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# **Inquiry into Homelessness Legislation**

## **Youth Accommodation Association Submission**

House Standing Committee on Family, Community, Housing & Youth



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## Introduction:

As the vision statement states “Working towards ending homelessness in NSW and Australia”, YAA is the peak NGO for youth homelessness in NSW. Established in 1979, as a peak body YAA currently has 100 members, with a representative Board of Management comprised of 14 metropolitan and regional representatives. Each of those Board members provides a link into local and regional networks.

YAA has a broad range of consultation, sector development, research and policy strategies, including web-based and face-to-face networks, a bi-annual publication called “*the Undercurrent*”, and bi-monthly policy forums. YAA is also convening a conference, ‘YHM 09: Youth Homelessness Matters’ in October 2009.

YAA works in partnership with other state peaks, State and Federal departments, and through the National Youth Coalition for Housing (NYCH) and Homelessness Australia.

Michael Coffey, CEO of YAA and Kevin Crowe, YAA President are the NSW delegates on NYCH. Michael is also on the board of Homelessness Australia, and NSW Council of Social Services (NCOSS)

The current public work that YAA is running is the YOUTH HOMELESSNESS MATTERS campaign ([www.youthhomelessnessmatters.net](http://www.youthhomelessnessmatters.net)).

YAA also runs a number of direct services which positions the organisation to have first-hand knowledge of practices and policy around service provision for young people at risk or experiencing homelessness. These services include the YEAL Project (Youth Emergency Accommodation Line - NSW vacancy line for young people) and the HOT Project (Health Outreach Team – an HIV/AIDS project for young people experiencing or at risk of homelessness). YAA also administers two direct accommodation services for young people: Wruwuallin House, located in Bankstown, and Canterbury Youth Services, a supportive housing project for young people in the Canterbury region.

Until recently YAA was also involved in the Live N Learn Foundation, responsible for developing and setting up the first foyer project in Australia in 2002 at Miller in Sydney.

For more information about YAA please refer to the website: ([www.yaa.com.au](http://www.yaa.com.au))

## The consultation process for this submission

Due to the short time frames, the consultation process for this submission by YAA was ‘somewhat limited. With this in mind, it is hoped that the submission and the inquiry is “*just the start of the conversation*” and that the community sector, homeless people and the broader community can be part of creating legislation that will provide the legislative basis for our shared vision of Ending Homelessness in Australia.

As the White Paper ‘*The Road Home*’ is the once-in-a-generation chance to end homelessness in Australia, we urge patience and caution in the process to avoid the desire ‘to do things quick’ in contrast to ‘getting things right’.

On the 21<sup>st</sup> July, 2009, YAA in partnership with Homelessness NSW hosted a detailed consultation with a range of stakeholders in Sydney, framed within the Inquiry’s terms of reference.

YAA also ran a consultation on the 4<sup>th</sup> August at its Policy Forum in which Youth Homeless Services from around the state were represented.

This submission is also informed by the extensive consultation process that occurred throughout 2008 as a response to the Green Paper discussion surrounding homelessness in Australia. Many of the points that were raised in the Green Paper submission remain relevant today. YAA draws on and expands on this submission available at:

[http://www.yaa.com.au/Policy\\_and\\_Structural\\_Advocacy/YAAs\\_Policy\\_Work/YAA\\_Policy\\_Work.aspx](http://www.yaa.com.au/Policy_and_Structural_Advocacy/YAAs_Policy_Work/YAA_Policy_Work.aspx)


The production of this submission has been a team effort and YAA would like to thank all of workers in NSW who took the time away from their direct work with young people to put effort into contributing to this submission and to the services in NSW for supporting their workers to do this important work.

In particular we note the contributions of those who attended our YAA consultation forums.

We also thank Sue Cripps, CEO of Homelessness NSW for assisting the facilitation of our primary consultation forum, Michael Coffey (Chief Executive Officer - YAA), Stephanie Creagh (Research & Sector Development Officer - YAA) and the Board of Management of YAA who feed into various homelessness networks around NSW.

We would also like to thank our colleagues across the country from NYCH, Homelessness Australia and other peaks and Non-Government Organisations.

George Mudford, *Acting CEO*.



August 2009

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## 1. Executive Summary

If the intent of the Federal Government's White Paper on homelessness<sup>1</sup> is to half homelessness by 2020, we view this process as critical in ensuring we can reach this goal. Homelessness is an issue that must not fall off the political agenda with the ebb and flow of political interest, and explicit homelessness legislation is one step in ensuring this. The Act therefore must guarantee funding and the allocation of resources on a basis that is quarantined from political agenda.

Now that homelessness is "everybody's business", we have an opportunity for a broad reaching Act, but in creating any new Act we also urge caution not to throw aside all the foundations of the SAA Act. (1994) for the sake of creating something 'new' but to recognize the strengths and weaknesses and create a framework that build upon this.

