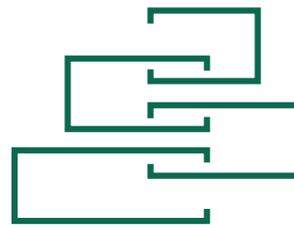


Homeless Persons' Legal Service

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



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Quality? Please assure us!

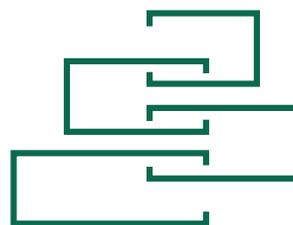
comments on the National Quality Framework Discussion Paper

22 April 2010

Chris Hartley
Policy Officer
Homeless Persons' Legal Service

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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 PIAC receives funding for HPLS from 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 ten 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 3,500 clients.

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, Vincentian House (St Vincent de Paul Society), 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, DLA Phillips Fox, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW, Minter Ellison, Norton Rose and Thomson Playford Cutlers.

Involvement of homeless people

The Homeless Persons' Legal Service believes that the current consultation is an opportunity for HPLS, as an advocate for homeless people, not just to provide its own perspectives on how homelessness services should operate, but also (and importantly) to listen to the voices and opinions of people on the streets.

HPLS believes that the active involvement of those who are or have been homeless will lead to the development of more effective public policy in response to issues facing homeless people, as well as assisting in the empowerment of participants. HPLS recognises 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).⁴

To facilitate the involvement of homeless people in service and government decision-making processes, HPLS established Street Care in 2009. Street Care is the first advisory group in New South Wales that is made up entirely of people who are currently or have been homeless.

To ensure the voices of people experiencing homelessness are contributed to this consultation, HPLS and the Federal Department of Families, Housing, Community Services and Indigenous Affairs (FHCSIA) jointly facilitated a consultation with members of the Street Care.

HPLS has previously held consultations with over 200 homeless and formerly homeless people to inform its submission to the Federal Government's Green Paper on homelessness, *Which Way Home, A new approach to homelessness* (the Homelessness Green Paper).⁵ HPLS also consulted with over 130 people currently experiencing homelessness in order to develop its response to the National Human Rights Consultation.⁶ A copy of the HPLS submission to the National Human Rights Consultation is appended to this submission (Appendix B).

⁴ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ratified by Australia on 13 August 1980 (entered into force for Australia on 13 November 1980, except article 41, which entered into force for Australia on 28 January 1993). The full text of the ICCPR is available at <<http://www2.ohchr.org/english/law/ccpr.htm>>.

⁵ Commonwealth of Australia, *Which Way Home, A new approach to homelessness* (2008).

⁶ Chris Hartley, *Our Rights Matter! The Voices of those who are or have been homeless in Sydney* (2009) Public Interest Advocacy Centre <http://www.piac.asn.au/publications/pubs/sub2009062_20090615.html> at 21 April 2010.

The input HPLS received through those consultations has been used to inform the content of this submission.

Executive summary and recommendations

This submission is made by the Homeless Persons' Legal Service in response to the release of the Housing Ministers' Conference discussion paper, *A national quality framework to support quality services for people experiencing homelessness – A Discussion Paper* (the Discussion Paper).⁷

HPLS welcomes the recognition by the Housing Minister's Conference of the need for a national quality framework that delivers ongoing improvement and better integration of services to those experiencing homelessness. While most state and territory governments currently have in place some form of quality framework in relation to provision of services to homeless people, a national approach that promotes and enforces a unified model of best practice is required.

In this submission HPLS comments primarily on the characteristics of good service practice that have been identified by the discussion paper. While generally supportive of these characteristics, HPLS identifies a number of additional features of quality services that should be adopted in a national quality framework. HPLS also provides detail on how the characteristics identified in the discussion paper can be implemented as enforceable standards that inform the daily practices of specialist homeless service providers.

HPLS supports the Federal Government's recognition, as expressed in the White Paper on Homelessness, *The Road Home – A national approach to reducing homelessness* (the White Paper), that addressing homelessness is a shared responsibility.⁸ In support of this approach, HPLS believes a national quality framework must incorporate the practices of mainstream services such as state and territory housing authorities and Centrelink.

⁷ Housing Minister's Conference, *A national quality framework to support quality services for people experiencing homelessness* (2010).

⁸ Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (2009) 14.

