

**Commissioner for Children and Young People**  
Western Australia

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Our reference: 09/10612

Ms Annette Ellis MP  
Chair  
Standing Committee on Family, Community, Housing and Youth  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Ms Ellis

**Inquiry into the principles and service standards for new homelessness legislation**

In my capacity as Western Australia's Commissioner for Children and Young People, I am pleased to provide the attached submission to the above Inquiry for the Committee's consideration.

Thank you for the opportunity to contribute to this important Inquiry. I would be pleased to discuss any of the issues further and I look forward to learning of the Committee's findings.

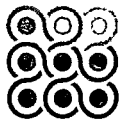
Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

6 August 2009

*Caring for the future growing up today*



## **Submission to the House of Representatives Standing Committee on Family Community Housing and Youth Inquiry into homelessness legislation**

### **1. Introduction**

Thank you for providing the opportunity to make a submission to the Inquiry into Homelessness Legislation.

#### **1.1 The role of the Western Australian Commissioner for Children and Young People**

The Commissioner for Children and Young People was established by the *Commissioner for Children and Young People Act 2006 (WA)* (the Act) and I was appointed as the inaugural Commissioner in December 2007.

Under section 19(g) of the Act I have responsibility to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people. Section 20 provides that in carrying out all of my functions I must have particular regard to Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.

The Act provides that I must observe four guiding principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation
- The contributions made by children and young people in the community should be recognised for their value and merit
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.<sup>1</sup>

It is with these responsibilities in mind that I submit comment to the Inquiry into Homelessness Legislation to ensure that the needs and views of children and young people are considered.

### **2. Issues to consider**

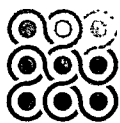
#### **2.1 Children's rights**

In performing my functions I must have regard to the United Nations *Convention on the Rights of the Child* (the Convention).<sup>2</sup> Article 12 provides that children and young people have the right to express their views and be heard in all matters affecting them. One of my primary roles as Commissioner is to encourage the participation of children and young

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<sup>1</sup> Section 4 *Commissioner for Children and Young People Act 2006 (WA)*

<sup>2</sup> Section 20



people in decision making and to encourage government and non-government agencies to seek the participation of children and young people appropriate to their maturity.

The Convention also states that every child has the right to 'a standard of living adequate for the child's physical, mental, spiritual, moral and social development'.<sup>3</sup> As is discussed later, housing provides the foundation for a child's overall development. The right to housing is also generally contained in a range of other United Nations human rights instruments and is considered further in my discussion of the Inquiry's Terms of Reference.

## 2.2 Submission to 'Which way home? A new approach to homelessness'

The Western Australian (WA) Commissioner and the New South Wales (NSW) Commission for Children and Young People made a joint submission to the Australian Government green paper, *Which way home? A new approach to homelessness* ('the green paper'). In that submission we agreed with the thrust of the long term goals articulated in the green paper, but expressed concern that positioning the homelessness service model at the point of contact with crisis services replicated the existing tertiary focus of homelessness services.

We urged instead that the proposed service model give effect to Principle 2 of the green paper, 'Preventing the causes of homelessness', and that emphasis be placed on initiatives to keep children, young people and their families living together in secure, affordable and appropriate housing. Hence, much of our paper focussed on the issue of housing affordability and the need to reduce the incidence of homelessness resulting from structural factors in the housing market. In addition to this central focus, we made two key recommendations:

- That a public health model be adopted, which would focus on primary, secondary and tertiary prevention strategies (see Figure 1, Appendix 1, as it applies to the homelessness risk factors identified in the green paper). This model reflects the complexity of systems and drivers across a homelessness continuum that runs from being appropriately and affordably accommodated to 'sleeping rough'. Strategies are directed along that continuum and include prevention, early intervention, minimising the period of homelessness and improved coordination and integration of services.<sup>4</sup>
- That a 'child centred' focus in homelessness service delivery is necessary. The many design features of 'child centred' crisis services was outlined, including such things as prioritising service and support models to maintain families with children in their own homes, and sustaining community connectedness. This is illustrated, as part of a public health model, in Figure 2, in Appendix 2.

I reiterate the proposals of that earlier submission. My comments as directed to the Terms of Reference of this Inquiry and the content of homelessness-related legislation reflect the position of the earlier submission. First, however, I draw attention to the incidence and nature of homelessness as it affects children and young people, drawing on the existing literature, including research on the views of children and young people. This is to inform the

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<sup>3</sup> Article 27

<sup>4</sup> For example, as reflected in Social Inclusion Board of South Australia *Reducing Homelessness: A Plan for Immediate Action*, 2004



model enabled by the legislation and provides a context for understanding the proposals for legislative content. I note that while the emphasis of this Inquiry is on proposals for changing homelessness legislation, legislative change must be in keeping with a broader policy framework to effect real change.

### 2.3 Incidence of homelessness among children and young people

There has been a change in the homeless demographic over the 5 years to 2006, with the number of children under 12 years who are homeless having increased by 22 per cent<sup>5</sup> (to 12 per cent of the homeless population, or 12,133 homeless children<sup>6</sup>). The Government's report into homelessness, *The road home*, states that many of these children are with their parents and are homeless because of violence or financial stress.<sup>7</sup> This trend is confirmed by SAAP data which shows a 33 per cent increase in the five years to 2008 in the number of families with children seeking homelessness assistance.<sup>8</sup>

The largest group of people experiencing homelessness are young people aged 12 to 18 years (21 per cent<sup>9</sup>) and although it is reported that this figure has reduced in the five years to 2006,<sup>10</sup> the figure points to the need for attention in the development of youth specific homelessness services.

