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ADVOCACY CENTRE

**Submission to the House of  
Representatives Standing Committee on  
Social Policy and Legal Affairs**

**Inquiry into homelessness in Australia**

**12 June 2020**

## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Our work addresses issues such as:

- Reducing homelessness, through the Homeless Persons' Legal Service and Streetcare
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for Aboriginal and Torres Strait Islander people
- Access to affordable energy and water (the Energy and Water Consumers Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)

In 2004, PIAC established the Homeless Persons' Legal Service (HPLS). HPLS has provided legal assistance to more than 8,000 people who are homeless or at risk of homelessness, on over 11,000 occasions. HPLS provides free legal advice at 16 legal advice clinics Sydney and the Hunter.

In 2009, PIAC established its homeless consumer advisory committee Streetcare, whose members have lived experience of homelessness. Streetcare is a diverse group, including women and men of different ages, Aboriginal people, and representatives from inner Sydney, outer suburbs and rural and regional areas. With support from PIAC, Streetcare members provide direct input into government policy making and law reform initiatives.

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Public Interest Advocacy Centre



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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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## **EXECUTIVE SUMMARY**

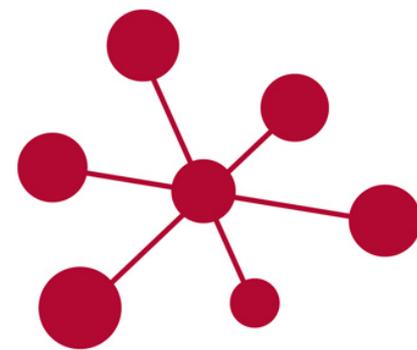
Australia faces a homelessness crisis due to structural issues in the housing and social security systems.

Decades of under-investment in social housing, a joint responsibility of the Commonwealth and State governments, have created a severe social housing shortage. At the same time, renting and owning in the private market is becoming increasingly difficult for lower income households as wages have not kept pace with rents and dwellings prices. Finally, levels of income support are severely inadequate, forcing recipients to live in poverty. For some specific cohorts, eligibility issues or other forms of disadvantage compound hardship and homelessness.

This submission outlines a range of policy and legislative reforms that have the potential to significantly reduce and alleviate homelessness. We draw on the expertise of lawyers from the Homeless Persons' Legal Service (HPLS) in NSW, the lived experience of members of PIAC's consumer advocacy committee Streetcare, recent data and academic research, and evidence from government reports and peak bodies.

Australia is a wealthy country with sufficient resources to end homelessness. However, doing so will require significant reform and investment. To this end, we urge the development of a National Housing Strategy underpinned by a housing first approach to homelessness. The Commonwealth should also work with states and territories to deliver enough social housing to meet the housing needs of people experiencing or at risk of homelessness. We also need to reform our social security system, including levels of payments, eligibility criteria, and processes available to customers and advocates.

Taking a person-centered and trauma informed approach, we must work together towards the progressive implementation of the human right to adequate housing across the nation.



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## Summary of recommendations

### ***Recommendation 1 – Engage with national housing and homelessness peak bodies to develop a National Housing Strategy to address systemic policy issues***

*The Government should develop a National Housing Strategy, with particular attention given to:*

- 1. Reforming the taxation settings that encourage speculation on housing;*
- 2. Increasing CRA by 30% to provide immediate relief to lower income households in housing stress, followed by a review of CRA;*
- 3. Working with the states and territories through the National Housing and Homelessness Agreement (NHHA) to invest in social and affordable housing at scale, with localised targets based on need; and*
- 4. Developing a national framework for tenancy legislation to work towards ending 'no-grounds' evictions nationally.*

### ***Recommendation 2 – Raise the rate of social security payments***

*The Government should permanently raise maximum rates of JobSeeker and related payments by a minimum of \$95 a week, with indexation. The payments should be indexed twice a year to a standard ABS measure of wages before tax, or CPI, whichever is the highest.*

### ***Recommendation 3 – Increase FTB and CRA and review CRA***

*The Government should implement the other recommendations of ACOSS submission to the review of Newstart and related payments, including the increase of Family Tax Benefits for single parents and an increase of CRA of 30% pending review of the payment.*

### ***Recommendation 4 – Implement the recommendations of the Senate inquiry into the adequacy of Newstart***

*The Government should implement the recommendations of the Senate inquiry into the adequacy of Newstart, in particular adopting a national definition of poverty, establishing an independent advisory body to government on social security payment and review mechanisms, and setting social security payments and allowances at a level where recipients do not live in poverty*

### ***Recommendation 5 – Current anti-discrimination provisions***

*The Government should ensure current anti-discrimination provisions are adequate, and enforced efficiently.*

### ***Recommendation 6 – Add housing status as a new protected attribute***

*The Government should consider adding housing status as a new protected attribute in anti-discrimination legislation.*

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**Recommendation 7 – Restore SRSS**

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*The Government should commit to restoring SRSS for all people seeking asylum who need it.*

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**Recommendation 8 – Reform the Newly Arrived Residents Waiting Period**

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*The Government should remove the Newly Arrived Residents Waiting Period.*

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**Recommendation 9 – Review treatment of New Zealand Citizens**

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*The Government should review the specific provisions that apply to New Zealand citizens who reside in Australia in order to ensure they receive the same treatment as other residents and migrants, and are not unnecessarily placed at risk of homelessness.*

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**Recommendation 10 – Implement further training within Centrelink**

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*The Government should implement further training within Centrelink so officers are aware of proper decision making process for clients who are entitled to access payments under the social security agreement between Australia and New Zealand.*

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**Recommendation 11 – Continue to exempt people in crisis, and extend the exemption**

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*The Government should continue to exempt people in crisis such as people experiencing homelessness from mutual obligations, and this exemption should be extended to people experiencing all forms of homelessness (including tertiary homelessness).*

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**Recommendation 12 – Continuity of rent payments**

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*The Government should ensure that, if payments are suspended for non-compliance with mutual obligations, rent payments should continue to be made directly to the landlord on behalf of the recipient until the suspension period ends.*

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**Recommendation 13 – Trauma informed assessment of capacity to meet obligations**

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*The Government should implement a trauma-informed approach to assessment of recipients capacity to meet mutual obligations.*

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**Recommendation 14 – Improve tenancy legislation**

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*The Government should encourage states and territories to improve their tenancy legislation, in particular reform of 'no-grounds' evictions, by providing financial incentives additional to existing funding arrangements.*

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**Recommendation 15 – Ensure appropriate protections for non-tenants**

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*The Government should work with states and territories to develop improved rights and protections for occupants of non-residential housing, for example through the development of stronger and broader occupancy principles for boarders and lodgers or integration of these forms of housing into residential tenancies acts.*