In summary, the Homeless Persons' Legal Service recommends:

Recommendation 1: That a national uniform quality framework system be developed to enable more effective service responses to those experiencing homelessness.

Recommendation 2: That a national uniform quality framework system be implemented through a staged process. The framework should initially provide homelessness services with guidelines about best practice models that will later form the basis for accreditation.

Recommendation 3: That the Federal, state and territory government's provide adequate funding and support to specialist homelessness services to enable them to achieve best practice requirements under a national quality framework.

Recommendation 4: That the Federal Government enact new specialist legislation to regulate the operation of all matters relating to homelessness.

Recommendation 5: That national homelessness legislation provide broad detail of best practice and of implementation and obligations to comply with the national quality framework, with the uniform national quality framework itself being provided in subordinate legislation or guidelines binding on states and territories.

Recommendation 6: That national quality framework principles be based on the needs of the client and require agencies working with homeless people to develop service responses based on an understanding of victimisation and trauma.

Recommendation 7: That national quality framework principles require agencies working with homeless people to assist those homeless people with mental health problems to access appropriate treatment.

Recommendation 8: That national quality framework principles specifically address the exclusion policies of many specialist homeless service providers and require such policies to be consistent with human rights and anti-discrimination laws.

Recommendation 9: That the characteristics of good service provision incorporated in the national quality framework reflect the right of those experiencing homelessness to have a central role in the design and delivery of homelessness services.

Recommendation 10: That the characteristics of good service provision and national quality standards reflect Australia's international human rights obligations.

Recommendation 11: That the Federal Government conduct an audit of the impact of mainstream and specialist services on the human rights of homeless people. Any policies and/or procedures that do not confirm to international standards should be amended accordingly in the national quality framework.

The need for a national quality framework

The role of a quality framework

The White Paper⁹ and the report of the House of Representatives Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation, *Housing the Homeless (Housing the Homeless)*, recommend the implementation of a national quality framework to guide the provision of services to those experiencing homelessness.¹⁰

The White Paper details the Federal Government's intention that the development of a national quality framework will assist in:

- placing clients at the centre of the response in both the mainstream and specialist homeless service settings;
- a greater ability to attract and retain a highly trained, multi-skilled and well-educated workforce;
- career paths for the workforce, with skills and expertise that are easily transferable within the sector;
- continuous service improvement to ensure that clients receive a service focused on achieving sustainable housing and employment outcomes;
- stronger connections between government, business and non-government services.¹¹

HPLS supports the implementation of a national quality framework that can achieve the above objectives.

At present, most Australian states and territories have service-standard models that

⁹ Commonwealth of Australia, above n 8, 44.

¹⁰ Commonwealth, House of Representatives Standing Committee on Family, Community, Housing and Youth, *Housing the Homeless, Report on the inquiry into homelessness legislation* (2009) 10.

¹¹ Commonwealth of Australia, above n 8, 43.

guide the provision of support to those experiencing homelessness. The types of quality framework and the types of standards they seek to enforce vary considerably between jurisdictions. Some of the models include:¹²

- rights-based and involve continuous quality improvement (Victoria, ACT)¹³;
- legislation-based, involving an extension of residential tenancy rights (Queensland and ACT)¹⁴;
- service charter and guarantee-based (ACT)¹⁵;
- non-legislative, monitored by a third party (Victoria and Tasmania)¹⁶;
- SAAP-structured (WA).¹⁷

Without commenting on the viability of each of these systems¹⁸, HPLS believes the current lack of uniform standards results in a lack of clarity to specialist homelessness agencies on how to ensure best practice in service delivery. Nor does such a diverse range of approaches enable those experiencing homelessness to know how to seek redress from services that provide ineffective or inappropriate assistance. Because people experiencing homelessness can be quite transient, the difficulty in locating

¹² Department of Families, Housing, Community Services and Indigenous Affairs (FHCSIA), *Quality Frameworks for Homelessness and Related Services – Literature Review and Environmental Scan* (2010) 20.

¹³ Office of Housing (Victoria), *Homelessness Assistance Service Standards* (2006).

¹⁴ *Residential Services (Accreditation) Act 2002* (Qld).

¹⁵ ACT Government, *Homelessness Charter* (2009) ACT Department of Disability, Housing and Community Services
<http://www.dhcs.act.gov.au/data/assets/pdf_file/0005/25376/Charter.pdf> at 20 April 2010.