In combination, there were 34,073 homeless children and young people up to 18 years out of a total homeless population of 104,676.<sup>11</sup>

The incidence of homelessness amongst Aboriginal and Torres Strait Islander<sup>12</sup> people is far in excess of that of non-Aboriginal communities. In 2006, Aboriginal people were 4.8 times more likely as non-Aboriginal people to face overcrowding in housing, and Aboriginal communities struggle to maintain basic environmental standards, such as functional sewerage and access to electricity and clean water.<sup>13</sup> Aboriginal people were also more likely to attend a SAAP service than non-Aboriginal people, with one in 13 Aboriginal children aged 0-17 years compared to 1 in 98 non-Aboriginal children accompanying a parent or guardian to a SAAP agency.<sup>14</sup> Family violence was the single main reason for Aboriginal clients seeking SAAP assistance.<sup>15</sup>

Homelessness figures are likely to have increased as a result of an economic boom which lead to Western Australian housing prices amongst the highest in Australia. Further a new group of people suffering housing stress has emerged as a result of the economic recession. Western Australia has had a record rate of property repossession (1,336 in 2008-09, up 94

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<sup>5</sup> Department of Families, Housing, Community Services and Indigenous Affairs, *The road home a national approach to reducing homelessness*, 2008, p5 (*The road home*)

<sup>6</sup> Australian Bureau of Statistics *Counting the Homeless 2006* ABS Cat No 2050.0, p27

<sup>7</sup> *The road home*, p5

<sup>8</sup> *The road home*, p5

<sup>9</sup> Australian Bureau of Statistics *Counting the Homeless 2006* ABS Cat No 2050 0, p27

<sup>10</sup> *The road home*, p4

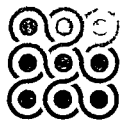
<sup>11</sup> Australian Bureau of Statistics *Counting the Homeless 2006* ABS Cat No 2050 0, p27

<sup>12</sup> This submission will refer to Aboriginal people, as inclusive of Aboriginal and Torres Strait Islander peoples.

<sup>13</sup> Steering Committee for the Review of Government Service Provision *Overcoming Indigenous Disadvantage Key indicators 2009*, Chapter 9

<sup>14</sup> Australian Institute of Health and Welfare *Homeless Aboriginal and Torres Strait Islander clients in SAAP 2006-07*, Summary

<sup>15</sup> Ibid



per cent) and a rapid rise in bankruptcy (up 16 per cent in 2008-09).<sup>16</sup> The primary need for these families is for affordable and appropriate housing and they are unlikely to need the support services required to be attached to SAAP Agreements under Division 2 of the *Supported Accommodation Assistance Act 1994* (Cth). Aside from the needs of this emerging group of potential clients in accessing secure accommodation, they place further pressure on the demand for stock at the lower end of the market, competing with low income housing consumers.

Existing homelessness services are unable to match the need for support. In 2007-08, 77 per cent of couples with children and 66 per cent of individuals with children were turned away from SAAP services, compared to 48.5 per cent of individuals without children, and 59 per cent were under 20 years of age.<sup>17</sup> This was mostly because of a lack of accommodation (83 per cent). Thirty per cent of all people with a valid unmet request for SAAP support were people from Aboriginal backgrounds.<sup>18</sup>

## 2.4 Causes of homelessness

Though noting that there are many causes of homelessness, *The road home* refers specifically to six causes of homelessness: access to affordable and stable housing, domestic violence, long-term unemployment, family breakdown, mental health and substance abuse and people leaving state facilities. Problems are likely to be compounded in remote and rural areas. A lack of accessible and affordable housing exacerbates the effects of other causes. For example, the disruption for a parent and children escaping family violence would be far less if alternative appropriate long-term accommodation for them or the perpetrator was readily available. Similarly, the availability of long-term, affordable housing for young people in their transition from child protection arrangements would reduce their housing stress and the potential need for intensive, ongoing support services. Hence, fundamental to any attempts to address homelessness is the need to ensure people have access to secure, affordable housing. I understand that the Australian and State Governments have taken steps to address the findings of *The road home* report and I comment on these later in the submission.

## 2.5 Impact of homelessness on children and young people

Numerous reports have referred to the impact of homelessness on children and youth. The Australian Institute of Health and Welfare reports that homeless children experience high rates of behavioural and mental health problems, very young children may experience physical and mental developmental delay, and older children suffer high levels of stress and anxiety, social isolation and schooling disruption. These consequences extend beyond the homelessness period.<sup>19</sup> The Ford review of the (then) WA Department of Community Development (responsible for child protection) notes that homelessness increases the vulnerability of children whether or not they are already an at-risk child. For children at risk of abuse or neglect the capacity for child protection or support agencies to assess whether

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<sup>16</sup> Ash S, WACOSS, *Record Number of Repossessions in WA*, Media Release, 1 July 2009, Ash S, WACOSS *WA Households Under Pressure as Bankruptcies Soar*, Media Release, 3 July 2009

<sup>17</sup> Australian Institute of Health and Welfare *Demand for SAAP accommodation by homeless people 2007-08 summary* Bulletin 71, 2009, p4-5

<sup>18</sup> Ibid

<sup>19</sup> Australian Institute of Health and Welfare *A Picture of Australia's Children*, 2009, p114 Similar effects are noted by Institute of Child Protection Studies, *Finding their way home Children's experiences of homelessness* 2007, p10-11



they are being adequately cared for is compromised if their accommodation issues are not resolved.<sup>20</sup> *The road home* cautions that for children, homelessness 'may be the first step on a path to lifelong disadvantage'.<sup>21</sup> Integrating a regard for the experiences of children and young people in the development of housing and homelessness policy and legislation may reduce the incidence and extent of these long term effects.

