

Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness
A joint initiative of the Public Interest Law Clearing House Inc
and the Public Interest Advocacy Centre Ltd



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A POSITIVE START ... BUT STILL MORE WORK TO DO

Homeless Persons' Legal Service submission in response to the NSW Government's Homelessness Strategic Framework Consultation Paper

23 September 2008

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Introduction

Homeless Persons' Legal Service

In 2003, following an extensive consultation process, the Homeless Persons' Legal Service (**HPLS**) was established by the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**).¹ HPLS is funded by the NSW Public Purpose Fund through the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates nine legal clinics on a roster basis at welfare agencies in the greater Sydney area.² These are agencies that provide direct services, such as food and accommodation to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers from PILCH member organisations.³ Since the launch of HPLS in May 2004 it has provided advice to over 2,000 clients.

HPLS has developed mechanisms to seek the views and ideas of homeless people and those who have experienced homelessness about its own work and about proposals from governments. Its work is informed by those views and by its work through the clinics.

¹ Further information about the Public Interest Advocacy Centre and the Public Interest Law Clearing House is provided as Appendix A to this document.

² The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Norman Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

³ The following PILCH members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Deacons, DLA Phillips Fox, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW and Minter Ellison.

Executive Summary and Recommendations

The Homeless Persons' Legal Service has prepared this submission in response to the New South Wales Homelessness Strategic Framework Draft Consultation Paper (**the draft framework**). The submission is based on HPLS's casework, public policy and law reform work experience, as well as the information provided to HPLS by participants in HPLS's Green Paper consultation events.

HPLS welcomes the New South Wales Government's commitment to producing a strategic framework on the issue of homelessness. HPLS believes that a strategic framework is a much-needed means of ensuring that homelessness is considered in service delivery by all departments and agencies of the NSW Government. HPLS also endorses the three strategic directions underpinning the draft framework: *Prevention and Early Intervention*, *Assessment and Crisis Response* and *Longer-term Accommodation and Community Support*.

While supportive of the development of a strategic framework, HPLS has a number of concerns about the current draft. These include the vague nature of many of the strategy's action items and the failure of the framework ensure the involvement of the NGO sector or to commit new resources to the issue of homelessness. In this submission, HPLS outlines these concerns and provides specific recommendations for amendments to the draft framework to deal with these concerns.

HPLS also commends the NSW Government for proposing to involve those who have experienced homelessness in the implementation of the framework and provides detail about the most appropriate method of doing so.

Summary of recommendations

1. That the NSW Strategic Framework recognise and implement the principles of the *Working Together for NSW* agreement to ensure the involvement of the NGO sector in the implementation and evaluation of the framework.
2. That the NSW State Plan be amended to include a measurable commitment to reducing the number of people experiencing homelessness in NSW with specific reference to the strategic directions identified in the framework and the *Working Together for NSW* agreement.
3. That Action 1.1.2 be amended to commit agencies and departments of the NSW Government to review the impact of policies and practices on those at risk of and those who are currently experiencing homelessness. This review process should involve the NGO sector and those who have personal experience of homelessness.

- 4. That Strategy 1.3 be amended to 'identifying and implementing interagency actions and improving co-ordination to better support people at risk of homelessness'.
- 5. That Action 1.3.1 be amended to include a commitment to prioritise spending on rehabilitation services and supported accommodation for individuals exiting the correctional services.
- 6. That the NSW Government's co-ordinated approach to assist those at risk of homelessness in the private rental market be developed in consultation with members of the real estate sector and those that have experienced homelessness and their advocates.
- 7. That Action 1.3.5 include a reference to providing greater protections to groups at risk of homelessness in relation to Rental Tenancy Databases.
- 8. That the eligibility requirements for Department of Housing Priority Housing be amended to include homelessness as sufficient to establish a successful application in itself.
- 9. That the NSW Government commit to the provision of more public housing stock in NSW as well as providing ongoing funding for programs shown to have an impact on reducing homelessness.
- 10. That the NSW Government consider issues around representation, reimbursement and the provision of feedback in its consultation with homeless people.
- 11. That the Homeless Persons' Legal Service consumer advisory group be considered by the NSW Government as one way of ensuring feedback into the operation of the strategic framework.

Still Working together for NSW?

HPLS is concerned that the NSW Government fails to recognise and promote the involvement of the NGO sector in implementing and evaluating the strategic framework.

HPLS reminds the NSW Government of the commitments it made to the NGO sector under the *Working Together for NSW* agreement. These commitments include ensuring the involvement of the NGO sector in establishing and evaluating social policy priorities and changes to human sector programs.

HPLS recommends that the NSW Government adhere to the *Working Together for NSW* agreement and promote the involvement of the NGO sector in the

design, delivery and evaluation of policies and programs developed under the strategic framework.