¹⁶ *Tasmanian Integrated Continuum of Support service system for homeless people and those at risk of homelessness* (2005) Department of Health and Human Services Tasmania
<http://www.dhhs.tas.gov.au/about_the_department/structure/operational_units/housing_tasmania/publications_and_resources/general2> at 21 April 2010.

¹⁷ *Western Australian SAAP Service Standards* (2002) Western Australian Department for Community Development
<<http://www.community.wa.gov.au/DCP/Resources/Accommodation/Homeless+%28SAAP%29/>> at 21 April 2010

¹⁸ A through examination of the effectiveness of each state and territory's quality frameworks is provided in *Quality Frameworks for Homelessness and Related Services – Literature Review and Environmental Scan* (see Commonwealth of Australia, above n 12).

accessible specialist homelessness services that are able to meet all of their needs is magnified. Homeless people are forced to negotiate a complex system of government and non-government agencies, each of which has its own benchmark of what it means to provide a quality service to homeless clients, and many of which operate in isolation from the others. A system comprising different approaches does not, and cannot, put homeless people at the centre of quality service delivery.

In HPLS's experience, homeless people accessing specialist homelessness services often feel unable to complain or raise issues for fear of retribution, including being banned from a service. Unfortunately, this is a story that is heard often by HPLS. As one person experiencing homelessness told HPLS during its Green Paper consultations:

Before you make a complaint about the way you are treated, you need to decide whether or not you can survive on the street without that ever going back to that service. If you decide that you need that service then you need to keep quiet and just accept what you get.

AJ, member of Street Care

HPLS believes a national quality framework that is developed in partnership with the sector and those experiencing homelessness will be effective in achieving a best practice model of service delivery that encourages the involvement of homelessness people in the development of policies and procedures.

Recommendation 1

That a national uniform quality framework system be developed to enable more effective service responses to those experiencing homelessness.

Accreditation

The Discussion Paper raises the important consideration of whether a national quality framework should be linked to service accreditation. In *Housing the Homeless*, the House of Representatives Standing Committee on Family, Community, Housing and Youth (the Standing Committee) noted that a number of submissions to the Inquiry questioned the role accreditation would play in improving service quality.¹⁹ Submissions to the Inquiry argued that linking service accreditation to a quality framework will mean that services will only be of the highest quality on the day(s) of accreditation. Other submissions noted that such an approach would also lead agencies to doing 'the bare minimum' rather than promoting continuous quality improvement in the delivery of services to homeless people.²⁰

¹⁹ Commonwealth of Australia, above n 10, 88.

²⁰ Commonwealth of Australia, above n 10, 89.

While recognising these potential limitations, HPLS believes an accreditation process based on a recognised national quality framework is essential to ensure the accountability of service providers. Aspirational standards without enforceability have already been shown to be an unsuccessful approach in the homelessness sector through the operation of the *Supported Accommodation Assistance Act 1994* (Cth) (SAA Act). While the preamble of the SAA Act recognises the need for services to homeless people to be delivered in ways that are compatible with international human rights, it provides no effective accountability mechanism for when these rights were undermined by the manner of service delivery.²¹ HPLS fears that without the accountability that linking the national quality framework to service accreditation provides, the failure of the SAA Act in terms of providing adequate service standards will be replicated.

However, if the national quality framework is to be linked to accreditation, specialist homelessness services must receive appropriate funding to enable them to meet these standards. It is also essential that immediately after the implementation of the national quality framework services not meeting these standards be provided with resources, assistance and opportunity to reform their practices.

HPLS is aware that many specialist homelessness services are required to undergo more than one, and sometimes as many as four, different accreditation reviews in one year to meet the individual requirements of different funding bodies. If accreditation were linked to a national quality framework, then it would make sense that all funding bodies accept this standard as the benchmark and not require unnecessary duplication of the process. This would allow specialist homelessness services to focus resources on the clients and not be distracted by the administrative burden of complying with numerous and different funding body requirements.

To enable this to occur, HPLS recommends the adoption of a staged implementation process for the national quality standards. This would involve the development and promotion of service standards and best practice models. Only after a reasonable period of adjustment would these standards become linked to accreditation. Such an approach is consistent with the model proposed by the Standing Committee Inquiry into homeless legislation.²²

²¹ *Supported Accommodation Assistance Act 1994* (Cth) s 5.