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**Recommendation 16 – Data collection on evictions into homelessness**

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*Collect and make publicly available data about the number of evictions that result in exits into homelessness, in particular for social housing tenants.*



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**Recommendation 17 – Additional funding for tenant advocates**

*Provide additional funding through the NHHA for States to increase funding to tenant representation services (such as TAAS in NSW) and other specialist advocacy services, including HPLS, that help people who would otherwise be unable to access civil and administrative tribunals processes.*

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**Recommendation 18 – Direct contact to Centrelink for advocates**

*Reinstate the Centrelink, Homelessness and Social Inclusion Team, or a similar process, creating a single point of contact within Centrelink for professionals acting on behalf of clients with complex needs, to assist with the efficient resolution of Centrelink inquiries.*

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**Recommendation 19 – Improve the National Hardship Register**

*The Government should:*

- *Work with the banking and debt collection sector to encourage participation in the NHR and similar initiatives; and*
- *Encourage the NHR to reduce the 'Right of Challenge' period from three years to six months.*

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**Recommendation 20 – Implement the recommendations of the SACC Review**

*The Government should implement the recommendations of the SACC review to improve protections for people who use payday loans and 'rent to buy' consumer leases, particularly those experiencing or at risk of homelessness.*

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**Recommendation 21 – Improve flexibility in relation to documentary evidence**

*The Government should develop and implement less stringent guidelines on which documents can be accepted by Centrelink to assess applications.*

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**Recommendation 22 – Adopt a no wrong door approach to service provision**

*The Government should implement a 'no-wrong door' approach across government departments, and adopt as a principle that government has a responsibility to endeavour to solve issues facing people experiencing homelessness rather than putting the onus on people who are in a difficult situation with limited capacity to address their issues.*

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**Recommendation 23 – Adopt a person-centered approach**

*The Government should work with all relevant agencies to develop and implement guidelines to create a more flexible, person-centered income support and related services system.*

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***Recommendation 24 – Deliver services in a culturally safe and trauma informed way***

*The Government should implement policies, including training for frontline workers, that ensure services are delivered in a culturally appropriate and trauma informed way, especially to people experiencing homelessness.*

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***Recommendation 25 – Increase consumer engagement in service and policy design***

*The Government should create more formal avenues for consumer participation in service and policy design, in order to use their experience to improve systemic outcomes.*

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***Recommendation 26 – Contact consumers using real phone numbers***

*The Government should implement policies that ensure that telephone contact with service users is made from a phone number that appears on screen, and can be called back directly.*

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***Recommendation 27 – Provide funding for housing first strategies***

*As part of a National Housing Strategy developed by states and territories (Recommendation 1), commit to working towards a response to homelessness primarily focused on housing first, or housing led, measures, including by provide funding through the NHHA for housing first responses to primary homelessness, including housing and wrap around support services.*

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***Recommendation 28 – support state and territory efforts following the COVID-19 response***

*The Government should work with states and territories to support a housing first approach to housing former rough sleepers, with an emphasis on the principle that no one should return to the streets.*

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***Recommendation 29 – Consider approaches to allow people to access housing through NDIS funds***

*The Government should explore options for allowing people experiencing homelessness with disability, including a psycho-social disability, to access housing through use of NDIS funds. For example, this could be done by amending National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016, section 3.7, to explicitly recognise that people with disability, including a psycho-social disability, and a prolonged experience of homelessness, are considered to have ‘very high support needs’ under the NDIS (SDA) Rules 2016.*

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***Recommendation 30 – A right to housing***

*The Government should consider how best to enshrine the human right to adequate housing into Australian legislation, including how it could be enforceable by administrative and civil tribunals.*

## Introduction and context

There are many intersecting factors that affect the incidence of homelessness. While individual factors can be both causes and consequences of homelessness, homelessness must be approached as a systemic policy issue, not an individual failure. At its core, the incidence of homelessness is a political choice; it represents the number of people society considers acceptable to leave without adequate shelter every night. Ending homelessness is possible. But it requires a commitment to systemic policy changes in both housing and social policy, and reform of related legislation.

This submission draws on our experience advocating for people at risk of or experiencing homelessness in New South Wales. In 2018-19, our Homeless Persons' Legal Service (HPLS) assisted 730 people who were homeless or at risk of becoming homeless. We provided 1145 legal advice sessions, and provided casework and representation services in more than 400 new matters, assisting with issues including tenancy, civil legal problems such as employment and social security, and criminal matters. This submission reflects this expertise, and draws on the experiences of clients of our legal practice and our own experiences as legal practitioners.

The submission also includes consumer input from people with lived experience of homelessness, particularly from members of Streetcare, our consumer advisory committee.

Case studies and qualitative evidence show there are a number of systemic policy issues that aggravate rather than mitigate the incidence and experience of homelessness. To protect client confidentiality, we do not use clients' real names or initials.

PIAC welcomes the opportunity to comment on the factors affecting the incidence of homelessness in Australia, the opportunities for early intervention and prevention of homelessness, and how support services could be improved. While this submission is focused on federal matters, certain issues are complex and involve responsibilities from other levels of government. Sustainable solutions will require a coordinated response from governments at all levels.

## 1. Structural policy factors affecting the incidence of homelessness

Every night, about one in 200 Australian has no place to call home. On 2016 Census night, there were 116,000 people experiencing homelessness across the country. Homelessness affects all demographics, but disproportionately impacts young people, Aboriginal and Torres Strait Islander people, and men.<sup>1</sup> The most common form of homelessness is tertiary homelessness, defined as accommodation that falls significantly below accepted community standards.<sup>2</sup> This is driven by the significant number of people living in severely overcrowded dwellings, representing 44% of people experiencing homelessness in Australia. This significantly and disproportionately affects Aboriginal and Torres Strait Islander people. More than one in five (20.6%) Aboriginal and Torres Strait Islander people lived in overcrowded households in 2014–15, increasing to about one in

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<sup>1</sup> Homelessness NSW (2016) [Census Info-graphics](#).

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

two (49.4%) for those living in very remote areas.<sup>3</sup> Aboriginal and Torres Strait Islander people accounted for about 22.5% of people experiencing homelessness in 2016.<sup>4</sup>

Australia has the second highest rate of homelessness in the OECD, following only New Zealand, despite our record of uninterrupted strong economic growth over nearly three decades.<sup>5</sup> This is partially explained by the broad definition of homelessness used in Australia compared to some OECD countries, but is also the consequence of a systemic policy failure.