The YAA key recommendations for this inquiry are:

- 1. Ensures homelessness is firmly embedded in national policy;**
- 2. Has a *rights-based* framework at its core**
- 3. Provides for quality service delivery that meets the *diverse* needs of people who may be experiencing homelessness;**
- 4. Defines homelessness in a way which is understood and supported by the whole community;**
- 5. Acknowledges homelessness is '*everybody's business*' and therefore any legislation is broad and holistic in its scope.**

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<sup>1</sup> *The Road Home: A national approach to ending homelessness*, December 2008 Australian Government

## 2. What do we mean when we talk about Homeless Young People?

When we speak of homelessness for the purposes of the submission, YAA will adopt the broad cultural definition determined by Chamberlain & Mackenzie that acknowledges that homelessness can be more than ‘*sleeping rough*’ or ‘*rooflessness*’<sup>2</sup>. This is also the ABS Operational definition of homelessness<sup>3</sup>.

The YAA emphasizes this to encourage legislators to avoid any attempt to design a legislative framework informed by an understanding of ‘homelessness’ as those sleeping rough or visibly homeless. Research shows that young people who experience homelessness tend to be not necessarily ‘*roofless*’ but ‘*couch-surfing*’, staying with friends or in other transient accommodation that lacks secure and adequate tenure. Young people are the ‘invisible face’ of homelessness and what we actually require is a legislative framework that recognizes this diversity in the homeless population (particularly young people!). If we focus on solely on the visible symptoms of homelessness, we risk not truly protecting the majority of people defined as “*homeless*”. This means not confusing “homelessness” with “*rooflessness*”.

Chamberlain and MacKenzie define homelessness by identifying three segments in the homelessness population:

### **Primary Homelessness:**

People without conventional accommodation (living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter).

### **Secondary Homelessness: (Moving around / temporary accommodation)**

People who move frequently from one form of temporary shelter to another, including: people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with friends or relatives; and those using boarding houses on an occasional or intermittent basis.

### **Tertiary Homelessness:**

People living in single rooms on a medium to long-term basis. Residents of private boarding houses do not have separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; and they do not have security of

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<sup>2</sup> Chamberlain, C. & MacKenzie, D. (1992) Understanding Contemporary Homelessness: Issues of Definition and Meaning. *Australian Journal of Social Issues*, 27(4), 274-297

<sup>3</sup> The cultural definition of homelessness put forward by Chamberlain and MacKenzie (1992), was also used for the 1996 and 2006 Census, and is the definition adopted by the CACH in the National Homelessness Strategy.

tenure provided by a lease. They are homeless because their accommodation is inferior to the characteristics identified in the 'community standard'.

We also advocate for the inclusion of a spiritual definition of homelessness encompassing separation from traditional land or family<sup>4</sup> specific to indigenous Australians.

### 3. Young People & Adolescent Development

YAA also acknowledges the adolescent development issues that impact on young people, families and communities and must be taken into consideration in developing legislation.

Once again the YAA places particular emphasis on the diverse needs of young people. Within this cohort, we see there are various considerations that must be acknowledged and responded to when we talk about young people.

Given that according to the last 2006 Census, Almost half of the homeless population were under 25, it is important that we consider that Adolescence is a time for great change for young people and their families. In the main these changes occur between the ages of 12-15 years. These changes for young people are at a number of levels:

- Biological – physical
- Psychological – thinking and feeling
- Social – how they relate to the world around them

Adolescent development is generally seen to be in three stages:

- Early adolescence: 12-14 years
- Middle adolescence: 15 -16 years
- Late adolescence: 17 – 19 years

In general services further breaks down the age group into three sub-groups:

- 12 -15 years
- 16-18 years and
- 19-25 years.

This understanding is important as it informs that any response must not be a one size fits all and any legislation must therefore enshrine that young people require a diverse response.

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<sup>4</sup> Indigenous homelessness within Australia / prepared by: the Commonwealth Advisory Committee on Homelessness and the Australian Government Department of Families, Community Services and Indigenous Affairs and supported by the National Aboriginal and Torres Strait Islander Homelessness Consultations.

#### 4. Homelessness Legislation: Rights – Based Legislation

As a member of the National Youth Coalition for Housing (NYCH), YAA supports the NYCH Charter of Rights for young people (see appendix A), and its fundamental tenet that all people have access to human rights.

Human rights are the basic rights and freedoms to which all humans are entitled and are enshrined in the 30 articles of the Universal Declaration of Human Rights.

Australia is a signatory to a number of human rights treaties, including;

- Σ International Covenant on Civil and Political Rights
- Σ International Covenant on Economic, Social and Cultural Rights
- Σ Convention on the Rights of the Child
- Σ Convention on the Elimination of all Forms of Racial Discrimination
- Σ Convention on the Elimination of all Forms of Discrimination Against Women
- Σ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Australia under these United Nations conventions is obligated to implement and enforce these rights.

Any new homelessness legislation must therefore synthesize these “big” human rights obligations with the more specific rights included the current *SAA Act 1994*.

Since 1994, the Supported Accommodation Assistance Program (SAAP) established under the Supported Accommodation Assistance Act 1994 (SAA Act) has been Australia’s primary response to homelessness.

The SAA Act is an important piece of human rights legislation. The inroads into protecting the rights and interests of those at risk of or experiencing homelessness made by the Act must be preserved in any new legislative response in this sector.

The YAA vision is to see the development of legislation which guarantees the rights of young people experiencing homelessness to access services participate in community life and enjoy equity in their access to community resources. We believe the NYCH charters of rights are a good example of this<sup>5</sup>.