²² Commonwealth of Australia, above n 10, 95.

Recommendation 2

That a national uniform quality framework system be implemented through a staged process. The framework should initially provide homelessness services with guidelines about best practice models that will later form the basis for accreditation.

Recommendation 3

That the Federal, state and territory government's provide adequate funding and support to specialist homelessness services to enable them to achieve best practice requirements under a national quality framework.

The role of legislation

The White Paper and *Housing the Homeless* both recommend the adoption of new national homelessness legislation to replace the SAA Act.²³ The Discussion Paper proposes that a quality framework could sit within this new homelessness legislation.

HPLS is supportive of the recommendations of the White Paper and *Housing the Homeless* that a specific enactment is necessary to regulate the homelessness service sector. However, placing a national quality framework system within this legislation will place severe limitations on the ability of the framework to be adapted at a later stage.

Rather than placing the national quality framework within a new piece of homelessness legislation, HPLS believes the new legislation should only contain broad principles of good quality service. Specific details of the national quality framework should be located in subordinate documents binding the states and territories (and through them specialist homelessness service providers). Arrangements of this kind will still enable accountability while enabling the national quality framework to be dynamic and adaptable.

Recommendation 4

That the Federal Government enact new specialist legislation to regulate the operation of all matters relating to homelessness.

Recommendation 5

That national homelessness legislation provide broad detail of best practice and of implementation and obligations to comply with the national quality framework, with the uniform national quality framework itself being provided in subordinate legislation or guidelines binding on states and territories.

²³ Commonwealth of Australia, above n 8, 38; Commonwealth of Australia, above n 10, 26.

Characteristics of service provision

The Discussion Paper outlines a number of characteristics of good service provision that will be used to form the basis of the national quality framework. HPLS is generally supportive of these characteristics and provides some detail below of how they might be implemented in practice. Some additional principles that need to be considered in developing the national quality framework are also provided below.

Responsive, timely and based on the needs of the client

HPLS supports the Discussion Paper's recognition that service responses need to be based on the needs of individual clients. In HPLS's experiences, current service delivery models fail to be based on the needs of the client in a number of key ways that are discussed below.

Lack of service delivery informed by understanding of victimisation and trauma

To provide effective responses based on the needs of the client, agencies providing services to homeless people need to develop models of trauma-based practice.

In 2009, HPLS commissioned Dr Catherine Robinson, a researcher from the University of Technology, Sydney, to conduct a qualitative study of rough sleepers' experiences of violence. Dr Robinson's draft research report not only revealed a wide range of violent victimisation as a key issue in the causation and perpetuation of homeless but the failure of homelessness services to effectively provide care that was based in an understanding of the resultant trauma caused by this victimisation.²⁴

Significant research details the high rates of childhood sexual, physical and emotional abuse experienced by people who are homeless as adults.²⁵ Studies have revealed that over 70 percent of young homeless woman and 30 percent of young homeless men can be expected to be survivors of physical abuse.²⁶ Other studies have extensively documented familial physical, sexual and emotional abuse as precursors to

²⁴ Catherine Robinson, *Rough Living: Surviving Violence and homelessness* (Draft Paper).

²⁵ See, for example, Katherine Taylor and Louise Sharpe, 'Trauma and Post-traumatic Stress Disorder among Homeless Adults in Sydney' (2008) 42 *Australian and New Zealand Journal of Psychiatry* 206.

²⁶ Lisa Thrane, Danny Hoyt, Les Whitbeck and Kevin Yoder, 'Impact of Family Abuse on Running Away, Deviance, and Street Victimization among Homeless Rural and Urban Youth' (2006) 30 *Child Abuse and Neglect* 117.

homelessness.²⁷ Dr Robinson's qualitative research confirms the linkages between abuse, trauma and homelessness, with 11 of the 12 participants in her research reporting suffering childhood and physical abuse that was, in the main, perpetrated by their parents.

While significant evidence demonstrates these linkages, the current practice of many service providers is to provide only superficial assistance to address resultant trauma caused by childhood abuse or for other mental health conditions. Many services are structured to enable clients to only receive accommodation for three months before they are required to move on. As Johnson and Chamberlain write in their paper 'Are the Homeless Mentally Ill?', support based on the model of Housing First provides the most effective mechanism to enable individuals to address their mental health issues.²⁸ However, in the absence of widespread adoption of this approach, services providing case management for only three months are completely inadequate to address trauma and other mental health conditions.