For Aboriginal people, the effects of homelessness are intensified. The degree of overcrowding in housing can increase the risk of family violence and impact on children's ability to sleep, relax and study. Poor environmental standards, particularly in rural and remote areas, contribute to the spread of environmentally-caused diseases such as respiratory diseases and intestinal infections.<sup>22</sup>

The literature consistently points to the primary need for secure and affordable housing, located close to family supports, including the children's schools and other educational facilities, as a primary and tertiary measure. As a preventative measure, there is a reduction in the incidence of homelessness associated with affordability or market trends. As a tertiary measure it assists the homeless in transition and reduces the period of homelessness, therefore ameliorating the resulting effects (such as schooling disruption) and reducing the likelihood of repeated crisis.<sup>23</sup>

Secondly, the literature refers to the need for appropriate support services to support the homeless in transition. This includes appropriate services for families escaping family violence, including child specific services,<sup>24</sup> to address mental health issues, including services specifically designed for young people,<sup>25</sup> and to assist in managing tenancies.<sup>26</sup> The literature also suggests that there is a need for culturally specific support services, because of the particular issues affecting specific groups.

## 2.6 What children and young people say about homelessness

As noted in the WA and NSW Commissioners' Joint Submission to the Australian Government's green paper on homelessness, the experiences of children and young people are often subsumed into the experience of their families, because of the assumption that research findings of adult family members are equally applicable to their children. However, the experiences of children and young people, whilst related to those of other family members, are unique. It is now widely recognised that their views should be sought, for a range of reasons, including their capacity to provide invaluable insights to their experience of homelessness and to inform the development of services appropriate to their particular needs.<sup>27</sup>

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<sup>20</sup> Ford P *Review of the Department for Community Development*, Perth, 2007, p52

<sup>21</sup> *The road home*, p5

<sup>22</sup> Steering Committee for the Review of Government Service Provision *Overcoming Indigenous disadvantage Key indicators 2009*, Chapter 9

<sup>23</sup> NSW Women [sic] Refuge Movement and the UWS Urban Research Centre *The impact of housing on the lives of women and children – post domestic violence crisis accommodation*, 2009, p16-21

<sup>24</sup> *Ibid*, p21-25, Pat Thomas Memorial Community House *The word of the child*, 2008 p45

<sup>25</sup> Youth Affairs Council of Western Australia *Long Term, collaborative and multifaceted A response from the Youth Affairs Council of Western Australia to the Federal Government's Green Paper on Homelessness 'Which Way Home'* c2008 p15

<sup>26</sup> *Ibid*

<sup>27</sup> On the benefits of seeking the participation of children and young people see, for example, Kirby P, Lanyon C, Cronin K, Sinclair R. *Building a culture of participation Involving children and young people in policy, service planning, delivery and*



In 2007, the Institute of Child Protection Studies reported on research into children's experience of homelessness.<sup>28</sup> Eighteen children aged 6 to 14 years and 7 young people aged between 15 and 21 years were surveyed. Eight of these identified as being of Aboriginal descent. The research subjects had been homeless, along with their families, for between 4 months and 10 years, the average period of homelessness being 30 months. I restate the summary of findings provided in the Joint Submission to the green paper. Relevant key findings include:

- Children and young people defined being 'housed' more by the level of connectedness to family and community and the absence of fear, instability and insecurity, than by their housing status. As one young man said  
*'Living with my mum has been when I am happiest .... (home) is more about the people there than the house'*
- Parents' capacity to protect and care for their children mitigated the effects of homelessness on their lives to some extent.
- When housed (in temporary and longer term housing), children stressed the importance of having adequate space, having adequate control over their environment and their special things around them.
- Housing stability and predictability were important. Many of the children had experienced high levels of mobility and having a 'home' was associated with permanency, stability, security.
- Children didn't necessarily feel safer and more secure in crisis accommodation than they did in the often difficult family circumstances that precipitated their homelessness.
- The most difficult aspect of moving for many was having to leave their schools, friends and local communities. An important part of 'home' for many children was a place where they could have pets. Maintaining these connections mitigates their sense of loss.

Children consistently raised the need to sustain safe and secure relationships, preserve family and wider community connectedness and to mitigate the effect of the experiences of adversity, and the researchers conclude that these remain priorities for the children and young people after they are housed, if they are to feel they have a 'home'. The researchers call for the prevention of homelessness as a means of limiting damage to families and as a more efficient allocation of community resources.<sup>29</sup>

The 2008 research on 20 children's experience of family violence and on the supports available to them in a regional WA centre reinforces the literature on the effects of homelessness on children: stress and anxiety, social isolation, and schooling disruption.<sup>30</sup> These impacts are exacerbated by the additional burden of violence in the home. Children as young as 7 years of age reported that they were tired and worried about their mother and

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*evaluation* Nottingham Department for Education and Skills, 2003 p9-14; Hoffman-Ekstein J, Michaux A, Bessell S, Mason J, Watson E *Children's agency in communities A review of literature and the policy and practice context*, Benevolent Society (NSW) 2008, p3

<sup>28</sup> Institute of Child Protection Studies, *Finding their way home Children's experiences of homelessness*, 2007

<sup>29</sup> *Ibid*, p11

<sup>30</sup> Pat Thomas Memorial Community House, *The word of the child*, 2008, p30



one 14 year old girl stated:

*I never wanted to go anywhere. I always want to be around mum, when I go out I get scared that she is going to be killed by him. I can never do any work at school coz my head is always thinking about poor mum.*<sup>31</sup>

Some children expressed anger at the situation and reported being in trouble at school because of their anger.

In regards to homelessness services, the research identified the need for children to be treated as clients in their own right and for the funding of a dedicated child case worker at each refuge. The role of the worker would be to link children to relevant services, assist children to deal with schooling issues, behavioural problems and Family Court issues, and assist in building positive mother/child relationships.<sup>32</sup>

In preparing its response to the Australian Government's Green Paper, the Youth Affairs Council of WA (YACWA) surveyed more than 150 West Australian young people. In view of their feedback and consultations with youth service providers, YACWA supports wrap-around services that recognise the range of issues affecting young people, and delivers services at different levels. In addition they identified the need for:

- an increase in housing for young people with mental illnesses, for Aboriginal young people, and for young women and mothers
- an increase in support to assist young people transition out of SAAP accommodation
- an increase in funding to tenants advice services
- an increase in funding and support to organisations to assist young people in state care to transition to independence
- better-equipped mainstream services.<sup>33</sup>

The information so far received from children and young people assists in the development of appropriate models for addressing homelessness. Given the long term impact of homelessness on children, I emphasise the importance of consultation in this process, particularly with children and young people.