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<sup>5</sup> There are some additional areas that the NYCH charter does not address that should also be considered in a national human rights framework. including; Privacy – particularly about the collection of personal information of homeless young people as they are vulnerable in terms of perceived or real retributive action if they do not consent;

## 5. Response to Terms of Reference

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

During the YAA consultation process most agreed the Principles in the SAA Act reflect many of the principles that currently – and should continue to - underpin the provision of services to Australians who are homeless or at risk of homelessness.

There was consensus that the following core essential principles that should underpin any new legislation in this area were:

- Σ **A basic right to accommodation *and* support;**
- Σ **An “Enforceable” right to accommodation and support**
- Σ **Social justice ‘*and*’ inclusion**
- Σ **Accessible accommodation & support for all those who need it (*no matter how they came to be homeless*)**
- Σ **A whole-of-government focus on quality service provision (*not just specialist homeless services*)**
- Σ **Quality services based on *diverse* needs (*not just those service under the SAA.*)**
- Σ **Focus on safety and well-being**
- Σ **Respect for cultural backgrounds and beliefs**
- Σ **Respect for dignity of individuals**
- Σ **Right to Privacy’**
- Σ **Broad definition of homelessness that acknowledges ‘more than rough sleeping’.**

It was also noted and highly desired that an acknowledgement of the structural causes of homelessness should be included – or rather, retained (i.e. the SAA Act principle of “*reduction and amelioration of poverty*”) - in any new legislation.

A key theme in our consultations was that any principles should apply to both Mainstream and Non-Government services

It was also noted that specialist homeless services alone cannot end homelessness and broader bigger picture prevention of homelessness is only achieved when we address other issues such as poverty, domestic violence, child abuse etc..., not by programs that divert people into secure and affordable housing. While we agree that early intervention mechanisms need to be a part of the homeless service system this is not the same as prevention.

### Commentary from our Consultations on this point:

- Σ Basic right to appropriate shelter and support for everyone regardless of background or perceived cause of homelessness – i.e. regardless of cause or ‘intent’
- Σ Empowerment based rather than charity based
- Σ Inclusiveness tailored to individual client needs as identified by/on behalf of client: decision making should be, as far as possible, in the hands of the client
- Σ Sustainability – most of the work in the sector begins after a state of homelessness stops. Isolation needs to be addressed as a major contributor to homelessness. A broad interpretation of the concept of social inclusion needs to underpin legislation in this area.
- Σ Holistic approach – needs based support
- Σ Flexibility – as an individual’s needs change, policy emerging from legislation must also change
- Σ Tailored to needs of client as well as rights: ‘customer service’ focus
- Σ Seamless transition between services – funding linked to coordination of services
- Σ Client-focused approach based on respect/dignity
- Σ Proactive response to homelessness/at risk
- Σ Outcomes measured on tailored client results and not on external standards
- Σ Strengthen principles around social justice existing in SAA Act
- Σ Unshackle sector thinking from ‘program’ based response – shake off idea that response must follow a traditional pathway of ‘crisis’ – ‘mid-term’ – ‘long-term’

#### 5.1.1 A Rights-based Framework

“All human beings are born free and equal in dignity and rights.”<sup>6</sup>

YAA believes that homelessness legislation should be framed explicitly within a rights-based framework, reflecting Australia’s commitment to the protection of human rights. It is essential that new legislation retain the rights discourse contained in the existing Supported Accommodation Assistance Act 1994.

The human right to **appropriate shelter ‘and’ support for every individual, regardless of background or perceived cause of homelessness**, should be the foremost principle underpinning homelessness

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<sup>6</sup> Article 1 of the United Nations Universal Declaration of Human Rights (UDHR) 1948

legislation. Further, homelessness legislation should reflect the tenets of human rights discourse and the six main instruments of human rights, to which Australia is party: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention Against Torture (CAT); Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child.

YAA supports the enactment of legislation enshrining the human right to adequate housing, which incorporates a prohibition on forced evictions. This human right is contained in article 11(1) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Australia, as a party to this international treaty, has a duty to legislate to its citizens.

Article 11(1) of the *ICESCR* provides as follows:

The State Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

### 5.1.2 Empowerment

YAA believes that those at risk of or experiencing homelessness should be involved as far as possible in decision making and responses. 'A 'rights-based approach' to homelessness involves homeless people being at the centre of decision making that affects them.'<sup>7</sup> As such, legislation developed in this area should be developed with ongoing consultation with those it seeks to protect. The consultation of homeless and at risk persons, as well as sector workers, is essential to achieve a just and balanced legislative response to homelessness.

### 5.1.3 Social Inclusion – and 'Justice'

YAA supports the move toward achieving social inclusion for all Australian citizens. It is important however that a broad interpretation of the concept of 'social inclusion' is reflected in legislation. For YAA, 'social inclusion' means more than the definition informing the 2008 White Paper on Homelessness. The White Paper's discussion of social inclusion was strongly focused on the promotion of 'economic participation'. A broader definition of social inclusion will result in a more sustainable solution to exiting homelessness particularly when we speak about young people and the principles of adolescent development as highlighted earlier.