When dealing with individuals who have experienced trauma, not only is the length of treatment important but also the manner in which it is provided. Clients with repeated experiences of homelessness and victimisation often require models of service based on 'trauma-informed care'. Trauma-informed care:

... takes at its starting point the likely presence and comprehensive, long-term effects of violent victimisation and the concern to practically integrate best-knowledge of the physical, emotional, psychological and physiological impacts of trauma in the way that service staff understand and engage with service user'.²⁹

In other words, trauma-informed care determines not only the psychological supports a homelessness service should provide but also the manner in which their entire services are structured. As Dr Robinson writes, such restructuring requires a fundamental shift from 'hierarchical models' to 'participatory models' under which client empowerment is actively encouraged by service providers.³⁰ Trauma-based responses also require

²⁷ Robinson, above n 24. See also, Gordan Hordas, *Responding to Childhood Trauma: The promise and practice of trauma informed care* (2009) Pennsylvania Office of Mental Health and Substance Abuse Services <<http://www.nationalcenterdvtraumamh.org/resources-trauma-services.php>> at 12 April 2010.

²⁸ Guy Johnson and Chris Chamberlain, 'Are the Homeless Mentally Ill?' (Paper presented at the Australian Social Policy Conference, Sydney, 8 July 2009).

²⁹ Catherine Robinson, *Rough Living: Surviving Violence and homelessness* (Draft Paper).

³⁰ Catherine Robinson, *Rough Living: Surviving Violence and homelessness* (Draft Paper).

significant staff development and training in how to communicate with and effectively listen to individuals experiencing trauma.

The extent of victimisation and trauma experienced by many people who are homeless also has considerable implications for service delivery by mainstream services such as housing authorities and Centrelink. In HPLS's experience, regrettably many staff in mainstream services often treat people who are homeless in a disrespectful and degrading way.

As one person experiencing homelessness told HPLS during its Human Right's Consultation Events:

When I needed Centrelink they treated me like a gutter rat. There are more barriers when you need it the most. When things went bad they put up more barriers and made it more difficult – you're judged, classified and not treated like a person.³¹

While for most of us such treatment is an annoyance at worst, for homeless people who may have experienced complex and multiple episodes of trauma, it is an additional form of victimisation that acts as a barrier to their ability to access vital services. The need for mainstream services to be accountable under a national quality framework is discussed in more detail below.

Recommendation 6

That national quality framework principles be based on the needs of the client and require agencies working with homeless people to develop service responses based on an understanding of victimisation and trauma.

Recommendation 7

That national quality framework principles require agencies working with homeless people to assist those homeless people with mental health problems to access appropriate treatment.

Exclusion policies

The exclusion policies of many specialist homelessness services also precludes assistance being offered in a way that meets the needs of individual clients. In addition to the SAA Act, the New South Wales Supported Accommodation Assistance Program (SAAP) Standards and the NSW SAAP Service Framework are in place to regulate the process of excluding clients from specialist homelessness services. These standards

³¹ Homeless Persons' Legal Service, Consultation with anonymous homeless person (Samaritan House, Sydney, 6 May 2009).

and regulations prescribe that exclusion policies in specialist homelessness services are to be developed so as to be free from discrimination and consistent with human rights.³² However, as the NSW Ombudsman found in his report, *Assisting homeless people – the need to improve their access to accommodation and support services*, there are considerable incidents of exclusions from specialist homelessness services that are unreasonable and in contravention of SAAP requirements and anti-discrimination legislation.³³ The NSW Ombudsman found that in a six-month period over 57 percent of specialist homelessness services surveyed turned away between one and 20 people, and 11 percent turned away over 40 people.³⁴ In total, from the 165 specialist homelessness services that participated in the NSW Ombudsman’s survey, approximately 2,249 people experiencing homeless had been excluded.³⁵

Approximately half of the specialist homelessness services consulted indicated that they exclude people with a mental illness and almost two thirds of services exclude people with drug and alcohol disorders.³⁶ Also of concern to the NSW Ombudsman was the high number of specialist homelessness services excluding pregnant woman.³⁷ While HPLS recognises the need to ensure the occupational health and safety of workers within specialist homelessness services, as the NSW Ombudsman’s figures reveal, the number of exclusions based on concern for the physical safety of workers is extremely small.³⁸

Recommendation 8

That national quality framework principles specifically address the exclusion policies of many specialist homeless service providers and require such policies to be consistent with human rights and anti-discrimination laws.