### **Recommendation 1**

That the views of children and young people be considered in the development of approaches to homelessness.

## **2.7 Recent initiatives**

Australian Government initiatives launched in response to *The road home* report go some way towards addressing the need for increased housing supply, with funds allocated to social housing construction and refurbishment, construction and upgrading of remote Aboriginal

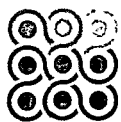
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<sup>31</sup> Ibid, p32

<sup>32</sup> Ibid, p45

<sup>33</sup> Youth Affairs Council of Western Australia *Long Term, collaborative and multifaceted. A response from the Youth Affairs Council of Western Australia to the Federal Government's Green Paper on Homelessness 'Which Way Home' c2008, p14-16*





housing, and incentives to building affordable rental properties.<sup>34</sup> It is not necessary to restate those initiatives in detail here. Further, the WA Implementation Plan under the National Partnership Agreement on Homelessness (NPA) includes initiatives to tackle homelessness. The detail of this Plan has not been made available to me, but the State Government's general information statement shows a focus on the support needs of the homeless.

The Commonwealth initiatives in particular may make inroads into the need for an increase in public/social housing stock and an increase in affordable rental accommodation, at least over the next 10 years. Further, the Australian Government's proposed review of 'without-grounds termination' clauses and the lack of protection for boarders and lodgers in some jurisdictions<sup>35</sup> is a positive step towards creating a more secure a private rental sector.

However, they may not be sufficient to address the structural drivers of homelessness. We should continue to ask whether housing is sufficiently protected from the ravages of the market place, and further, whether our laws and policies exacerbate the impact of economic factors on housing access, security and affordability.

#### **Recommendation 2**

That Australian and State and Territory Governments continue to investigate the structural drivers of homelessness.

I now turn specifically to addressing the Inquiry's Terms of Reference, which should be read in the context of the previous comments.

### **3. The Inquiry 'Terms of Reference'**

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

The right to housing should be a fundamental principle in the provision of homelessness and other housing services and should be enshrined in legislation. As stated previously, housing provides the foundation for the ongoing physical, social and educational development for children and young people.

The Universal Declaration of Human Rights provides in Article 25(1) that:

Everyone has the right to a standard of living adequate for health and well being of himself [or herself] and his [or her] family, including food, clothing, housing and medical care and necessary social services ...

The right to housing is further enshrined in the International Covenant on Economic, Social and Cultural rights (Article 11). In addition, the Convention on the Rights of the Child (Article 27) states that every child has the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development'.

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<sup>34</sup> *Homelessness Implementation Plan Fact Sheet* Available at <http://www.community.wa.gov.au>

<sup>35</sup> *The road home*, p27



The United Nations (UN) has commented that the right to housing should not be interpreted in a narrow or restrictive sense, equated with merely having a roof over one's head. The right translates to the ability to live in security, peace and dignity and includes aspects such as affordability, habitability, cultural appropriateness, and being located close to employment and services.<sup>36</sup>

Further, the UN Special Rapporteur on Adequate Housing has urged federal and state authorities to make a greater effort to incorporate the international human rights instruments (to which Australia is a party) into the domestic legal system.<sup>37</sup> More recently, the UN Special Rapporteur has highlighted the fundamental error of governments considering housing only as a 'commodity and an investment asset' and leaving housing provision primarily to the private market. She argues that the reduction in the role of the state in housing has led to a decrease in housing options, impacting on those that cannot afford market rents and mortgages.<sup>38</sup>

Australia lags behind other Commonwealth countries in moves to enshrine human rights generally, and the right to housing, specifically, in domestic law. While the Commonwealth Government has taken steps to facilitate public debate on the adoption of a charter of rights, this does not preclude the Commonwealth enshrining the right to housing as a principle in the delivery of homelessness services, as is the case in, for example, Scotland<sup>39</sup> and South Africa.<sup>40</sup>

Aside from the fundamental right to housing the following specific principles should underpin the provision of housing in Australia.

1. That housing provides the foundations for social inclusion, and that homelessness significantly erodes the capacity of people, particularly children and young people, to meet their social, psychological, educational and physical potential.
2. The causes of homelessness are varied and include a lack of affordable and appropriate housing as well as circumstances that are particular to the individual. Individual circumstances should not be overstated as the cause of their homelessness.
3. That strategies will be aimed at preventing and addressing homelessness.
  - 3.1. Homelessness prevention includes
    - the creation of a viable not-for-profit housing stock, providing an alternative to private renting and homeownership, and providing a buffer against market forces
    - residential tenancy laws that protect from 'without-grounds evictions' and excessive rent increases, and which provide protection for boarders, lodgers and long-term caravan dwellers

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<sup>36</sup> United Nations Committee on Economic, Social and Cultural Rights *The right to adequate housing (Art 11 (1)) General Comment No 4*, para 6-8

<sup>37</sup> UN Special Rapporteur on Adequate Housing *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, Mission to Australia, A/HRC/4/18/Add.2, 11 May 2007, para 127

<sup>38</sup> United Nations *UN expert on housing issues report on the financial crisis*, Press Release issued 9 March 2009

<sup>39</sup> *Scottish Homelessness Act 2002*. In addition, the UK *Homelessness Act 2002* imposes a duty on local housing authorities in Britain to provide accommodation for people classified as unintentionally homeless and in priority need, until a settled housing solution is found

<sup>40</sup> Devereux A, 'Housing Rights in Australia', in Leckie S, (ed) *National Perspectives on Housing Rights*, 2001