Finally, it must be acknowledged that social *justice* will not necessarily follow social inclusion. Systemic disadvantage still exists in Australia – in onerous eligibility requirements within welfare systems and many other examples. Children and young people experiencing or at risk of homelessness do not have access to all the resources that may be available to an adult. (E.g Private Rental Market) This should be recognized and inform the development of legislation working toward achieving social inclusion.

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<sup>7</sup> Goldie, Cassandra 'Rights Versus Welfare' *Alternative Law Journal* Vol. 28, No. 3 June 2003

### Some points of this discussion were reinforced in our stakeholder consultations.....

- Σ References to social inclusion in White Paper: what does ‘social inclusion’ mean in this context?
  - ‘social inclusion’ vs. ‘social justice’
  - Supporting a broad interpretation of social inclusion – beyond economic participation and opportunity to participate in the work force
  - Physical and tangible aspects of SI – recognizing diversity of client base and geographical challenges posed by funding etc
- Σ Social inclusion initiatives in NSW? SA model may transfer to other states
- Σ What kind of SI model do we want and how can it be framed in legislation that will provide accountability, consistency and evaluation?
  - Support for a Charter of Rights – enforceability through positive duty posited with State
  - Risk identified in imposing a positive duty to house – must take care to regulate standards of housing to avoid problems like those experienced in UK; not contribute to ‘intentional homelessness’ (i.e. situations where housing found inappropriate for individual’s needs; not to contribute to social exclusion and isolation, for example where homeless young person housed away from support network due to limited resources)
- Σ Scope of legislation should include prevention and needs to be linked to rights and activity promoting social inclusion
- Σ Scope of legislation needs to recognize diversity of client needs

#### 5.1.4 Whole of Government Response

There was ‘**strong**’ consensus that the Act must acknowledge the increased role of the mainstream service system. Given that it is approximated that only 19% of all homeless people enter specialist services, it is clear that government departments (Housing, Child Protection Justice etc...) also need to be covered by the Act.

If (as stated in the White Paper *The Road Home*) homelessness is “everybody’s business”, we must ensure homeless people (or those at risk of homelessness) have the right to minimum quality standards of service from **ALL** service providers. This includes mainstream government departments.

Ensuring quality of service amongst specialist homeless service providers is important, but we risk missing the majority of the homeless population who don’t access these services. Given the increased role of mainstream departments as outlined in the White Paper, it makes sense any regulations are applicable to anywhere homeless people or those at risk of may access assistance.

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

YAA proposes that new national homelessness legislation needs to stand alone. The scope of response to homelessness would be too limited should it be inserted into an existing legislative instrument. As the census data shows only 19% of the homeless population gain access to the Supported Accommodation Assistance Programs. This means that 81% of people experiencing homelessness have no level of protection of their right to support and accommodation under the current legislative framework. There are many other NGO's and government departments that also work with homeless people and people at risk of homelessness. These organisation and departments need to be equally "accountable for their service delivery".

If homelessness as according to 'The Road Home' is "everybody's business", the scope of any legislation needs to link to all government initiatives in the areas of social inclusion and rights.

Legislation could include reference to private rental markets – such as the 'National Tenants Database' (ntd). This privately run company is utilized by registered real estate agents to check individuals rental history. Generally, these databases hold information on tenants who have "vacated without notice... with outstanding rent arrears...who have unpaid Tribunal orders..."<sup>8</sup>... ntd asserts that it has "1.5 million individuals' tenancy files, along with access to over 2 million public record files and 1 million commercial credit files held by Veda Advantage"<sup>9</sup>. While such databases are subjects to National Privacy Laws, failing to allow agents to share information may preclude an individual from securing tenure.

YAA believes that there should be legislation to ensure rent arrears or rental issues are unpublished on such databases. The blacklisting of individuals based on rental issues is discriminatory and perpetuates the cycle of homelessness.

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

It is essential that homelessness legislation provides for quality services. We question the reference to 'improving' the quality of service as perhaps a view that current homeless services are not delivering quality services. In NSW, specialist homeless services under the DoCS performance management framework (PMF) are required to demonstrate compliance with a set of Good Practice Guidelines.<sup>10</sup>

YAA were encouraged by the development of quality services in NSW in partnership with DoCS. Some of the successes we attribute this piece of quality improvement work with the service system in NSW were;

- ∑ Continual involvement and input from the sector and peak bodies
- ∑ Staged and transition periods (Trial phases)
- ∑ A willingness to take on feedback and work into future (PMF) cycles
- ∑ Acknowledging that any quality improvement system will have anomalies and cannot be one-size fits all.
- ∑ The system was about "Quality Improvement" not a "accreditation system for accreditations sake"
- ∑ Not over-burdening services with administration (PMF) Self Assessment

<sup>8</sup>Tenants Union of Victoria – Tenanat Database (Residential Tenants). Available at: <http://www.tuv.org.au/search.aspx?SearchText=database>

<sup>9</sup> [http://www.ntd.net.au/non\\_member/ntd/check/index.html](http://www.ntd.net.au/non_member/ntd/check/index.html)

<sup>10</sup> Information about the DoCS Good Practice Guidelines and (PMF) are available at the DoCS website [www.community.nsw.gov.au](http://www.community.nsw.gov.au)

YAA strongly believes that legislation can play an essential role in ensuring a level of quality service to young people experiencing or at risk of homelessness – This however is only if...