³² See, for example, NSW Department of Community Services, *SAAP Standards* (1998) 6.

³³ NSW Ombudsman, *Assisting homeless people – the need to improve their access to accommodation and support services* (2004) [30]
<<http://ombo.nsw.gov.au/publication/PDF/specialreport/Assisting%20homeless%20people.pdf>> at 13 August 2009.

³⁴ Ibid 30.

³⁵ Ibid 33.

³⁶ Ibid 30.

³⁷ Ibid 29.

³⁸ Ibid 11.

Enables the client to participate in the decision making process and supports them to make their own decisions and achieve goals

If you want to know how to fix homelessness, just ask us. We are the experts!

Sarah, member of Street Care

The right for homeless people to be involved in decision-making processes that impact them is enshrined in Article 25 of the ICCPR which states:

Every citizen shall have the right and the opportunity, ... without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

The need for homeless people to be placed at the centre of service planning has recently been recognised by the White Paper³⁹ and the NSW Homelessness Action Plan, *A Way Home, Reducing homelessness in NSW, NSW Homelessness Action Plan 2009 – 2014*.⁴⁰ The importance of consumer participation in service design and delivery was also recognised in the objects to the SAA Act, including the need for development of a national advisory committee that has representation from people who have experienced homelessness. However, in reality there are very few services with dedicated consumer participation processes.

HPLS supports the recognition in the discussion paper of the need for those experiencing homelessness to have input into the way their individual cases and needs are dealt with by service providers. However, the involvement of those experiencing homelessness should not be restricted to having input in relation to their individual cases, but should also incorporate the right to be involved in the design and delivery of service responses in general. As outlined above, such involvement at an operational level is not only a human right, but will also lead to better targeted services responses.

³⁹ Commonwealth of Australia, above n 8, viii.

⁴⁰ New South Wales Government, *A Way Home, Reducing homelessness in NSW, NSW Homelessness Action Plan 2009 – 2014* (2009) 19.

Recommendation 9

That the characteristics of good service provision incorporated in the national quality framework reflect the right of those experiencing homelessness to have a central role in the design and delivery of homelessness services.

Rights-based, ethical, fair and equitable

HPLS supports the development of a national quality framework that protects and promotes the rights of those experiencing homelessness and recommends that a rights-based approach be adopted to promote and protect the human rights of people accessing homelessness services.

Australia's ratification of international human rights treaties such as the ICCPR, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)⁴¹, the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)⁴², the *Convention on the Rights of the Child* (CROC)⁴³, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)⁴⁴, and the *Convention on the Rights of Persons with Disabilities*⁴⁵ imposes an obligation on Australia to ensure that the rights within those treaties are protected, promoted and fulfilled in Australia.

⁴¹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) ratified by Australia on 10 December 1975 (entered into force for Australia on 10 March 1976).

⁴² *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) ratified by Australia on 30 September 1975 (entered into force for Australia on 30 October 1975, except article 14, which entered into force for Australia on 28 January 1993).

⁴³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ratified by Australia 17 December 1990 (entered into force for Australia on 16 January 1991).

⁴⁴ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ratified by Australia 28 July 1983 (entered into force for Australia on 27 August 1983).

⁴⁵ *Convention on the Rights of Persons with Disabilities*, opened for signature 31 March 2007, Doc.A/61/611 (entered into force 3 May 2008), ratified by Australia on 17 July 2008 (entered into force for Australia on 16 August 2008).

As was outlined above, one of the central legislative responses to addressing homelessness, the SAA Act makes a number of references to Australia's international human rights obligations. The objects to the SAA Act detail that:

Australia has acted to protect the rights of all of its citizens, including people who are homeless or at risk of homelessness, by recognising international standards for the protection of universal human rights and fundamental freedoms.⁴⁶

In addition, the preamble of the SAA Act states that homeless people's 'universal human rights should not be prejudiced by the manner by which services are provided to them'.⁴⁷ The SAA Act also specifies that specialist homelessness service agreements must contain detail on how 'the civil, political, economic and social rights of people that are homeless may be preserved and protected by service providers'.⁴⁸