- 3.2. Addressing homelessness requires
  - recognition that there are differing causes of homelessness, each requiring a different response (in some instances provision of emergency housing will suffice)
  - the provision of appropriately targeted short to medium term housing and services to meet the needs of individual clients and, where applicable, their children. Where appropriate, services should be child focused.
4. That in recognition of the impact of dislocation, especially on children and young people, measures be adopted which minimise the risk and impact of displacement. The assessment of need should be fast and efficient and assistance appropriately targeted. This could include the allocation of priority not-for-profit rental housing stock and the creation of emergency housing in a diversity of areas, particularly in rural and remote areas, to minimise disruption for families with children. There should also be improved measures to assist vulnerable groups to remain in their homes; for example, to enable victims of family violence and their children to remain in their homes and to build relationships between families and young people at risk of homelessness.
5. That Commonwealth and State and Territory Governments will co-operate to minimise the incidence of homelessness through the continued investigation of housing models that will best deliver accessible, secure, appropriate and affordable housing to minimise the impact of homelessness, and to assist the transition from homelessness to housing of choice.

### **Recommendation 3**

That the right to housing be enshrined in Commonwealth and State legislation.

### **Recommendation 4**

That homelessness legislation be underpinned by principles reflecting the centrality of housing as a means of supporting social inclusion and recognising the need for primary, secondary and tertiary strategies for preventing homelessness.

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

In a recent paper the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) has explained 'social exclusion' as such:

...it is generally understood to be a dynamic process, with a multiplicity of causes, which occurs at both an individual and community level....[T]here are differing manifestations of exclusion, both wide (affecting many people), deep (entrenched and multiple forms of exclusion) and concentrated exclusion (geographic concentration).<sup>41</sup>

Social inclusion as a public policy construct responds to this, recognising 'that the lives of the most disadvantaged in society are typified by exclusion from the things necessary for full

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<sup>41</sup> 'Social inclusion and human rights – strange bedfellows on the road to an authentically Australian inclusion agenda?', paper presented to the Australian Social Policy Conference, 2009, p3, referring to Hayes et. al, *Social Inclusion Origins, concepts and key themes*, 2008



economic, social and civic life,<sup>42</sup> whilst recognising the multiple causes and effects of inequality.<sup>43</sup>

According to the VEOHRC it is critical that governments integrate the social rights and human rights agendas.<sup>44</sup> Amongst other things, the marrying of the two means that governments operate under a clear set of standards that define the rights of individuals and the responsibilities of the community. This ensures fair and transparent interactions and shifts the discourse from formal to substantive equality.<sup>45</sup>

As discussed above, homelessness can lead to the social and educational alienation of children and young people, and can set them on a path to a life time of disadvantage. Legislation is critical in marrying the social inclusion and rights agendas. In the first instance, for rights to carry weight they need to be legislatively enshrined. Then, for legislated rights to have impact in the area of homelessness, they need to be articulated along the spectrum of homelessness. The types of statutes that could be affected by such an approach are discussed below.

Aside from the content of housing-related legislation, the allocation of departmental responsibility also has a role in addressing the social inclusion/rights agenda. Historically, the responsibility for government housing delivery has been divided between housing and community service departments (and the funding of not for profit organisations). While the role of community service departments is critical in assisting those vulnerable to housing to move to, and be able to sustain, long term accommodation, in my view the responsibility for the delivery of housing support should be held by state housing departments.

This would better reflect the continuum from secure/affordable housing to rough sleeping and the permutations of circumstances and factors along that continuum, and enable the development of approaches suited to those variables. For example, if a family escaping domestic violence was able to be accommodated in housing department stock set aside for emergency accommodation and that emergency stock was suitable to their long term needs, it might be possible for them to retain that property and a new 'emergency' property be allocated to the pool. Similarly, a housing department could allocate priority housing stock for those families that do not require 'supported' accommodation. This type of flexibility cannot be easily delivered where there is a division in departmental responsibility between emergency/supported accommodation and medium to long-term housing.

### **Recommendation 5**

That the right to housing, reflecting the continuum of homelessness, be articulated in legislation.

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<sup>42</sup> Ibid p3

<sup>43</sup> Ibid p5

<sup>44</sup> Ibid p5

<sup>45</sup> Ibid p6-7



### Recommendation 6

That the responsibility for housing services be located within state housing departments, with a relationship to community service departments to assist in the delivery of support aspects.

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

Legislation has the capacity to mandate the availability and quality of services, thereby establishing an obligation on relevant bodies to fulfil policy objectives. Further, it can provide the philosophical framework for delivering services, set out the mechanisms for delivery and determine Commonwealth and State responsibilities regarding funding and functions.

As outlined in *The road home*, the responses to homelessness are varied. I support a suite of reforms to legislation that impact on the availability and security of housing and on the delivery of supports to prevent homelessness and to assist the transition to housing. The focus should be shifted from the commodification of housing to the concept of housing as a fundamental human right (a 'home'). The types of legislation that could be affected by an integrated, rights-based approach to housing and homelessness would include:

*Residential tenancies legislation:* to ensure a correct balance in the protection of fundamental tenants' rights (security of tenure, affordability, habitability) and the maintenance of a healthy private rental market. Tenancy protections are particularly important in Australia where, since the 1940s, the policy and economic emphasis has been on home ownership. In the absence of a substantial government investment in not-for-profit housing, private tenancy becomes the only 'safety net' for those unable to enter the housing market because of individual circumstances or because of inflated housing prices. However, in most jurisdictions private tenants have few protections from eviction or market driven rent increases.