- Σ We are not just talking about specialist homelessness services, but mainstream services are included in this as well.
- Σ Accreditation processes are supported and resources. Accreditation can be time and resource intensive and would require a commitment to adequately resource Services going through the process.

Once again, the inference that if the NGO sector worked “better” via an accreditation process we would see a decrease in homelessness is somewhat uninformed. As stated above, we are not confident that focusing on accreditation as an end in itself will substantially effect a reduction in homelessness nor lead to improved outcomes for clients - particularly without increased resources.

People who are at risk or experiencing homelessness must have the security of a guaranteed standard of service should they need to enter assisted accommodation and other services provided for by the legislation. Of concern is the fact that ‘people are reported to not complain about substandard accommodation, because they have nowhere else to live if they are evicted as a result of the complaint.’<sup>11</sup> Legislation should provide not only for minimum service standards in specialist homeless services, but also for grievance mechanisms that clients of the sector can follow free from the threat of adverse repercussions on their housing situation in a range of other housing situations.

A concern raised during consultation was the risk of standards of assisted accommodation slipping to conform to requirements of legislation – that housing, in providing a roof for those experiencing homelessness, may become the sole pursuit addressed in practice following the enactment of legislation in this area. A review of approaches taken by international jurisdictions has revealed a similar problem. In the UK, where the Housing Act posits a duty on local government structures to provide housing for those in need, ‘housing’ has been interpreted as solving the “*rooflessness*” issue. In this context, eligible individuals may be housed in bed and breakfast accommodation, in boarding houses or other short-term accommodation that does little to assist people to exit homelessness permanently and sustainably. This ‘sweeping under the carpet’ approach of providing a short-term solution to “*rooflessness*” is, in YAA’s opinion, detrimental to the overarching goal of ending homelessness on a permanent and sustainable basis.

Accreditation and consistency of service provision is important, but drastically improved funding and recognition of the work already being done in the sector is equally important.

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

### **5.4.1 The Supported Accommodation Act 1994**

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<sup>11</sup> Forell et. al, ‘No Home, No Justice? Access to Justice and Legal Needs’ Vol. 2 July 2005 Law and Justice Foundation of NSW

YAA welcomes the opportunity for innovation and development that new homelessness legislation provides. YAA is however concerned by the possibility that legislators, in looking to the new, may overlook the positive parts of existing legislation governing homelessness services in Australia.

The current legislation governing homelessness services in Australia is the Supported Accommodation Assistance Act 1994 (the SAA Act).

YAA believes that this legislation has served Australia and homeless young people well. This has been reflected in the evaluations of the Supported Accommodation Assistance Program (SAAP) over 5 year periods since the program's inception in the 1980's. Research, including the AHURI report 'Recent International and National Approaches to Homelessness',<sup>12</sup> supports the value of SAAP, and notes that Australia has a much more advanced response to addressing homelessness than countries in Europe, the UK and the USA.

The SAA Act 1994 provides a national definition for:

- Σ Homelessness or people who are homeless; and
- Σ Inadequate housing

The existence of nationally legislated definitions and a united policy stance is essential to the success of outcomes in combating homelessness in Australia.

The purpose of the SAA Act 1994 is to grant financial assistance to the states to administer a program of transitional supported accommodation and related support services to assist people who are homeless or at risk of homelessness. The program, known as SAAP, aims to achieve the maximum possible degree of self-reliance and independence. The Preamble to the Act provides the following:

- Σ That Parliament recognises the need to redress social inequalities and to achieve a reduction in poverty;
- Σ That homeless people form one of the most powerless and marginalized groups in society. SAAP therefore aims to empower people experiencing homelessness and maximise their independence;
- Σ 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, making specific reference to six international human rights instruments; and
- Σ That legislation relating to homeless people should focus on the individual needs of people experiencing homelessness and their right to non-discrimination and equality.
- Σ That there must be community consultation mechanisms in terms of the development of policies relating to, or impacting on, people who are homeless or at risk of homelessness.

These aspirations are reflected in section 5 of the Act, which provides, inter alia, that SAAP must:

- Σ Provide transitional supported accommodation and related support services to homeless people;
- Σ Assist people who are homeless or at risk of homelessness to achieve the maximum possible degree of self-reliance and independence;
- Σ Promote and protect the dignity of people experiencing homelessness;

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<sup>12</sup> 'Recent international and national approaches to homelessness: final report to the National SAAP Coordination and Development Committee', AHURI Australian Housing and Urban Research Institute, Queensland Research Centre; Emma Greenhalgh ... [et al.] Canberra, Department of Family and Community Services, March 2004

- Σ Ensure that homeless people are empowered to participate fully in social, cultural, economic and political life;
- Σ Encourage innovation in the provision of services to people who are homeless; and
- Σ Help people who are homeless to obtain long-term, secure and affordable housing.

In short, SAAP aims to promote and protect the rights of people experiencing homelessness. Section 7 of the Act recognises the relationship between the achievement of these objectives and the increased access of people experiencing homelessness to such fundamental resources as:

- Σ employment;
- Σ education and training;
- Σ health services (including mental health services);
- Σ disability and rehabilitation services;
- Σ income support;
- Σ other appropriate opportunities and resources; and
- Σ adequate housing.