In particular, our poor record on homelessness can be explained by two factors discussed in the next sections: first, a housing system that does not function for people on lower incomes, and second, an inadequate social security safety net. In research published by the Australian Council of Social Services (ACOSS),<sup>6</sup> our community sector overwhelmingly identified these two issues as having the greatest impact on their clients. In 2019, cost of living, adequacy of incomes and housing were the top three issues mentioned by 1,454 professionals including 408 executives. 74% of professionals mentioned people accessing their services were affected by housing pressures and/or homelessness, while 69% identified the inadequate rates of income support as a primordial factor.<sup>7</sup>

Despite increasing reliance on the private rental market relative to social housing over the past decades, the private rental market does not offer a viable alternative for many members of our community. Private rent is unaffordable, insecure, and some face discrimination as an additional barrier to access. Meanwhile, due to decades of under-investment from all levels of government, there are not enough social and affordable dwellings to house people for whom renting privately is not an option. Some households are able to deal with this by compromising on amenity and quality of their housing, at the cost of exacerbating tertiary homelessness, or being pushed out to the geographical and social fringes and excluded from opportunities. Others 'fall through the cracks' and become homeless.

## 1.1 Structural issues in the housing system

There are a number of structural issues with the housing system that explain the high incidence of homelessness in Australia, including taxation policy, underinvestment in social housing, and inadequate tenancy protections.

Taxation measures, such as Capital Gains Tax (CGT) discounts for investors, and negative gearing provisions, have encouraged speculation on housing and have tended to favour investors over first home buyers.

Levels of social housing as a proportion of total stock have decreased due to decades of underinvestment at both the State and Commonwealth level. The Australian Institute of Health and Welfare notes that social housing stock 'has not kept pace with the growth in households',

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<sup>3</sup> Australian Law Reform Commission (2017) Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133

<sup>4</sup> Australian Institute of Health and Welfare (2019). Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness. Cat. no. HOU 301. Canberra: AIHW. Table 5.1.

<sup>5</sup> OECD Affordable Housing Database, Social Policy Division - Directorate of Employment, Labour and Social Affairs (2020) 'HC 3.1 Homeless Population', Accessible on OECD website.

<sup>6</sup> Cortis, N. & Blaxland, M (2020): The profile and pulse of the sector: Findings from the 2019 Australian Community Sector Survey. Sydney: ACOSS

<sup>7</sup> Ibid p 10.

falling from 5.1% in 2008 (already an historically low level) to 4.6% in 2018.<sup>8</sup> There is simply not enough social housing to house people experiencing homelessness, let alone people in the bottom two quintiles of income earners. A significant proportion of private renters experience housing stress, with 66% of low income earners spending more than 30% of their income on housing costs, and 25% in severe housing stress, spending more than half.<sup>9</sup> Eligibility criteria for social housing have become increasingly restrictive, preventing cross subsidy of public housing portfolios and concentrating disadvantage and people with high needs in certain areas.

There are insufficient protections and rights for renters in several jurisdictions, and there is no national framework for tenancy legislation or a national housing strategy. Commonwealth Rent Assistance (CRA) has not kept pace with increasing rents, and tends to flow to landlords as a demand-side subsidy. Tenancy protections are also weak across Australia, and no grounds evictions provisions across residential tenancy laws mean that even long term tenants do not have security of tenure.

Demand for affordable housing is at an all time high, but the main federal incentive to provide affordable housing, the National Rental Affordability Scheme, is slated to finish by 30 June 2026. It is important that mechanisms be introduced to ensure that the dwellings delivered under the scheme remain affordable, and supply of affordable housing dwellings continues.

These structural housing policy issues will need to be addressed in order to significantly decrease the incidence of homelessness in Australia. PIAC supports policy reform of the housing system, in line with the recommendations of the federal housing and homelessness peak bodies, National Shelter and Homelessness Australia.<sup>10</sup>

### ***Recommendation 1 – Engage with national housing and homelessness peak bodies to develop a National Housing Strategy to address systemic policy issues***

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*The Government should develop a National Housing Strategy, with particular attention given to:*

- 5. Reforming the taxation settings that encourage speculation on housing;*
- 6. Increasing CRA by 30% to provide immediate relief to lower income households in housing stress, followed by a review of CRA;*
- 7. Working with the states and territories through the National Housing and Homelessness Agreement (NHHA) to invest in social and affordable housing at scale, with localised targets based on need; and*
- 8. Developing a national framework for tenancy legislation to work towards ending ‘no-grounds’ evictions nationally.*

## **1.2 Inadequacy of social security payments**

Social security and income support payments are a vital part of our social safety net, and should be designed to ensure that people do not fall into poverty and/or homelessness due to changes in their circumstances resulting in financial hardship. However, the Australian social security system has ceased to perform this function properly due to inadequate payment levels.

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<sup>8</sup> Australian Institute of Health and Welfare. (2019). Housing assistance in Australia 2019. Available [here](#).

<sup>9</sup> Productivity Commission (2019) Vulnerable Private Renters: Evidence and Options

<sup>10</sup> For example See National Shelter (2018) Policy Platform: Housing & Infrastructure in Australia. Accessible [here](#). This is also a recommendation of a report formally endorsed by over 200 NGOs; Universal Periodic Review NGO Coordinating Committee (2020) Australia’s Human Rights Scorecard: Australia’s 2020 United Nations UPR NGO Coalition Report.

This was recently acknowledged by the Commonwealth inquiry into the adequacy of Newstart.<sup>11</sup> The JobSeeker payment (previously Newstart), which forms the core of our social security system together with related allowances, has not increased in real terms in 25 years. Leaving aside recent temporary increases as part of COVID-19 policy response, the JobSeeker payment level places its recipients well below the poverty line.<sup>12</sup> As shown by SGS/National Shelter Rental Affordability Index,<sup>13</sup> and Anglicare Rental Affordability Snapshot,<sup>14</sup> there is virtually no housing at all that is affordable for people on Newstart in any metropolitan area of Australia, within reach of employment opportunities and services.

It was well documented that people would go without the most basic essentials to survive on Newstart, having to choose between paying for medication, food and/or rent.<sup>15</sup> Case studies published by ACOSS highlight shocking stories of people unable to feed themselves properly: with one individual commenting that they '... eat 1 sachet of porridge, 1 tin of food, and 1 popper (for Vitamin C) a day. Sometimes I can't afford the porridge.' Other stories highlight lack of access to health services and medication: '[I] halve my dosages of medicines so they last longer. Don't access mental health services. Don't make appointments for health issues.' Others describe becoming homeless, 'living in a tent in the bush'.<sup>16</sup>

Unfortunately, the inadequacy of Australia's social security system will only become more apparent in the likely upcoming recession. While this has been partially acknowledged by the stimulus packages passed by Government to address the economic impacts of the COVID-19 health crisis, the long term issue remains that payment levels are inadequate.