*Taxation law:* as a driver of housing investment. While tax incentives to invest in rental housing may have benefits (for example, in generating investment in private rental stock) they can also affect housing prices and the capacity for low to middle income earners to afford home ownership.<sup>46</sup> Similar concerns have been expressed about the effect of the capital gains tax exemptions on primary residences. Australia is identified as one of the least affordable housing markets internationally<sup>47</sup> and it is projected that there will be a 50 per cent increase in the number of households in housing stress over the next 40 years.<sup>48</sup> According to Disney, house price inflation over the last 20 years has been driven by taxation policies which 'pitch would-be home buyers of modest means into unequal competition with

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<sup>46</sup> There is a vast body of literature on the possible affects of economic policy on housing affordability. See for example, Disney, J, 'Affordable Housing in Australia: Some Key Problems and Priorities for Action', Paper presented to *National Forum on Affordable Housing*, Australian Housing and Urban Research Institute, 19 April 2007

<sup>47</sup> Demographia *5th Annual Demographia International Housing Affordability Survey. 2009 Ratings for Metropolitan Markets* 2009

<sup>48</sup> Yates J, Kendig H, and Phillips B, *Sustaining fair shares: the Australian housing system and intergenerational sustainability. Final Report No. 111*, Australian Housing and Urban Research Institute 2008



wealthy investors for whom higher prices mean greater tax benefits'.<sup>49</sup> He argues that reducing these tax distortions should be a priority for action in increasing the affordability of housing. I agree that such a review is central to addressing homelessness at a primary level and for devising a nation-wide housing model that meets the housing needs of our citizens.

*Commonwealth/State funding legislation/agreements:* A policy framework for homelessness can be put into effect through the terms for funding provision. For example, some Commonwealth funding to States and Territories for the provision of public housing could be tied to the States and Territories delivering a sufficiently viable, shifting pool of targeted priority housing. In the funding of services to the homeless (such as through SAAP/NAHA) the range and mode of support services can be mandated, including provision for groups with particular needs, such as children, young people and people from Aboriginal and Torres Strait Islander background.

*Other legislation:* Other non-housing legislation can be critical in assisting children and young people to remain in their homes. For example, legislation relating to family violence can significantly reduce the likelihood or duration of homelessness for victims and their children if it effectively enables them to safely remain in or return to the family home, or eliminates their need to flee subsequent accommodation. Similarly, child protection legislation and supporting measures can assist in building relationships between families and young people and reducing the risk of youth homelessness.

### **Recommendation 7**

That legislation that directly and indirectly impacts on homelessness be reviewed.

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

### *3.4.1 Housing-related legislation generally*

There has been a repeated identification in the literature of affordability and access issues as a major cause of homelessness in Australia, particular in certain economic climates. As noted above, the UN Special Rapporteur on Adequate Housing has commented on the problem of leaving housing provision primarily to the private market. The impact of the recent property boom on housing consumers not normally affected by housing stress suggests that the legislative and policy framework relies too heavily on a private market philosophy and does not sufficiently regulate housing as something other than a commodity. Residential tenancy laws have been inadequate to protect against price rises not tied to the cost of housing, or against without-fault evictions. Economic and taxation policy may have contributed to an increase in home purchase prices. It would appear, then, that existing housing legislation has not successfully protected families from forced homelessness.

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<sup>49</sup> Disney, J, 'Affordable Housing in Australia: Some Key Problems and Priorities for Action', Paper presented to *National Forum on Affordable Housing*, Australian Housing and Urban Research Institute, 19 April 2007, p5



### 3.4.2 Homelessness specific legislation, such as the Supported Accommodation Assistance Act 1994 (Cth)

*The Supported Accommodation Assistance Act 1994 (Cth) (SAAA)* and the Supported Accommodation Assistance Programme (SAAP) was originally established to assist the transition of homeless people from crisis to long term accommodation and included the provision of support services tailored to the needs of particular identified groups of homeless people. The SAAP national evaluation in 1993 recommended the continuation of SAAP as a safety net for people who are homeless or in crisis, to assist them make the transition to independent living.<sup>50</sup> It also recommended urgent action to improve access to appropriate and affordable housing. The SAAP model was a means of addressing the former recommendation and is targeted at providing crisis support services to people who are vulnerable to homelessness, because of factors such as family violence, mental health issues and substance abuse.

However, the social landscape has changed since the creation of SAAP, with previously atypical client groups increasingly experiencing housing stress because of high costs. By SAAA definition, this constitutes homelessness,<sup>51</sup> whether or not that person is a SAAP client. While it is critical to maintain targeted support for vulnerable groups, it is also important that we address homelessness where it is a consequence of housing unavailability. SAAP does not sufficiently provide for crisis support to those whose primary or even only need is for transitional accommodation or assistance into secure accommodation.

New homelessness legislation should enable a response based on need, providing access to accommodation alone for those for whom this is their only need, and targeted supported accommodation for those particularly vulnerable to homelessness. I reiterate my earlier recommendation of housing assistance which supports the minimum of disruption to family life, enabling children and young people to remain connected to their existing schools and social networks. Flexible approaches may be required to effect this in rural and remote areas.

For those groups who are vulnerable to homelessness, SAAA provides that it is a responsibility for service providers to provide relevant support services to homeless people. I support this requirement, for those in need of such support. The flexibility provided under SAAP for SAAP organisations to design services around local and target-group need is also supported.

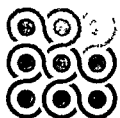
#### **Recommendation 8**

That homelessness legislation provide for a range of targeted supports, ranging from minimal support for those for whom housing assistance is the only need, to other supports tailored to the particular issues of those vulnerable to homelessness.

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<sup>50</sup> Department of the Parliamentary Library (Australia), Bills Digest. Supported Accommodation Assistance Bill 1994, 19 October 1994

<sup>51</sup> Section 4



### **Recommendation 9**

That it be a requirement for agencies providing accommodation assistance to families with children to provide child-focussed support services.

