.

## 4. The Australian Government *can do more*

The Commonwealth Government's stated position is that the Bill can only be symbolic because it has no constitutional power to legislate comprehensively in relation to housing or homelessness.<sup>iii</sup>

The HPLC and CHP argue that the Commonwealth Government *does* have the power to provide a more meaningful legislative framework for the national response to homelessness. Australia is a party to international treaties that recognise the right of persons to adequate housing.<sup>iv</sup> The Commonwealth Parliament has the power to enact legislation to implement these rights into domestic law under the external affairs power.<sup>v</sup> The Australian Constitution also confers on the Commonwealth other relevant powers which may be relied upon in the enactment of such a legislative framework.<sup>vi</sup>

## 5. The need for homelessness leadership, increased clarity and accountability

In our view, it is possible for the Bill to make a significant contribution to the effectiveness of homelessness funding and service delivery. To achieve this, we recommend that the Bill establish an outcomes measurement framework with nationally consistent, evidence-based measures. Tracking outcomes of services provided to people experiencing or at risk of homelessness would allow the Commonwealth Government to measure progress against its goals for preventing and reducing homelessness. We

recommend the framework also provide for measurement of the quality of services being provided. The Bill should establish a statutory body (**Homelessness Authority**) to monitor and report publicly against these measures.

Research by the Australian Housing and Urban Research Institute (**AHURI**) indicates that national outcome measures are an appropriate method for measuring the effectiveness of services provided to people experiencing or at risk of homelessness.<sup>vii</sup>

In addition to giving the Bill more purpose, we consider that this solution has the potential to join the Bill in a cohesive way to the existing funding arrangements for housing and homelessness services and does not exceed powers established by the Australian Constitution. In addition, this approach has the following advantages.

(a) National homelessness leadership

The Commonwealth's roles and responsibilities under the NAHA include 'leadership for national housing and homelessness policy including Indigenous housing policy'.<sup>viii</sup> In addition, the Commonwealth's roles and responsibilities under the NPAH include monitoring performance against specified performance indicators and benchmarks and 'providing performance and financial reporting as required'.<sup>ix</sup>

The establishment of the Homelessness Authority would promote the Commonwealth's responsibility for leadership of national policy in this area. It would also provide a statutory regime for performance of the Commonwealth's monitoring and reporting obligations under the NPAH.

(b) Public accountability

The shortcoming of the current framework for funding of homelessness services is that it is based on private contractual arrangements that do not confer rights on the Australian community (including, importantly, service users). As such, this framework significantly reduces public accountability for homelessness decision making in respect of funding and services, despite the fact that a key objective of the framework established under the IGA FFR is 'improved accountability'.

In respect of this objective, the parties to the IGA FFR have committed 'to improve service delivery by ensuring that the appropriate government is accountable to its community – not just for its expenditure in delivering services, but more importantly for the quality and efficiency of the services it delivers and the outcomes it achieves'.<sup>x</sup> Relevantly, the parties have committed 'to enhancing the accountability of governments to the community through simpler, standardised and more transparent public performance reporting for all jurisdictions'.<sup>xi</sup>

Establishment of a Homelessness Authority whose function is to monitor and report on services provided to persons experiencing or at risk of homelessness would be an effective means of achieving the desired level of accountability to the Australian community in the area of housing and homelessness.

## 6. Recommended amendments to Bill

(a) Establishment and functions of the Homelessness Authority

As outlined in section 4, the HPLC and CHP recommend that the Bill establish the Homelessness Authority to monitor and report on the outcome and quality of Government-funded services provided to people experiencing or at risk of homelessness.

The National Health Performance Authority established under the *National Health Reform Act 2011* (Cth) could be used as a model for the establishment of the Homelessness Authority whose functions would include to:

- (i) monitor and report on progress in achieving the overarching objective that all Australians have access to adequate housing;

- (ii) monitor and report on the quality and outcomes of mainstream services and specialist homelessness services provided to persons who are experiencing or at risk of homelessness;
- (iii) develop performance indicators to be used by the Homelessness Authority in connection with the performance of the functions conferred by paragraphs (i) and (ii); and
- (iv) consider relevant intergovernmental agreements (such as the IGA FFR) in performing its functions under the legislation.

Given State and Territory governments are responsible for the delivery of services to persons experiencing or at risk of homelessness, it will be important for these governments to participate in the process of establishing the Homelessness Authority.

(b) Reporting against the right to adequate housing

As a party to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Australia recognises the right of everyone to an adequate standard of living, including adequate housing, and commits to taking appropriate steps, to the maximum of its available resources, with a view to achieving progressively the realisation of this right.<sup>xii</sup>

Under the Constitution, the Commonwealth Parliament has the power to enact laws with respect to external affairs.<sup>xiii</sup> Relevantly, this includes the power to enact into domestic law international obligations that Australia has accepted under treaty, subject to certain qualifications. Other relevant powers in the Constitution may also be relied upon to establish a Homelessness Authority with monitoring and reporting functions.<sup>xiv</sup> Accordingly there is scope to use the Bill to create the Homelessness Authority with the functions set out above, including the function of monitoring and reporting on progress towards achieving access to adequate housing for all Australians.