Recommendation 1:

That the NSW Strategic Framework recognise and implement the principles of the Working Together for NSW agreement to ensure the involvement of the NGO sector in the implementation and evaluation of the framework.

Strategic Directions

Prevention and Early Intervention

HPLS endorses Prevention and Early Intervention as strategic directions underpinning the framework and makes the following comments in regards to the action items identified under this direction.

Strategy 1.1 Improving understanding of the risk of homelessness among providers of services to at-risk groups

Action 1.1.1 Embed the objectives of intervening early into the State Plan

HPLS welcomes the Government's recognition of the need for early intervention in response to homelessness to be made a priority under the NSW State Plan. HPLS believes without embedding the objectives of the framework in the State Plan, departments and agencies of the NSW Government will have little incentive to implement it effectively.

The need for the framework to include accountability measures was clearly identified in consultations that HPLS has held with homeless and formerly homeless people. One formerly homeless person commented;

Is all this just political point-scoring? The only thing that will motivate them to do anything is fear of getting into trouble!

HPLS believes that this accountability in the State Plan should apply to all of the strategic directions identified by the framework—Assessment and Crisis Response and Longer Term Accommodation and Community Support—as part of a global commitment to reducing the numbers of people experiencing homelessness in NSW. HPLS also recommends that State Plan recognise the principles of the *Working Together for NSW* agreement.

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Recommendation 2:

That the NSW State Plan be amended to include a measurable commitment to reducing the number of people experiencing homelessness in NSW with specific reference to the strategic directions identified in the framework and the principles of the Working Together for NSW agreement.

Action 1.1.2 *Develop tools and methodologies to assist agencies that provide services to people at risk of homelessness to better consider homelessness in service planning*

HPLS welcomes the Government's recognition that its agencies and departments need to better consider groups at risk of homelessness when planning service delivery. However, HPLS is concerned that Action 1.1.2 does not adequately commit the NSW Government to reviewing and reforming policies found to impact negatively on these groups.

From HPLS's policy work and consultation with homeless people it is clear that many departments and agencies of the NSW Government have policies and practices that create and exacerbate homelessness. One example of this is the NSW Department of Housing's requirement that an applicant for public housing must respond to an offer of accommodation within two days of the letter's date of issue. Those experiencing homelessness have obvious difficulties receiving mail. If a letter is received at all, it is highly unlikely that a homeless person will obtain it within two days of the letter's date of issue. While the Department has indicated in discussions with HPLS that a person may still be able to be placed in accommodation if they contact the Department after the two days have elapsed, this is not communicated by the Department to the recipient of the letter and the likelihood of a homeless person feeling confident enough to pursue this after the time limit has elapsed is extremely slim.

In order that such policies are identified and reformed, HPLS submits that the vague references in Action 1.1.2 to the development of 'tools and methodologies' should be replaced with a commitment to regularly review service delivery in relation to groups *at risk of* as well as those *currently experiencing* homelessness. HPLS recommends that this review process recognise the NSW Government's commitment under the *Working Together for NSW* agreement to involve the NGO sector in human services planning and evaluation processes as well incorporating feedback provided by currently and formerly homeless people.

Recommendation 3:

That Action 1.1.2 be amended to commit agencies and departments of the NSW Government to review the impact of policies and practices on those at risk of and those who are currently experiencing homelessness. This review process should involve the NGO sector and those who have personal experience of homelessness.

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Strategy 1.3 Identifying interagency actions and improving co-ordination to better support people at risk of homelessness

HPLS welcomes the Government's recognition that greater co-ordination is needed between departments and agencies of the NSW Government to assist those at risk of homelessness. HPLS notes that a key aspect of the recommendations contained in the NSW Auditor-General's report on the NSW Government's response to homelessness, *Performance Audit: Responding to Homelessness* was the need for greater co-ordination in service delivery to homeless people.⁴ HPLS also believes that the Government has correctly identified groups in NSW particularly vulnerable to homelessness.

While it is supportive of Strategy 1.3, HPLS advocates that the wording be changed to commit NSW Government agencies and departments not only to *identify* interagency approaches but also to *implement* them.

Recommendation 4:

That Strategy 1.3 be amended to 'identifying and implementing interagency actions and improving co-ordination to better support people at risk of homelessness'.

Action 1.3.1 Develop planned and coordinated support for people in contact with the criminal justice system and exiting juvenile detention and corrective services.

HPLS welcomes the Government's recognition of the vulnerability of people who are exiting the criminal justice system to the risk of homelessness. A recent study conducted by Dr Eileen Baldry, an academic at the University of New South Wales, which traced the experiences of people exiting prison, revealed that 50% of prisoners are homeless within nine months of their release from prison.⁵ It is also important to note that those currently in detention may be there in order to avoid homelessness. As one person who was interviewed as part of consultations into the Federal Government's Green Paper told HPLS:

I have committed crimes as I knew I would get a feed and somewhere to sleep for a while, at least I was secure in prison. I had to wait 11 years for housing, just a place for my girls and me. Boarding houses are not fit for children.