### **3.5 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.**

In our earlier submission to the Government's green paper, the NSW Commissioner for Children and Young People and I endorsed the adoption of a public health approach to homelessness (see above). In summary, the public health approach would:

- Shift the focus of effort towards prevention
- Adopt a model which addresses primary, secondary and tertiary prevention strategies
- Adopt mechanisms which foster cross sector shared responsibility
- Integrate interventions at local, state and national levels
- Trial service pilots to determine effectiveness and application of strategies and avoid short term projects. Once trialled, effective models should be rolled out nationwide.

The adoption of such an approach would require a comprehensive review of the relevant enabling or facilitating legislation as well as the legislative framework for housing provision generally, and housing-related private sector regulations.

For those vulnerable to homelessness, I advocate for legislation that would assist social inclusion by enabling the development of holistic models of service delivery. An example of such an approach for young people has been the 'foyer' model developed in Britain in the 1990s. Typically the UK foyers which have focussed on the needs of young people in housing need have had 3 key characteristics:

- They provide integrated access to housing, training and job search facilities in a holistic manner.
- They aim to assist a transition from dependence to independence.
- Services are provided on the basis of an individual contract between the young person and the service provider, covering the conditions of residence and the package of activities to undertaken by the resident.<sup>52</sup>

Such a model could be adapted to other groups who are vulnerable to homelessness, such as families escaping family violence. However, the benefit of such a model is undermined if the service users are unable to make the transition to independent housing because of a lack of available medium to long term housing options.

### **Recommendation 10**

Review of legislation, focusing on primary, secondary and tertiary prevention strategies to address homelessness in keeping with the adoption of a public health model.

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<sup>52</sup> Australian Housing and Urban Research Institute, *An interim evaluation of the Muller Live 'N' Learn Campus Final Report No 84*, 2005, p12.





### **Recommendation 11**

That specific legislation which focuses on homelessness at a tertiary level enable and facilitate holistic models of service delivery, such as the 'foyer' model.

## **4. Conclusion**

Children and young people constitute more than 30 per cent of the homeless population. Aboriginal and Torres Strait Islander people are disproportionately represented in homelessness data. Inadequate housing can have a profound long term effect on children and young people because of disruption to education and social networks and adverse affects on health, amongst other things. The Inquiry into Homelessness Legislation provides a unique opportunity to reform legislation in a way that will improve the housing situation for Australian children and young people and, in turn, assist their long term development.

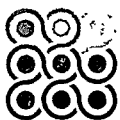
It is my view that the housing needs of children and young people should be a priority. I strongly advocate a rights-based rather than a needs-based approach to housing services. A rights approach is the best means of achieving a policy agenda of social inclusion. In particular I note that under the Convention on the Rights of the Child children have the right to a standard of living adequate for their full development and housing is central to achieving this right.

As with my earlier submission to the green paper, I endorse a public health approach to homelessness, shifting the focus from an emphasis on services at a tertiary point, towards prevention at a primary, secondary and tertiary level. This would require review of a raft of statutes, including residential tenancies acts, tax law and legislation setting out the funding arrangements between the Commonwealth and States and Territories on housing services. The validation of the right to housing should underpin all relevant legislation. The public health model also aims for greater cross-sector shared responsibility and the funding models enshrined in legislation should reflect this.

Consistent with a public health approach, I support the adoption of fully-integrated holistic services for those most vulnerable to homelessness. This would permit the particular needs of such groups to be addressed in one setting and assist them to secure and maintain medium to long term accommodation.

Finally, given the number of children and young people affected by homelessness, and the importance of ensuring their needs are met by housing-related legislation, I urge the Commonwealth and the States and Territories to ensure that the views of children and young people are heard in the development of strategies to address the causes and consequences of homelessness.

I would be happy to provide further information if required. I look forward to receiving the findings of the Inquiry and to have a continued opportunity to shape legislation that is inclusive of the needs of children and young people.



### Recommendations

1. That the views of children and young people be considered in the development of approaches to homelessness.
2. That Australian and State and Territory Governments continue to investigate the structural drivers of homelessness.
3. That the right to housing be enshrined in Commonwealth and State legislation.
4. That homelessness legislation be underpinned by principles reflecting the centrality of housing as a means of supporting social inclusion and recognising the need for primary, secondary and tertiary strategies for preventing homelessness.
5. That the right to housing, reflecting the continuum of homelessness, be articulated in legislation.
6. That the responsibility for housing services be located within state housing departments, with a relationship to community service departments to assist in the delivery of support aspects.
7. That legislation that directly and indirectly impacts on homelessness be reviewed.
8. That homelessness legislation provide for a range of targeted supports, ranging from minimal support for those for whom housing assistance is the only need, to other supports tailored to the particular issues of those vulnerable to homelessness.
9. That it be a requirement for agencies providing accommodation assistance to families with children to provide child-focussed support services.
10. Review of legislation, focusing on primary, secondary and tertiary prevention strategies to address homelessness in keeping with the adoption of a public health model.
11. That specific legislation which focuses on homelessness at a tertiary level enable and facilitate holistic models of service delivery, such as the 'foyer' model.