However, the intention of Government (as expressed through the SAA Act) that the provision of services to homeless people would not impact upon their human rights has not translated into practice. In response to the Federal Government's announcement of a National Human Rights Consultation, HPLS and PIAC held a series of human rights workshops in homeless shelters in inner city Sydney. At these workshops, homeless people were encouraged and assisted to provide their stories and views about how and how well their human rights are protected in Australia. HPLS and PIAC received considerable feedback from homeless people that their human rights in areas such as housing, social security, discrimination and personal safety were being consistently undermined by the operation of federal, state and territory government policies. In addition, those consulted by HPLS were concerned that specialist homelessness services were also failing to adequately protect their human rights in service delivery. Participants were asked to vote on the model of rights protection they would like to see to best protect their rights. Tellingly, of the over 130 homeless people who attended these consultation events, not one person cast a vote to retain the status quo.

In particular human rights such as the right to adequate housing⁴⁹, the right to highest attainable standards of physical and mental health⁵⁰, the right to consumer participation,

⁴⁶ *Supported Accommodation Assistance Act 1994* (Cth) s 5

⁴⁷ *Ibid.*

⁴⁸ *Supported Accommodation Assistance Act 1994* (Cth) s 8.

⁴⁹ *International Covenant on Economic, Social and Cultural Rights*, Art 11.

⁵⁰ *International Covenant on Economic, Social and Cultural Rights*, Art 12.

the right to social security⁵¹, freedom of association and assembly⁵², and the right to vote⁵³ are being undermined by both specialist and mainstream services responses to homelessness.

The role breaches of human rights play in causing and exacerbating homelessness was recognised by the Standing Committee in *Housing the Homeless*.⁵⁴ In the report, the Standing Committee recommended that new homelessness legislation contain the right of all Australians to adequate housing and explicitly recognise the right to adequate housing will be progressively realised. The Standing Committee also recommended that the Federal Government conduct an audit of state and territory laws that impact on homeless people to determine compatibility with international human rights obligations.

HPLS recommends that the rights-based approach within the national quality framework process similarly be based on an understanding of the current impact of mainstream and specialist homelessness services upon the rights of those experiencing homelessness. Service responses shown to undermine these rights should then be specifically addressed in the national quality framework.

Recommendation 10

That the characteristics of good service provision and national quality standards reflect Australia's international human rights obligations.

Recommendation 11

That the Federal Government conduct an audit of the impact of mainstream and specialist services on the human rights of homeless people. Any policies and/or procedures that do not confirm to international standards should be amended accordingly in the national quality framework.

⁵¹ *International Covenant on Economic, Social and Cultural Rights*, Art 9; and *Convention on the Rights of Persons with Disabilities*, Art 28(2)(b).

⁵² *International Covenant on Civil and Political Rights*, Art 22; *Convention on the Rights of the Child*, Art 15; and *International Convention on the Elimination of all Forms of Racial Discrimination*, Art 5(d).

⁵³ *International Covenant on Civil and Political Rights*, Art 25; *Convention on the Elimination of all Forms of Discrimination against Women*, Art 7; *International Convention on the Elimination of all Forms of Racial Discrimination*, Art 5(c); and *Convention on the Rights of Persons with Disabilities*, Art 29(a).

⁵⁴ Commonwealth of Australia, above n 10, 55.

HPLS supports the recognition in the Discussion Paper of the need for collaborative partnerships in addressing homelessness. In HPLS's experience, specialist homelessness services often act in a vacuum and do not have in place collaborative partnerships that are necessary to meet individual client needs.

A consistent message from HPLS's discussions with members of Street Care about service standards is the need for 'no wrong doors' when someone is trying to exit homelessness. It is often the experience of members of Street Care and other homeless people that they are informed they have accessed the 'wrong kind of service' for their particular needs without being supported or adequately referred to the 'right' service.

Given the diverse experiences of those who make up the homeless population, it is not reasonable to expect that all services can cater to all needs. However, the concerns of Street Care point to the need for greater collaboration between services. Such collaboration would enable more effective referral mechanisms to be established to enable clients to quickly receive the support they require.

Conclusion

The development of a homelessness national quality framework provides an opportunity to promote and protect the rights of those experiencing homelessness and to establish models of best practice for service delivery.

The success of a future national quality framework will ultimately be based on its relevance to the needs of the very people who are accessing services: homeless people themselves. If the national quality framework simply pays 'lip service' to best practice without providing concrete and enforceable standards it will, like many promises given to homeless people, be hollow.