There are also eligibility issues that cause issues for specific cohorts such as people seeking asylum and New Zealand citizens.<sup>17</sup>

The inadequate level of social security payments, combined with the lack of social housing previously mentioned, is the main structural cause of homelessness in Australia. These factors force many people to compromise on the quality of their housing and to live in overcrowded, insecure, and otherwise inadequate dwellings. Others will fall into primary homelessness.

These issues were acknowledged by the Senate Standing Committees on Community Affairs in the inquiry into the 'Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia'.

PIAC supports the recommendations of the Australian Council of Social Service, the peak body of community services and welfare sector, to urgently increase JobSeeker and related allowances,

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<sup>11</sup> Senate Standing Committees on Community Affairs (2020) Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia, Commonwealth of Australia 2020.

<sup>12</sup> Davidson, P., Saunders, P., Bradbury, B. and Wong, M. (2020), Poverty in Australia 2020: Part 1, Overview. ACOSS/UNSW Poverty and Inequality Partnership Report No. 3, Sydney: ACOSS.

<sup>13</sup> SGS Economics & Planning for National Shelter, Brotherhood of St Laurence and Community Sector Banking (2019) Rental Affordability Index Interactive Map. Access here.

<sup>14</sup> Anglicare (2019) Rental Affordability Snapshot. Access [here](#).

<sup>15</sup> For example see ACOSS (2019) Surviving, not living: The (in) adequacy of Newstart and related payments. Accessible [here](#).

<sup>16</sup> Ibid p 10.

<sup>17</sup> Covered in more detail in part 2.b. of this submission.

followed by a review of social security payment settings by an independent statutory social security advisory commission. We also support the recommendations of the Commonwealth inquiry into the adequacy of Newstart.

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**Recommendation 2 – Raise the rate of social security payments**

*The Government should permanently raise maximum rates of JobSeeker and related payments by a minimum of \$95 a week, with indexation. The payments should be indexed twice a year to a standard ABS measure of wages before tax, or CPI, whichever is the highest.*

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**Recommendation 3 – Increase FTB and CRA and review CRA**

*The Government should implement the other recommendations of ACOSS submission to the review of Newstart and related payments, including the increase of Family Tax Benefits for single parents and an increase of CRA of 30% pending review of the payment.<sup>18</sup>*

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**Recommendation 4 – Implement the recommendations of the Senate inquiry into the adequacy of Newstart**

*The Government should implement the recommendations of the Senate inquiry into the adequacy of Newstart, in particular adopting a national definition of poverty, establishing an independent advisory body to government on social security payment and review mechanisms, and setting social security payments and allowances at a level where recipients do not live in poverty.<sup>19</sup>*

## **2. Legal and policy issues affecting people at risk of, or experiencing homelessness**

### **2.1 Discrimination affects access to housing**

Discrimination further compounds housing issues and homelessness for cohorts already experiencing multiple forms of disadvantage. In certain areas, there may be housing stock available in general, but effectively unavailable to certain cohorts, which increases the risk of homelessness among the group discriminated against.

Several groups may be affected, including single parents. In our experience, Aboriginal and Torres Strait Islander people are particularly likely to be affected, especially in regional towns where the problem is exacerbated by low levels of housing stock. HPLS has heard of local real estate agents in regional areas requiring Aboriginal and Torres Strait Islander people to submit a full tenancy application before being allowed to inspect a property – a procedure not in place for non-indigenous prospective tenants, who were allowed to view the relevant rental property before deciding whether to submit a tenancy application. This discriminatory measure meant that Aboriginal and Torres Strait Islander people were effectively excluded from the private rental market in that town.

We also note that current homelessness can also be a barrier to accessing the private rental market. Current anti-discrimination legislation does not protect people experiencing

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<sup>18</sup> See ACOSS (2019) *Surviving, not living: The (in) adequacy of Newstart and related payments*. Accessible [here](#)

<sup>19</sup> Senate Standing Committees on Community Affairs (2020) *Adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia*, Commonwealth of Australia 2020.

homelessness. Accordingly, PIAC would support making housing status a protected attribute under Commonwealth anti-discrimination legislation.

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**Recommendation 5 – Current anti-discrimination provisions**

*The Government should ensure current anti-discrimination provisions are adequate, and enforced efficiently.*

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**Recommendation 6 – Add housing status as a new protected attribute**

*The Government should consider adding housing status as a new protected attribute in anti-discrimination legislation.*

## **2.2 Eligibility issues for specific cohorts**

Certain specific cohorts face additional issues linked to eligibility for social security payments and/or social housing, which tend to aggravate the incidence of homelessness among those groups.

### **People seeking asylum**

People seeking asylum are particularly and increasingly at risk of homelessness, yet they are not mentioned in the terms of reference of the inquiry as a group of people with particular risk of homelessness. Status Resolution Support Services (SRSS) is a safety net for the most vulnerable people seeking asylum, allowing them to access basic income support for food and rent, medication, and torture and trauma counselling. This payment is designed to support people while they await assessment of their protection claims, as they tend not to be eligible for mainstream services.

Since 2018, however, there has been significant cuts to the program, with eligibility being severely restricted and its budget reduced by 60%.<sup>20</sup>

As documented in the [Cutting the Safety Net](#) report by the Asylum Seeker Resource Centre (ASRC), these cuts have greatly increased demand for housing support, and many families cut off from SRSS are now either at risk of, or experiencing homelessness. ASRC reports providing 64,643 nights of accommodation in 2018 following the cuts, up 265% from 17,682 nights in 2016.<sup>21</sup> We note that given asylum seekers are not eligible for social housing in many jurisdictions, the assistance of already overburdened services such as ASRC is all that stand between them and more entrenched poverty and primary homelessness. ASRC has reported being ‘inundated with requests for housing and cannot meet the demand’. Certain Local Government Areas (LGA) with relatively high levels of people seeking asylum and newly arrived migrants also report people seeking asylum as a key group experiencing or at risk of homelessness following SRSS cuts: see the example of Cumberland LGA cited in the [‘State of Homelessness in Cumberland’](#) report.<sup>22</sup>

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<sup>20</sup> Asylum Seeker Resource Centre (2019) Cutting the Safety Net: The Impact of Cuts to Status Resolution Support Services.

<sup>21</sup> Ibid.

<sup>22</sup> Cumberland Council (2018) The State of Homelessness in Cumberland Research Report

While HPLS does not provide immigration law assistance, many of our clients experiencing homelessness have issues relating to their immigration status, and in our experience this is a key factor in their experience of homelessness.