(c) An unqualified right to adequate housing

Currently clause 7 of the Bill suggests that the Commonwealth Government 'aspires' for all people living in Australia to have adequate housing. We consider that as currently drafted this section diminishes the right to adequate housing set out in the ICESCR and is inconsistent with an Act intended to 'underpin the national response to homelessness'.<sup>xv</sup>

Accordingly, we recommend that the Commonwealth Government amend clause 7 of the Bill to state, 'The Commonwealth recognises the right of all persons living in Australia to adequate housing and commits to take appropriate steps, to the maximum of its available resources, to achieve progressively the realisation of this right.' This reflects Australia's international obligations and the objective and outcome referred to above in the NAHA.<sup>xvi</sup>

(d) Acknowledgement that a multi-faceted approach is needed to achieve the objective of adequate housing

The realisation of the right to adequate housing is not just a matter of ensuring a sufficient supply of housing but of addressing a complex range of issues to ensure people obtain and keep housing.<sup>xvii</sup>

In developing a 'client outcomes model' to measure the effectiveness of homelessness services, AHURI identified 'two phases in achieving outcomes for people experiencing or at risk of homelessness: *getting housing* and *keeping housing*' and recommended a shift in focus towards the latter.<sup>xviii</sup> The Bill should acknowledge the multi-faceted approach required to progressively realise the right to adequate housing. We recommend the Commonwealth use clause 10 of the Bill as a basis for such an acknowledgement.

(e) Other proposed drafting amendments

We also recommend the following amendments to the Bill.

- The Bill should define ‘adequate housing’ and specify that housing is adequate if it provides access to adequate amenities and is safe, secure and affordable. See section 4 of the *Supported Accommodation Assistance Act 1994* (Cth).
- Clause 4 of the Bill defines ‘specialist homelessness services’ inclusively to mean services to assist persons experiencing or at risk of sleeping rough or living in an improvised dwelling. We consider it is important for this term to be defined by reference to examples of specialist services that assist clients experiencing or at risk of all types of homelessness.
- Clause 5(c) of the Bill includes the words ‘and the person is not living in that accommodation by choice’ in the definition of homelessness and therefore requires a subjective assessment of a person’s decision making in respect of their housing. These words should be removed from the definition.
- Insert a new paragraph (d) in clause 5 of the Bill to provide a ‘catch-all’ category of homelessness that states, ‘the person does not otherwise have access to adequate housing’. ‘Adequate housing’ should be defined as set out in the first bullet point. This would make references to persons ‘at risk of experiencing’ homelessness throughout the Bill unnecessary.
- Insert a new paragraph (f) in Clause 10 of the Bill, which recognises the importance of greater integration between mainstream services and specialist homelessness services as identified in the NPAH.<sup>xix</sup>
- Insert a new paragraph (g) in Clause 10 of the Bill, which recognises the importance of effective intervention during critical transitions to prevent homelessness, including ageing, young people leaving care, family violence related housing risk and homelessness, people exiting institutional healthcare institutions and people exiting correctional institutions.<sup>xx</sup>
- Delete Clause 13 of the Bill as our recommended provisions are consistent with the Australian Constitution and the allocation of responsibilities between federal and state level governments for the provision of housing services under the IGA FFR.

Please contact **Chris Povey** of HPLC on (03) 8636 4410 or **Sarah Kahn** of CHP on (03) 8415 6203 to discuss this submission further.

<sup>i</sup> Minister for Housing and Homelessness, ‘Draft Homelessness Bill released for comment’ (Media Release, 5 June 2012).

<sup>ii</sup> Homelessness Bill 2012 (Cth) cl 13.

<sup>iii</sup> Minister for Housing and Homelessness, above n i; see also Australian Government *Government Response to the House of Representatives Standing Committee on Family, Community, Housing and Youth report: Housing the Homeless - Report on the inquiry into homelessness legislation* (2012) 3.

<sup>iv</sup> See, eg, *International Covenant on Economic, Social and Cultural Rights* opened for signature 16 December 1966, [1976] ATS 5 (entered into force 3 January 1976) art 2(1), art 11(1).

<sup>v</sup> Australian Constitution s 51(xxix).

<sup>vi</sup> See, eg, ss 51(xi) – power to make laws with respect to census and statistics, 51(xx) – power to make laws with respect to trading or financial corporations, 96 – power to grant financial assistance to States and Territories on terms and conditions Parliament thinks fit.

<sup>vii</sup> Australian Housing and Urban Research Institute, ‘What makes a difference? Building a foundation for nationally consistent outcome measures’ (17 April 2012) 1 < <http://www.ahuri.edu.au/publications/psyn043/>.

<sup>viii</sup> Council of Australian Governments, ‘National Affordable Housing Agreement’ (July 2011) Standing Council on Federal Financial Relations, cl 11(a).

<sup>ix</sup> Council of Australian Governments, ‘National Partnership Agreement on Homelessness Relations’ (July 2011) Standing Council on Federal Financial Relations, cl 20(d), 20(e).

<sup>x</sup> Council of Australian Governments, ‘Intergovernmental Agreement on Federal Financial Relations’ (July 2011) Standing Council on Federal Financial Relations, cl 14.

<sup>xi</sup> *Ibid* cl 15, cl C1.

<sup>xii</sup> Art 2(1), Art 11(1) International Covenant on Economic, Social and Cultural Rights;

<sup>xiii</sup> Section 51(xxix).

<sup>xiv</sup> Above n vi. See also *National Health Reform Act 2011* (Cth) s 64.

<sup>xv</sup> Above n i.

<sup>xvi</sup> Above n iv, n viii, cl 6.

<sup>xvii</sup> Above n ix, cl 18(c).

<sup>xviii</sup> Above n vii.

<sup>xix</sup> Above n ix, cl 18(c).

<sup>xx</sup> Above n vii, 94.