⁴ NSW Auditor General, *Performance Audit: Responding to Homelessness* (2007).

⁵ Eileen Baldry, 'Prison boom will prove a social bust' *Sydney Morning Herald* (Sydney) 18 January 2005, <<http://www.smh.com.au/news/Opinion/Prison-boom-will-prove-a-social-bust/2005/01/17/1105810839489.html>>.

While the Government correctly identifies the period post release as a time requiring greater interagency efforts, HPLS is concerned that it fails to direct much needed funding to rehabilitation and post-release services. A significant reason that high numbers of people exiting prison fall into homelessness is the lack of re-integration support provided by the NSW Government to individuals on release. One person interviewed at an HPLS Consultation event into the Green Paper spoke of the need to ‘assess the reasons why people have offended and address these issues’. Another said, ‘the government needs to consider rehabilitation’.

Presently under 1% of the Department of Corrective Service’s (DCS) budget is dedicated to the provision of post-release services. HPLS believes unless the DCS and other relevant Government departments and agencies radically change their current budget priorities, the framework will have negligible impact on reducing homelessness that affects people after release from the criminal justice system.

It is also clear that if those exiting prison are to avoid homelessness the NSW Government must—through the framework and elsewhere—also commit to providing more supported housing options to be available to people on release from correctional facilities. The need for the provision of such housing was also clearly identified by individuals involved in HPLS consultation to the Federal Government’s Green Paper.

Recommendation 5:

That Action 1.3.1 be amended to include a commitment to prioritise spending on rehabilitation services and supported accommodation for individuals exiting the correctional services.

Action 1.3.5 Facilitate a co-ordinated approach to supporting people at risk of homelessness in the private rental market.

HPLS recognises the need for a facilitated approach to ensure individuals in the private rental market do not become homeless. HPLS believes that such an approach should be generated not only in consultation with NSW Government department and agencies but should involve relevant stakeholders including those who have been or who are currently experiencing homelessness as well as members of the real estate sector.

Recommendation 6:

That the NSW Government’s co-ordinated approach to assist those at risk of homelessness in the private rental market be developed in consultation with members of the real estate sector those that have experienced homelessness and their advocates.

One action necessary to reduce the growing numbers of people in the private rental market becoming homeless is reform to Rental Tenancy Databases (RTD) such as the TICA system. HPLS is concerned that a large number of the listings made on the RTD system are made against members of vulnerable groups such as women escaping domestic violence and those with mental illnesses.

As a listing on a RTD effectively prevents the person from accessing private rental accommodation in the future, HPLS believes that further protections are necessary to ensure individuals are not forced into homelessness. Such protections may include providing for dispute resolution in relation to RTD listings under the NSW Consumer, Trader and Tenancy Tribunal.

Recommendation 7:

That Action 1.3.5 include a reference to providing greater protections to groups at risk of homelessness in relation to Rental Tenancy Databases.

Longer Term Accommodation and Community Support

HPLS endorses the identification of Longer Term Accommodation and Community Support as a strategic direction under the framework.

Strategy 3.1 Improving linkages between crisis and longer-term accommodation and support services

Action 3.1.7 Consider Eligibility requirements for access to priority housing for homeless people

HPLS endorses the Government's proposal to review the current eligibility requirements for access to priority housing for homeless people. HPLS has been working on the issue of priority housing applications and people experiencing homelessness for some time. During this time, HPLS has come across numerous cases in which long-term homeless clients have had their priority housing applications rejected on the basis that they can, according to the assessment by the NSW Housing, resolve their housing need in the private rental market. All of these clients have significant mental illnesses and Centrelink pensions or benefits are their only form of income.

In determining that such individuals can afford private rental, the Department of Housing calculates that an individual receiving Newstart Allowance (around \$260/week including Rent Assistance) could choose to spend (and afford to spend) up to 60% of their total payment (around \$160 per week) on rent. They are then provided with printouts from online rental agencies showing the properties in this price range that the individual should, based on this calculation, be able to afford.

HPLS believes that the eligibility requirements applied in such cases are unreasonable and demeaning for someone currently experiencing homelessness. An individual who has been homeless for a significant period of time and who is mentally unwell is unlikely to be able to obtain or maintain a private tenancy. Even if the person does not have a mental illness, the challenges of living with homelessness means they are less likely to get a favourable decision from a private landlord or real estate agent on a tenancy application. It also clearly unrealistic to expect a long-term homeless person to be able to afford spending 60% of their total income on private rent.

In order to ensure that those experiencing homeless are not excluded from having their housing needs urgently met, HPLS recommends that the establishment of homelessness as a category in itself for priority housing applications.