### ***Recommendation 7 – Restore SRSS***

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*The Government should commit to restoring SRSS for all people seeking asylum who need it.*

#### **Newly Arrived Migrants**

The Newly Arrived Residents Waiting Period requires newly arrived residents to serve a waiting period before they are eligible for various social security payments. In January 2019, the Waiting Period was extended from 104 weeks to 208 weeks for various payments for people of 'working age', in order to 'encourage self sufficiency for newly arrived migrants'. As discussed in the [Homeward Bound](#) report prepared by the National Social Security Rights Network and Canberra Community Law, there is no evidence to support the proposition that migrants need income support because they choose not to work.

Increased statutory waiting periods for social security payments for newly arrived immigrants and families have also had negative outcomes for our community. These measures have caused financial hardship, increased the risk and incidence of homelessness, and shifted the support burden to an already under-funded community and welfare sector. Australian residents born overseas are over-represented amongst the homeless population, making up 46% of people experiencing homelessness while they only make up 28.5% of the general resident population.<sup>23</sup>

In our view, the same eligibility criteria should apply to all Australian residents in need of income support.

### ***Recommendation 8 – Reform the Newly Arrived Residents Waiting Period***

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*The Government should remove the Newly Arrived Residents Waiting Period.*

#### **New Zealand (NZ) Citizens**

People born in New Zealand are over-represented among people experiencing homelessness, making up only 2.2% of the general population, and 4% of the total homeless population.<sup>24</sup> Due to their special visa status, and the ease with which they can settle in Australia, many New Zealanders do not choose to become Australian permanent residents.

Because these New Zealanders generally do not have access to Australia's social safety net, they are at an increased risk of homelessness, as they tend to become aware of their non-eligibility for a range of payments only when they most need to access them. These issues are also well documented.<sup>25</sup> This situation will be worsened by the economic crisis triggered by COVID-19 lockdown measures, and has already started occurring as documented by The Guardian in '[No safety net and now no jobs for New Zealanders who call Australia home](#)'.<sup>26</sup>

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<sup>23</sup> See Homelessness NSW Census 2016 Factsheet and ABS Census 2016 data.

<sup>24</sup> Ibid.

<sup>25</sup> Most recently see National Social Security Rights Network, Canberra Community Law (2019) 'Homeward Bound: Social security and homelessness', page 62-63.

<sup>26</sup> Denham Sadler, 28/03/2020, 'No safety net and now no jobs for New Zealanders who call Australia Home', The Guardian, Australia Online Edition.

HPLS had a number of clients who have not been eligible for Centrelink payments because they were NZ citizens and did not meet residency requirements. Even when there are exceptions, such as NZ Special Benefit recipients who may be eligible for the Disability Support Pension, there are often multiple barriers to accessing entitlements in Australia. Centrelink staff may not know about available support and give incorrect advice about eligibility, and steps may be unclear. In some cases, we are aware of decisions to refuse entitlements that were overturned on appeal, or settled by the Department in favour of the applicant prior to the hearing. While these clients eventually received backpay of their entitlements, they were without income for an extended period, and would not have been able to resolve these issues without legal assistance.

Whether clients are unable to access benefits due to difficulties accessing an entitlement, or are simply not eligible for any support, all have been left without any income support for a period. People in this category are heavily reliant on charity support and may feel they have no choice but to turn to unsafe sources of support, such as a family home where there is risk of violence. It is very difficult for people in this situation to access accommodation, including emergency accommodation, as they cannot pay rent and may also be ineligible for state or territory based housing support. They are therefore at severe risk of becoming homeless.

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***Recommendation 9 – Review treatment of New Zealand Citizens***

*The Government should review the specific provisions that apply to New Zealand citizens who reside in Australia in order to ensure they receive the same treatment as other residents and migrants, and are not unnecessarily placed at risk of homelessness.*

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***Recommendation 10 – Implement further training within Centrelink***

*The Government should implement further training within Centrelink so officers are aware of proper decision making process for clients who are entitled to access payments under the social security agreement between Australia and New Zealand.*

### **2.3 Mutual obligations regime**

PIAC strongly supports the suspension of mutual obligation requirements, and believe the current temporary suspension should be extended or, preferably, made permanent. In our experience, there are significant, long-standing issues with the mutual obligation regime that should be urgently addressed. The stated objective of mutual obligations requirements is to make sure people receiving social security payments such as JobSeeker are as ‘job-ready’ as they can be and have the ‘best possible chance to find work’.<sup>27</sup> In practice, however, the punitive approach taken to people who have limited capacity to engage with the system can trigger a downward spiral, exacerbating financial hardship and risk of primary homelessness.

We note that there are also mutual obligation requirements imposed in the state housing system. In NSW, clients seeking access to crisis temporary accommodation (TA) are usually only granted accommodation for 2-3 nights at a time. They are then required to present to their local housing office to enter into a plan to resolve their housing needs, which often requires them to inspect a certain number of rental properties and complete a rental search diary. If the client does not comply with that plan they can be refused further TA when they next seek assistance. In our experience, people experiencing primary homelessness have often had negative experiences of

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<sup>27</sup> Mutual Obligations Requirements (2020) Services Australia, Australian Government. Accessed [here](#).

the private rental market, including experiences of discrimination, and are struggling with a range of other issues that make it difficult for them to comply with these requirements. Being cut off from further TA compounds these issues, often leaving them with no option but to sleep rough.

**Case study: 'Being a job seeker while being homeless, that is a struggle'**

*Damo is a Streetcare member with a lived experience of prolonged homelessness and rough sleeping. He told PIAC of the difficulties to search for employment while homeless.*

'Being a job seeker while being homeless, that is a struggle. Getting to interviews and such can be expensive for someone who is homeless, let alone having appropriate attire, and guarantee personal hygiene on the day. It can be a daunting experience. It's complicated to make an appointment on the day, especially when you need to secure food and other services. It really is a financial, physical, and psychological struggle. The system exists in such a way that it entices people to be motivated to gain employment. But it doesn't always work that way.

When people are couch surfing or living in a boarding house, sometimes this person has a clear plan to look for permanent accommodation elsewhere. This is another struggle, because if someone is couch surfing in Bondi but wants to move to Wollongong, it does not make sense for them to search work there. Especially when moving from primary homelessness.'

*Damo supports extending exemptions from mutual obligations for all forms of homelessness and not only primary homelessness.*

It is also important to recognise that people have varying levels of capacity to engage with requirements such as mutual obligations. From HPLS experience, many clients do not have the capacity to engage long term with these kind of systems once they have been housed for a certain period of time. Too often, capacity assessment does not take a trauma-informed approach, and does not adequately recognise that clients have a limited or varying capacity to comply with mutual obligations.

For some Aboriginal and Torres Strait Islander people, engaging with the mutual obligation system is traumatic because of the historical and cultural context of negative and discriminatory treatment by 'welfare' agencies. HPLS has seen cases of people refusing to apply for Newstart payments even though they are eligible, because they have felt a lack of cultural safety.