The SAA Act 1994 provides a range of safeguards for homeless people in that there is:

- Σ A legislative response to homelessness that ensures the responses to homeless people and that are not subject to the vagaries of political funding cycles;
- Σ A national response to homelessness (targeted at homelessness not an adjunct to another policy);
- Σ A legislative response entrenches a human rights framework to homelessness;
- Σ A right to access to services regardless of an ability to pay;
- Σ A right to non discriminatory access to services;
- Σ An engagement with the community;
- Σ A programmatic response to homelessness that guarantees a level of funding; and
- Σ A legislative focus on all levels of government to work together.

These safeguards should be maintained and strengthened by new homelessness legislation.

#### **5.4.2 International Approaches: Lessons Learned**

The United Kingdom has a long history of having homelessness responses based in legislation however there have been a number of key issues that have been recently debated.

##### *Retaining a broad definition of homelessness*

A broad view of homelessness is essential if the true scale of the homelessness problem is to be understood. If only those who are roofless (i.e. rough sleeping) are counted in homelessness statistics, this will lead to solutions and policies that only tackle half the problem. In the UK only those who are eligible for assistance, unintentionally homeless and in priority needs are counted and therefore in the homeless statistics – those who are intentionally homeless, not in priority need and ineligible for assistance are not counted.

##### *Tackling the causes of homelessness*

Discussion regarding government policy approaches – in particular a belief that the UK government focuses too much on pre-crisis intervention without enough focus on preventing the structural causes of homelessness. Issues regarding inadequate supply of social rental housing, the need to develop a strategy for the private rental sector, reducing the number of repossessions and evictions and strategies to assist tenancies have all been discussed at some length.

#### *Retention of the low threshold for interim accommodation*

There is a strong belief that any system that is designed to assist homeless households should be easily accessible and have a low threshold. This is seen as one of the most important legacies of the 1977 Act in the UK.

#### *Priority need and vulnerability*

Issues regarding extending the priority needs criteria beyond just those households that had children to those that did not has been lobbied for. The Housing Act 1996 currently gives grounds for the government to confer priority need on those who have spent time in prison or in the armed forces so that they no longer need to pass the vulnerability test. It has also been found that people from CALD backgrounds including migrants and refugees are particularly disadvantaged as they are excluded from any assistance under the Act. The issue about who is eligible or not have fluctuated and at this point unemployed EU nationals are also excluded.

Young people were particularly disadvantaged due to the fact that they were not in the initial priority allocation. This was changed in England with the introduction of the Homelessness Act 2002 where young people were included in the priority group. It is interesting to note that most UK countries now all include certain groups of young people in the priority group. Scotland is the most progressive in terms of young people 18 -20 as they take into account risk factors over and above the 'leaving care' category. These factors include young people at risk of exploitation and substance misuse. Young people have however been deterred as they fear that they will not be prioritised and encouraged to return home.

There has also been some concern expressed about the paper based process of determining vulnerability.

#### *Standards of temporary accommodation*

In the UK there have been significant concerns about the standards of temporary accommodation. In particular there has been strong concern about the use of private provision through Bed and Breakfast places especially for young people 16 – 17 years of age. Further people are staying for extended periods of time due to the lack of appropriate housing options.

South Africa has had varied success from the responses it has instituted to the issue of homelessness over the years. The *Housing Act 1997* (SA) places an obligation on the State to take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to:

- Σ Ensure that inhabitants within its area of jurisdiction have access to housing on a progressive basis;
- Σ Set housing delivery goals in respect of its area of jurisdiction;
- Σ Identify and designate land for housing development; and
- Σ Initiate, plan, coordinate, facilitate, promote and enable appropriate housing development in their areas of jurisdiction

The legislation in the United States of America (USA) is the Stewart B. McKinney Homeless Assistance Act. There was an extension of the Act to incorporate McKinney-Vento Homeless Education Assistance Act 2001. However the critical issue for America seems to be the need for funding to meet the demand, and that there needed to be better coordination and strategic responses to youth homelessness.

YAA strongly believes that we need more than a *Housing Act* in Australia. Legislation must be developed that specifically protects the rights and interests of all individuals experiencing or at risk of homelessness. In both the UK and South Africa the Housing Act models have fallen short. Any new homelessness legislation would be rendered meaningless if there are no enforceable provisions embedded within it. YAA suggests a relationship between the Homelessness Act and Anti-Discrimination legislation would provide avenues for individuals protected under the Act to instigate a complaints process.

The Act must also provide for accountability on behalf of the Minister. This could be achieved by a reporting mechanism requiring annual reporting to Parliament with specific reference to targets set by federal and State governments.

Finally, new legislation must provide for ongoing consultation with the community sector and young people. This was a recurring theme that arose from consultation discussions in the sector. It is essential that homeless and at risk young people have a say in what is decided in their interests.

### **5.5 The applicability of existing legislative and regulatory models used in other community service systems, such as disability services, aged care and child care, to the homelessness sector.**

The National Community Housing forum notes that standards and accreditation

*... establish what is expected of service providers in relation to the quality and effectiveness of service provision. Accreditation is the process of evaluating performance and certifying that standards have been met to the level required.*

*Accreditation is an active process. While standards can exist independently of an evaluation system, an accreditation system must have explicit standards with which to assess performance. Together, standards and the accreditation process form a framework for the delivery and management of a service, and a means of assessing performance to ensure quality and accountability.<sup>13</sup>*

The ISO's formal definition of accreditation is 'third party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks.'<sup>14</sup>

YAA supports the need for quality service delivery in services. In the past, YAA notes that the homeless service system has had a set of minimum standards. Drafted in 1993, these are now quite dated.