Recommendation 8:

That the eligibility requirements for Department of Housing Priority Housing be amended to include homelessness as sufficient to establish a successful application in itself.

A framework without funding

While supportive of the development of the NSW framework, HPLS is concerned that unless the NSW Government commits significant resources to the sector the framework will have no impact on reducing homelessness.

While better co-ordination between departments and agencies of the NSW Government is essential, alone this will not eradicate homelessness. HPLS believes that it is necessary for funding to be urgently provided towards the provision of more public and community housing stock as well as to providing targeting supports for people once they have received such housing.

HPLS also believes the NSW Government should commit to provide ongoing funding to pilot programs that are shown to have an impact on reducing homelessness rather than only towards new initiatives.

Recommendation 9:

That the NSW Government commit to the provision of more public housing stock in NSW as well as providing ongoing funding for programs shown to have an impact on reducing homelessness.

Involvement of Homeless People

HPLS welcomes the NSW Government's recognition of the need for those who have personal experience of homelessness to provide input into the development, implementation and review of the framework.

HPLS believes that the active involvement of those who are or have been homeless will lead to the development of more effective public policy formed in response to issues facing homeless people, as well as assisting in the empowerment of participants. It will also ensure that the fundamental right of people to 'take part in the conduct of public affairs', as enshrined in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR) is realised in NSW.⁶

HPLS has significant experience in consulting with homeless and formerly homeless people, including speaking with over 200 people who had experienced homelessness as part of submission to the Federal Government's Green Paper. In addition, HPLS—along with members of Homeless Voice—assisted the NSW Government to conduct consultations with homeless people on the NSW Strategic Framework.

On the basis of this experience, HPLS makes a number of comments and recommendations below as to the best methods of conducting ongoing consultative work with individuals who have experienced homelessness.

Representation

HPLS believes it is important that the NSW Government consult across the broad range of people who experience homelessness. The NSW Government should ensure that it seek input from people experiencing primary, secondary and tertiary homelessness as well from representatives of social groups at an increased risk of homelessness including Indigenous people, children and young people, women escaping domestic violence, people exiting prison, those excluded from Supported Accommodation Assistance Program (SAAP) services, and transgender people.

Reimbursement

While one-off consultation events do not necessarily require reimbursement to those attending, HPLS believes that it is essential that participants in any ongoing consultative role with the NSW Government be reimbursed for their time and expertise. Depending on the degree of input sought, such reimbursement can range from the provision of food, vouchers or a regular sitting fee.

⁶ Australia is a State Party to the *International Covenant on Civil and Political Rights*, having ratified it on 13 August 1980. It came into force for Australia on 13 November 1980. The full text of the ICCPR is available at: <<http://www2.ohchr.org/english/law/ccpr.htm>>.

Feedback and genuine consultation

Of primary importance is that any consultative efforts that are established are not tokenistic but rather are used to fill gaps in existing service delivery. Consultation with those experiencing homelessness should be organised in advance and not be last minute, or lack clarity in respect of the issues on which input is sought or target group to be consulted. HPLS also believes it is essential that participants be provided feedback into how the information they provided has been used by the NSW Government.

Recommendation 10:

That the NSW Government consider issues around representation, reimbursement and the provision of feedback in its consultation with homeless people.

HPLS is also in the final stages of establishing the first homeless advisory group in NSW. The group will consist of people who are homeless, formerly homeless and those at risk of homelessness. The advisory group is being established to provide input into the formation of public policy in relation to homelessness as well as to assist in the advocacy and law reform activities of HPLS. HPLS believes that the formation of the advisory group has the potential to be utilised by the NSW Government in attempting to ensure the effective use of the expertise of homeless people.

Recommendation 11:

That the Homeless Persons' Legal Service consumer advisory group be considered by the NSW Government as one way of ensuring feedback into the operation of the strategic framework.

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The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (**PIAC**) is an independent, non-profit legal and policy centre located in Sydney. Its charter is:

To undertake strategic legal and policy interventions in public interest matters in order to foster a fair, just and democratic society and empower citizens, consumers and communities.

PIAC's work extends beyond the rights and interests of individuals; it specialises in working on issues that have systemic impact. PIAC's clients and constituencies are primarily those with least access to economic, social and legal resources and opportunities. PIAC provides its services for free or at minimal cost.

The Public Interest Law Clearing House

The Public Interest Law Clearing House (**PILCH**) was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

1. to identify matters of public interest that warrant legal assistance *pro bono publico*;
2. to identify the legal needs of non-profit organisations;
3. to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
4. to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
5. to expand the participation of private practitioners in the law reform process;
6. to seek the integration of *pro bono* work with legal practice; and
7. to encourage co-operation between private practitioners and public interest lawyers.

• APPENDIX A

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association and PIAC.