**Case study: Difficulties complying with mutual obligations**

Salim, like a significant number of HPLS 'at risk' clients, finds it very difficult to comply with his mutual obligations and regularly has payments cut off. He has an intellectual disability and severe impairment of his executive functioning skills but has no support. Even a simple task such as getting a doctor's certificate to apply for a Centrelink exemption is extremely difficult for him. He had his payments cut off numerous times which increased his risk of recidivism because he then had to turn to his criminal associates to make money in other ways.

**Consequences of penalties for non-compliance**

Penalties for non-compliance with mutual obligation provisions significantly aggravate the incidence of homelessness. Suspension of payments imposes unnecessary severe financial

hardship on people already at risk of homelessness, or who may already be experiencing a form of homelessness. Anyone suspended from all payment will be unable to pay rent, and may accrue a significant rental arrears debt in addition to being placed at imminent risk of eviction. In some cases, an individual may be able to avoid eviction, particularly if they are in social housing and have access to an advocacy service such as HPLS that can negotiate with their landlord on their behalf. However, they will often end the period of suspension with a substantial debt, which must then be repaid, prolonging their financial hardship for an extended period.

People who are evicted into homelessness with such a debt will often face barriers to returning to housing as a result of their history of rental arrears and outstanding debt, and may suffer under the weight of the debt for many years. In NSW, social housing tenants evicted with arrears can be classified as unsatisfactory former tenants, which means they are not eligible for further social housing. They are also highly unlikely to secure a private rental, and as a result can enter a period of entrenched homelessness. People evicted from a private rental with arrears may be entered on a tenancy blacklist such as the TICA database, which will hamper their prospects of obtaining future rental accommodation.

Finally, many people living on the margins of the private rental market have informal housing arrangements (such as an undocumented sub-tenancy in share housing), or live as a lodger or in a boarding house, where they can be evicted with very little notice.<sup>28</sup> When this happens, primary homelessness is often the result.

### **Alternative approaches**

PIAC supports the exemption from mutual obligations requirements that applies to people in crisis, such as people experiencing primary homelessness/rough sleeping. We would also support the extension of this exception to people experiencing other forms of homelessness. This would allow people experiencing homelessness to focus on securing a safe, stable home, from which they can then pursue opportunities to work and otherwise contribute to the community.

Another approach to mutual obligation would be to modify the breach provisions so that rent can continue to be paid through Centrepay, while other parts of the payment are suspended. While this would continue to impose considerable hardship, this system would at least protect people from falling into housing related debt and homelessness as a direct result of mutual obligation provisions.

We understand that the Job Network Provider system will be undergoing a redesign, and that from 2022, the majority of people will be engaging with their job provider online. People who have high needs and who might need longer term support will be assigned a disability service provider, even if they are not on Disability Support Pension recipients (DSP). We support this move.

### ***Recommendation 11 – Continue to exempt people in crisis, and extend the exemption***

*The Government should continue to exempt people in crisis such as people experiencing homelessness from mutual obligations, and this exemption should be extended to people experiencing all forms of homelessness (including tertiary homelessness).*

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<sup>28</sup> For example, in NSW, the Boarding Houses Act 2012 only stipulates that 'reasonable notice' must be given in writing. In practice, eviction notices for boarding houses occupants can be 7 days or shorter.

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### **Recommendation 12 – Continuity of rent payments**

*The Government should ensure that, if payments are suspended for non-compliance with mutual obligations, rent payments should continue to be made directly to the landlord on behalf of the recipient until the suspension period ends.*

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### **Recommendation 13 – Trauma informed assessment of capacity to meet obligations**

*The Government should implement a trauma-informed approach to assessment of recipients capacity to meet mutual obligations.*

## **2.4 Insufficient protections for renters**

Shelter is a basic human need, and the provision of housing is an essential service. Close to a third of Australians rent their home. Yet, there are insufficient protections for renters. Some Australian States are part of the few jurisdictions in the developed world where evictions are allowed without the landlord having to provide a reason. This is known as ‘no-grounds’ evictions, as described in NSW in ss 84–85 of the Residential Tenancies Act, for example. In our view, no grounds evictions should be removed from all Australian tenancy legislation.

The central issue with the power to evict a tenant without grounds is that this undermines every other right tenants have. While tenants are protected against retaliatory evictions in NSW, in our experience tenants rarely seek to use these provisions and such cases can be very difficult to prove. One of the striking findings of the report ‘[Disrupted](#)’, published by CHOICE, is that 44% of tenants are concerned that a request for repairs could get them evicted.<sup>29</sup>

In our view, landlords should provide reasonable grounds using a list of set, prescribed grounds, in order to evict someone from their home.

Another issue that HPLS has identified is that it is standard practice for landlords to initiate eviction proceedings in order to get tenants in rental arrears to enter a repayment plan. They will then abandon eviction proceedings when tenants agree to enter a repayment plan for rent arrears at a conciliation hearing held by NCAT. We consider this to be an abuse of process, although it is unfortunately common in NSW, including in social housing tenancies.

While tenancy legislation is a State responsibility, the Commonwealth has a leadership role to work with States and Territories towards a national framework, including through financial incentives to assist States in updating their legislation and funding potential increase in tribunal activity (for example, extra funding for civil and administrative tribunals such as NCAT if State Governments have concerns that reform of no-grounds evictions would increase litigation).

In line with the recommendations of housing peak bodies and campaigns such as National Shelter and ‘Make Renting Fair’, PIAC recommends that the Commonwealth works with the States towards greater security of tenure for people who rent their homes. This should include greater protections for people who live in marginal housing and are often particularly vulnerable, such as boarders and lodgers.

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<sup>29</sup> CHOICE, National Shelter, National Association of Tenants Organisations (2018) *Disrupted: The consumer experience of renting in Australia*.

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**Recommendation 14 – Improve tenancy legislation**

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*The Government should encourage states and territories to improve their tenancy legislation, in particular reform of ‘no-grounds’ evictions, by providing financial incentives additional to existing funding arrangements.*

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**Recommendation 15 – Ensure appropriate protections for non-tenants**

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*The Government should work with states and territories to develop improved rights and protections for occupants of non-residential housing, for example through the development of stronger and broader occupancy principles for boarders and lodgers or integration of these forms of housing into residential tenancies acts.*

**Better data collection about the impact of evictions**

To understand the scale of the issue of direct exits from secure housing into homelessness, better data is needed. Understanding how often evictions from social housing lead directly to homelessness, for example, would assist in evaluating and potentially reforming certain policies in place for social housing tenants. While we are able to draw some generalisations about the incidence of evictions into homelessness from our own client base, we are not aware of any state or national data on this issue. For example, data about applications to NCAT from Community Housing Providers or NSW Housing department do not include any information about the outcomes of those matters.