The development of new standards needs to be developed in consultation with the community sector and needs to be quite specific to homelessness. The standards should have a greater focus on quality of

<sup>13</sup> <http://www.nchf.org.au/framework.html>

<sup>14</sup> ISO/ IEC 17000:2004

service delivery as opposed to a risk management framework for services. It must be noted that standards do not necessarily improve practice – any homeless response needs to be coupled with a **strong resourcing framework for networking and professional development opportunities for the workforce.**

The issue for most services is the accreditation process as can be quite costly and time consuming processes. There are currently a range of other regulatory systems at play that services need to comply with depending on the range of service activities that they are undertaking. These include, but are not limited to:

- Σ *Housing Act* NSW- Community housing standards
- Σ *Children and Young Persons (Care and Protection) Act* NSW - Child Protection licensing and regulations processes
- Σ Office of the Children’s Guardian – Quality Management System.

There needs to be some streamlining of standards and accreditation processes. An issue which arose from consultation was the difficulties experienced by smaller SAAP-funded services struggling to achieve accreditation in a complex, under-resourced environment. Consideration needs to be given to having levels of compliance based on the size of the service.

**There was strong reinforcement of the key points surrounding this issue through our consultations:**

- Σ Accreditation issues:
  - Form of standards and accreditation: cost quite high – cost benefit analysis required
  - Modify accreditation to suit organization
  - Create a sensible system for community services
  - Current programs confusing and long winded
  - Work out ways to cross credit
  - SAAP Services do not have capability for high standard of accreditation – current system supports large services rather than smaller services which are in danger of not meeting minimum standards
  - Onus on small organizations unreasonable
- Σ Staffing issues:
  - standards, funding levels important
  - Staffing issues in rural areas
  - Qualification of staff must be appropriate to level of service needed

## Other Stakeholder commentary.....

- Σ Protect CAP
- Σ Ensure regulation and accreditation enables freedom for services to have day to day autonomy
- Σ Scope for innovation should not be overlooked
- Σ Coordination of services and govt – government as well as service providers must be accountable to the same standards of practice
- Σ Assumption services need improvement in *quality of services* – rather than improved funding of services.
- Σ Risk identified in focusing too much on services and neglecting '*bricks and mortar*' need for more housing
- Σ Who sets the standards of and evaluates *quality of services*? Consultation with services essential
- Σ Legislation applies to anyone providing services to homeless people, including mainstream services
- Σ Legislate for consistent funding: recognize clear link between secure funding and quality improvement
- Σ Need to maintain focus on causes and prevention of homelessness/at risk
- Σ Recognise the distinction between SAAP and Out-of-Home Care (OOHC)
- Σ Retain human rights aspects of SAA Act
- Σ Existing homelessness legislation in some jurisdictions may be transferable to a national standard
- Σ Point raised that existing regulative framework of OOHC should be avoided as not working in that area – too focused on institution; too much power placed on bureaucratic decision-making.

## Appendix A

### NYCH Charter of Rights

NYCH has developed the following charter of rights for young people to act as a foundation and a guide for all NYCH policy. NYCH supports the right of all young people to:

1. Safe, secure, affordable and adequate housing appropriate to the needs of the young person.

2. Adequate, secure and independent incomes not related to age.
3. Live free from the threat of physical, emotional or sexual abuse and harassment.
4. Resources, services and information that are non-judgmental and non-institutional. These should include a range of gender-specific and ethno-specific services where appropriate.
5. Relevant and accessible services including health care, financial assistance, counseling or support services, child care, transport, housing and legal services.
6. Participate in design and management of programs or projects directed at young people.
7. Services and programs relevant and responsive to cultural, gender, class, sexuality and disability diversity among young people.
8. Self determination and Land Rights if Aboriginal or Torres Strait Islander.
9. Equal opportunity and affirmative action policies and practices which recognise the discrimination faced by young people on the basis of their age, race, sex, cultural background, disability, class, parenting status or sexual preference.
10. Secure paid employment at wage levels equivalent to those of adult workers performing similar duties.
11. Free education and participation in education management and curriculum design.
12. Non-exploitative and relevant non-compulsory vocational training programs and opportunities.
13. Information and support services on issues of concern to young people including incest, sexual abuse, drug and alcohol use, health, parenting and legal rights.
14. Freedom from State intervention or incarceration for poverty related offences.
15. Parent their children and have access to assistance in parenting at their request.