## Appendix 1

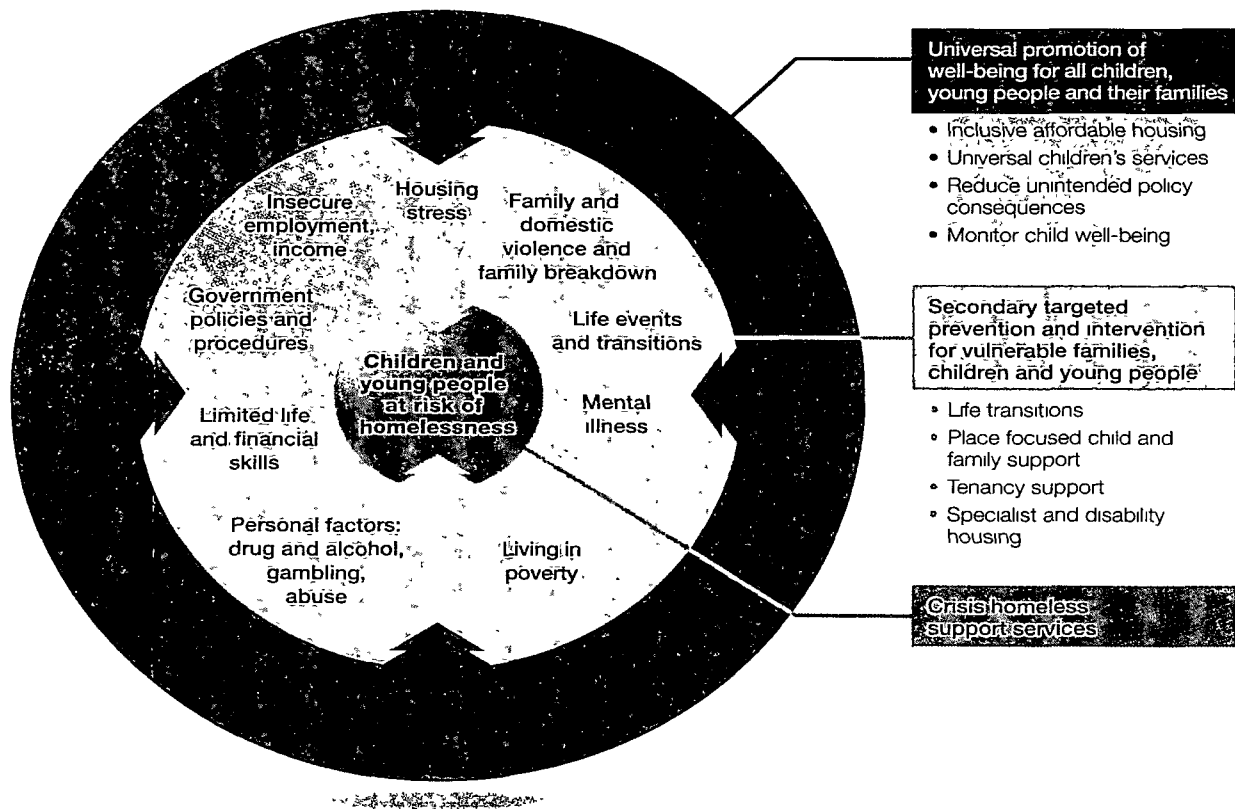


Figure 1: Primary, Secondary and Tertiary Prevention and Intervention of Homelessness  
(adapted from Morrison (2006) and O'Donnell, Scott and Stanley (2008) in Cashmore et al (2008))



## Appendix 2

**Figure 2: Implementing a Public Health Approach to Homelessness – Examples of Good Practice Focused on Children and Young People**

	Primary Prevention/Intervention Strategies	Secondary Prevention/Intervention Strategies	Tertiary Prevention/Intervention Strategies
<b>Families</b>	<ul style="list-style-type: none"> <li>• Inclusive Affordable Housing across all tenures, incomes, life stages</li> <li>• Domestic and family violence and family relationships community education strategy</li> <li>• Employment strategies</li> </ul>	<ul style="list-style-type: none"> <li>• Affordable Rental Housing initiatives in private and social housing</li> <li>• Tenancy Support Programs such as WA Supported Housing Assistance Program (SHAP) providing intensive support to maintain families in public housing, HOME Advice Program for private renters, HASI for people with mental illness at risk of homelessness</li> <li>• Individual Support Plans for families at risk</li> <li>• Fax Back and Safe at Home responses to domestic violence including supporting women and children to remain in their homes</li> <li>• Supported Housing and Early Years Programs for Aboriginal mums</li> <li>• Direct provision of independent long term affordable housing plus support</li> <li>• Availability of priority housing stock</li> <li>• Child centred, family focused approaches that enable family preservation and community connectedness</li> <li>• Targeted mental health, drug and alcohol, financial management programs</li> <li>• Joined up homelessness policy framework involving three levels of government, NGO's and business</li> </ul>	<ul style="list-style-type: none"> <li>• SAAP good practice models with flexible funding arrangements</li> <li>• A range of emergency services with varying degrees and types of support tailored to the cause of homelessness</li> <li>• Availability of priority housing stock</li> <li>• Homeless to Home Intensive Case Management</li> </ul>
<b>Children</b>	<ul style="list-style-type: none"> <li>• Well-being focused early years strategy</li> <li>• Transport to antenatal appointments</li> <li>• Child care centres</li> <li>• 'Communities for children'</li> </ul>	<ul style="list-style-type: none"> <li>• School based hubs, outreach and other 'first to know' agency based support</li> <li>• Full service schools</li> <li>• 'Mind Matters'</li> <li>• 'Portable' support workers</li> </ul>	<ul style="list-style-type: none"> <li>• Specialist counselling and support models</li> <li>• School and community connection model</li> </ul>
<b>Young People</b>	<ul style="list-style-type: none"> <li>• Inclusive Affordable Housing across all tenures, incomes, life stages</li> <li>• Education, training and accommodation models including in rural localities e.g Foyer model</li> </ul>	<ul style="list-style-type: none"> <li>• Supported Transition from Care, juvenile detention such as YES model, Refugees with Temporary Protection Visas</li> <li>• School based and other 'first to know' agency based support</li> <li>• Living skills programs</li> <li>• Reconnect</li> <li>• Legislated responsibility e.g UK model</li> </ul>	<ul style="list-style-type: none"> <li>• Long term case management</li> <li>• Justice initiatives e.g Homelessness Court, bail support programs for young people</li> <li>• Portable locational support model e.g MOMO</li> <li>• Wrap around models and one stop shops</li> <li>• Priority focus on support programs for Aboriginal young mums</li> <li>• A range of emergency services with varying degrees and types of support tailored to the cause of homelessness</li> <li>• Availability of priority housing stock</li> </ul>