Such data should be gathered, and made publically available. This could be collected by the Australian Institute of Health and Welfare, which already collects and publishes national data about similar matters, or the Commonwealth could fund a national housing and homelessness peak body to do this.

The latest report from the Australian Housing & Urban Research Institute (AHURI), AHURI Final Report 326,<sup>30</sup> focused on social housing pathways including both entry and exit points. The report found that ‘it is almost certainly the case that approximately one-third of people exiting social rented housing are doing so by moving into housing circumstances that are inherently more precarious than either social or formal private renting through a real estate agent.’<sup>31</sup> From HPLS casework experience, it is highly likely most exits from social housing result in the former tenant entering a form of homelessness.

Ideally, there should be no evictions that result into homelessness, especially from social housing. We recommend that this be monitored in order to inform policy development in the future.

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**Recommendation 16 – Data collection on evictions into homelessness**

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*Collect and make publicly available data about the number of evictions that result in exits into homelessness, in particular for social housing tenants.*

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<sup>30</sup> Baker, E., Leishman, C., Bentley, R., Pham, N.T.A., and Daniel, L. (2020) Social Housing exit points, outcomes and future pathways, AHURI Final Report 326, Australian Housing and Urban Research Institute Limited, Melbourne.

<sup>31</sup> Ibid. p32.

### **Adequate resourcing and streamlined processes for representation services<sup>32</sup>**

In NSW, in most cases, vulnerable tenants are referred to their local tenants' advice and advocacy service (TAAS). These services operate across NSW. Legal Aid may also be available, particularly where a tenant faces loss of their dwelling. Some other specialised services, like HPLS, will prioritise cases involving potential termination of a tenancy, and respond flexibly to client need. However, we all face resource constraints. For example, HPLS representation services are only available in the Sydney metro area, and TAAS duty services do not operate at every registry or on every day when tenancy matters may be heard, and they do not always have capacity to engage in early negotiations that might obviate the need for a matter to progress to NCAT.

In addition to tenancy matters, we are also able to provide flexible representation as-needed in a range of other matters, including in relation to consumer matters, discrimination and guardianship applications. Because we focus on providing this support to a disadvantaged segment of the community, the total numbers of other representation provided are relatively low. Nonetheless, the demand for our services significantly outstrips our ability to meet the need among our client group. While some other community legal centres or pro bono legal providers may offer a similar type of help in some cases, we are not aware of any other service that specifically assists people with NCAT proceedings.

In the past, HPLS lawyers have had access to a direct, single point of contact within Centrelink, the 'Centrelink, Homelessness and Social Inclusion Team'. The Team assisted rough sleepers, particularly in Woolloomooloo, with their Centrelink inquiries. It also allowed HPLS to contact Centrelink directly and to rapidly resolve client issues. For example, we could quickly obtain an income statement in order to fill a public housing application. Unfortunately, this system was discontinued in about 2014. While HPLS is sometimes able to establish an informal relationship with a Centrelink worker who can assist us with client queries, such relationships are unreliable given frequent staff changes at Centrelink.

We would support the reinstatement of a streamlined, dedicated single point of contact for professional advocates and solicitors, allowing to resolve simple matters efficiently and rapidly. The other function of the team, assisting rough sleepers with their Centrelink inquiries, should also be reestablished.

#### ***Recommendation 17 – Additional funding for tenant advocates***

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*Provide additional funding through the NHHA for States to increase funding to tenant representation services (such as TAAS in NSW) and other specialist advocacy services, including HPLS, that help people who would otherwise be unable to access civil and administrative tribunals processes.*

#### ***Recommendation 18 – Direct contact to Centrelink for advocates***

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*Reinstate the Centrelink, Homelessness and Social Inclusion Team, or a similar process, creating a single point of contact within Centrelink for professionals acting on behalf of clients with complex needs, to assist with the efficient resolution of Centrelink inquiries.*

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<sup>32</sup> Adapted from PIAC (2019) 'Submission to the Statutory Review of the Civil and Administrative Tribunal Act 2013', available [here](#).

## 2.5 Debt matters: Strengthening the National Hardship Register

Debt is a common issue affecting people at risk of, or experiencing homelessness. Like other advocates, we spend significant time and resources securing debt reductions, write-offs or waivers on behalf of our clients. The process usually involves seeking supporting documents from creditors to evidence each debt (sometimes complicated by a client's poor recall of details), advising the client of their options for dealing with each debt, and then making representations to the creditor on the client's behalf to request that the debt amount be written off or negotiating another suitable arrangement. This work can be undertaken multiple times for an individual client, depending on the number of debts they owe. This is highly inefficient for both our service, clients, and the creditor, given that attempts to recover the debt would prove uneconomical in any case.

In our experience, the National Hardship Register (NHR), operated by the debt collection peak body, is a positive initiative that could be significantly improved. It is not well known and many of the agencies and debt collectors that do know of it choose not to use it because it involves lengthy processes. Banks, which have their own internal debt waiver programs, do not participate. PIAC would support Commonwealth-led efforts to include a greater number of financial service providers in the NHR, or to promote a similar initiative that could include a broader range of services (such as a banking-specific NHR).

A further issue with the NHR is that debts are only 'provisionally finalised' for three years before being 'unconditionally finalised' (waived). This means that the debts are suspended for three years, with a right of challenge from creditors. This makes the NHR an inferior option where it is possible to directly persuade individual creditors to waive debts unconditionally – this is often a more efficient than going through NHR process, and gives clients greater certainty. This issue would be addressed if the 'right of challenge' period were reduced to six months.

Payday loans are also a major issue affecting people experiencing or at risk of homelessness. PIAC recommends passing legislation on payday loans to reduce predatory lending practices that trap people in a spiral of debt and financial hardship, along the lines of recommendations of the independent *Review of Small Amount Credit Contracts (SACC Review)*<sup>33</sup> and the 'Stop The Debt Trap!' campaign led by Consumer Action Law Centre.<sup>34</sup>

### ***Recommendation 19 – Improve the National Hardship Register***

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*The Government should:*

- *Work with the banking and debt collection sector to encourage participation in the NHR and similar initiatives; and*
- *Encourage the NHR to reduce the 'Right of Challenge' period from three years to six months.*

### ***Recommendation 20 – Implement the recommendations of the SACC Review***

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*The Government should implement the recommendations of the SACC review to improve protections for people who use payday loans and 'rent to buy' consumer leases, particularly those experiencing or at risk of homelessness.*

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<sup>33</sup> The Australian Government The Treasury (2016) Review of the small amount credit contract laws, Commonwealth of Australia 2016.