## Appendix B.

### Consultation Notes

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

- Σ Basic right to appropriate shelter and support for everyone regardless of background or perceived cause of homelessness – i.e. regardless of cause or ‘intent’
- Σ Empowerment based rather than charity based
- Σ Inclusiveness tailored to individual client needs as identified by/on behalf of client: decision making should be, as far as possible, in the hands of the client
  - Disability Services Act sets out circumstances and requirements of where an individual can act on behalf of someone of limited/lacking decision making capacity
- Σ Sustainability – most of the work in the sector begins after a state of homelessness stops. Isolation needs to be addressed as a major contributor to homelessness. A broad interpretation of the concept of social inclusion needs to underpin legislation in this area.
- Σ Holistic approach – needs based support
- Σ Flexibility – as an individual’s needs change, policy emerging from legislation must also change
- Σ Tailored to needs of client as well as rights: ‘customer service’ focus
- Σ Seamless transition between services – funding linked to coordination of services
- Σ Client-focused approach based on respect/dignity
- Σ Proactive response to homelessness/at risk
- Σ Outcomes measured on tailored client results and not on external standards
- Σ Strengthen principles around social justice existing in SAA Act
- Σ Unshackle sector thinking from ‘program’ based response – shake off idea that response must follow a traditional pathway of ‘crisis’ – ‘mid-term’ – ‘long-term’

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

- Σ The ongoing National consultation on Human Rights raises applicable issues
- Σ References to social inclusion in White Paper: what does 'social inclusion' mean in this context?
  - 'social inclusion' vs. 'social justice'
  - Supporting a broad interpretation of social inclusion – beyond economic participation and opportunity to participate in the work force
  - Physical and tangible aspects of SI – recognizing diversity of client base and geographical challenges posed by funding etc
- Σ Social inclusion initiatives in NSW? SA model may transfer to other states
- Σ What kind of SI model do we want and how can it be framed in legislation that will provide accountability, consistency and evaluation?
  - Support for a Charter of Rights – enforceability through positive duty posited with State
  - Risk identified in imposing a positive duty to house – must take care to regulate standards of housing to avoid problems like those experienced in UK; not contribute to 'intentional homelessness' (i.e. situations where housing found inappropriate for individual's needs; not to contribute to social exclusion and isolation, for example where homeless young person housed away from support network due to limited resources)
- Σ Scope of legislation should include prevention and needs to be linked to rights and activity promoting social inclusion
- Σ Scope of legislation needs to recognize diversity of client needs
- Σ Legislation must protect CAP from absorption into general housing stock
- Σ Legislation must be nationally consistent and accountable
- Σ Strategic direction of scope to prosecute public authorities for failure to comply with minimum standard requirements or failure to provide shelter as a fundamental entitlement
- Σ Risk identified with 'Report Card' model of evaluation of services: must not reflect fault on services or provide option for government to deflect responsibility for poor service provision or failure to comply
- Σ There was a point regarding entrenched 'exclusions' but I did not get it down

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

- Σ At the consultation, there was support for a change of the wording of this term of reference:
  - 'The role of legislation in promoting continuous quality improvement to the quality of services for people who are homeless or at risk of homelessness.'
- Σ Issue raised:
  - Assumption services need improvement in *quality of services* – rather than improved funding of services
  - Who sets the standards of and evaluates *quality of services*?
- Σ Relevant definitions: homelessness; who it applies to; quality of service
- Σ Legislate for consistent funding: recognize clear link between secure funding and quality improvement
- Σ Risk identified in focusing too much on services and neglecting housing
- Σ Ensuring mechanism for consumer input into quality service provision and development
- Σ Legislation should seek to protect universal human rights
- Σ Legislation applies to anyone providing services to homeless people
- Σ Must encompass more than accommodation services

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

- Σ Retain Human rights aspects of SAA Act
- Σ Existing homelessness legislation in some jurisdictions may be transferable to a national standard
- Σ Point raised that existing regulative framework of OOHC should be avoided as not working in that area – too focused on institution; too much power placed on bureaucratic decision-making
  - i) Identifying difficulties in data collection:
    - a. Lack of suitability of current practices
    - b. Lack of coordination between state/federal reporting
    - c. Misplaced value on legislative structures with good reporting and evaluation measures, where other legislative structures exist with better content yet troublesome reporting
  - ii) Coordination of services and govt – government as well as service providers must be accountable to the same standards of practice
  - iii) Definitions around homelessness:
    - a. US model – 6 months+ rough sleeping
    - b. Impact of labels on client groups – differentiation between operational definition and how a person might define his or her status

- c. Impact of labels such as 'primary' 'secondary' 'tertiary' homelessness – this kind of allocation of funds or provision of services

**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.**

Σ Accreditation issues:

- Form of standards and accreditation: cost quite high – cost benefit analysis required
- Modify accreditation to suit organization
- Create a sensible system for community services
- Current programs confusing and long winded
- Work out ways to cross credit
- SAAP Services do not have capability for high standard of accreditation – current system supports large services rather than smaller services which are in danger of not meeting minimum standards
- Similar tool in place in aged care sector
- Onus on small organizations unreasonable

Σ Staffing issues:

- standards, funding levels important
- Staffing issues in rural areas
- Qualification of staff must be appropriate to level of service needed

Σ Funding should be realistic for outcomes reached

Σ Consultation – services should be involved in whole reform process

**6. Further comments arising from consultation**

- Σ Protect CAP
- Σ Ensure NSW follows through with Reconnect
- Σ Ensure regulation and accreditation enables freedom for services to have day to day autonomy
- Σ Scope for innovation should not be overlooked
- Σ Need to maintain focus on causes and prevention of homelessness/at risk
- Σ Distinction between SAAP and OOHC