<sup>34</sup> 'Stop the Debt Trap', Consumer Action Law Centre and 31 signatory organisations, <https://consumeraction.org.au/policy-campaigns/stop-the-debt-trap/>

### 3. Strategies to end homelessness

In this section, we outline some key principles that can inform effective strategies to end homelessness in Australia. These approaches are in addition to the policy and law reform proposals set out above.

PIAC recognises that different service models suit different people with different needs. We support a homelessness service system with a diversity of models, allowing choice for service users.

#### 3.1 Support without stigma

Members of Streetcare, our consumer advisory committee, tell us that the social security and housing and homelessness system feels punitive and focused on excluding people. As a result, people experiencing homelessness are less likely to use the system and to have their needs addressed. This makes the system less efficient overall, and means that instead of supporting people to find secure housing and resolve their problems, the system itself contributes to the continued entrenchment of homelessness.

Many of the people we talk to feel their dignity and rights are not respected when interacting with government services. HPLS lawyers have also mentioned that, too often, they need to use internal and/or external appeal processes in order to help clients access entitlements that they should have been granted in the first place.

In the words of a member of Streetcare, some services ‘don’t even treat people like humans, they are so dehumanising its unbelievable. ... The people that work in the offices have no understanding. If they had people with lived experience, it would be very different.’

Many Streetcare members feel that their attempts to access government services are met with the assumption that they are trying to rot the system, leading to an overfocus on compliance and implied judgment at the individual has somehow failed because they are seeking support. In the words of one member:

There’s also this stigma around ‘dole bludgers’ or ‘being homeless in Vaucluse’ ... that’s [it’s] not being homeless, that’s a hippie lifestyle – some people have the belief that people are choosing to be homeless, be mentally ill, be dependant on welfare, but they’re not.

This perception is shared by some HPLS lawyers, who report that frontline government workers (such as Centrelink staff) are too often unwilling to be (or believe they are unable to be) flexible in the way they deliver services to people in need.

The service system often fails people when they are most vulnerable. In our view, a more humane, flexible, and compassionate approach would see improved outcomes for both service users and staff, and would improve the efficiency and effectiveness of the system as a whole. Opportunities to take a more person-centered approach to service delivery are discussed in greater detail below.

### 3.2 A person-centered, holistic approach

Streetcare members overwhelmingly report that the key support agencies they rely on – being the Commonwealth social security system and NSW housing system – are not ‘person-centered’. They feel strongly that there is not enough flexibility to account for people’s individual circumstances and to provide support that is adapted to individual needs. They also state that clients tend to be blamed for not using the system properly, even though such issues often arise as a result of system-side issues that create barriers to access. As a result, some people are deterred from accessing the system at all, and fall into primary homelessness and severe financial hardship. Support costs are then shifted to other systems, including justice and health systems.

#### Increasing flexibility

Streetcare has a strong view that the system needs to be better adapted to meet the needs of the person seeking support, rather than insisting the individual adapt (perhaps in ways that are impossible for them as an individual) to the system.

HPLS lawyers contributing to this submission made similar comments. They indicated many Centrelink workers are quick to categorise clients based on a basic understanding of their situation, and to apply blanket policies. While workers do have some discretion in their work, and can apply flexibility, in practice the use of discretion is limited.

#### Reducing barriers to accessing services while currently homeless

Streetcare members report that the system is both ‘siloe’d’, with little coordination between departments and services, and overly complex, making it difficult for people experiencing homelessness to navigate. Many HPLS clients have difficult and complex circumstances, and ‘fall through the cracks’ in the system because they have to prioritise immediate daily needs such as finding shelter, managing substance use and/or other mental health issues, and finding food.

The people we spoke to while preparing this submission often recalled ‘Catch-22’ situations that made it impossible for them to access services. For example, Streetcare members recalled being required to provide an address to access support services while experiencing homelessness.

Another major issue was the need to have access to a phone or internet connected computer in order to access services, which has been made yet more difficult by measures to contain the spread of COVID-19. For example, many libraries and community centres have closed. In the words of one consumer quoted by the ABC:

With my wallet stolen I need to get a new Centrelink healthcare card to get on the bus, but I can't call them because I don't have a phone, and the queues are round the block. Without any ID, I can't even get into a backpackers for a night.

I can't use the internet, either, so staying in touch with people is off the table.<sup>35</sup>

More generally, lack of awareness of mental ill-health, and/or willingness to engage in an appropriate manner, was identified as a major issue by people with lived experience of

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<sup>35</sup> Beatrice Christian, as told to Jesse Noakes, ABC Life (2020) ‘How am I supposed to go into coronavirus self-isolation when I’m homeless?’. Available [here](#).

homelessness. One Streetcare member said that their mental health issues, and the lack of appropriate diagnostic and support, was the main reason they experienced various forms of homelessness, on and off, for 35 years.

**Case study: 'Treated as some sort of attention seeker just because I was homeless'**

*Damo is a Streetcare member with a lived experience of prolonged homelessness. He told PIAC lack of diagnosis of his mental health issues and failure from services to properly acknowledge and respond adequately was the main reason he experienced homelessness for so long.*

'The main 'brick wall' was my mental health issues. Trying to get issues acknowledged. Only in recent years I have been diagnosed fully. I was coming up against brick wall because I couldn't articulate to anyone something that had not been identified to myself. The professionals I sought out and begged for assistance treated me as some sort of attention seeker because I was homeless, when I had a legitimate cause for concern. As a consequence I withdrew and gave up on making anyone understand until by pure chance I met a professional psychiatrist. She diagnosed me in five minutes and was absolutely furious it had taken 42 years. I have been working with her solidly for one year now, but things would have got better earlier if someone had cared more about their profession. Some people are more concerned with pay grade than their professions. Whatever service it may be. It's a problem when homeless people are seeking legitimate assistance to make a step forward.'

**Support needed to get support**

Currently, a person experiencing homelessness bears all the onus of obtaining access to services. One Streetcare member simply said that the obligation 'always falls on service users'. This is not realistic for many people in need of support during a period of homelessness, given their circumstances and capacity.

Another described getting access to services such as Centrelink and housing as a 'full time job'. A third member responded they had experienced 'buck passing' by government departments '(their) whole life. It's always one person trying to blame another person'.

HPLS lawyers also report that the obligations on service users – such as gathering documents, completing forms, and persisting with deliberately onerous application processes – were simply beyond the capacity of many of their clients. In addition to grappling with the challenging conditions of homelessness, many of our clients experience multiple compounding issues, including language and literacy barriers, and disabilities including cognitive impairment. These clients would be unable to access the system without the help of a legal advocate.

A large part of HPLS work, particularly when assisting clients to access housing or in financial hardship matters, is document collection. This involves collecting data on behalf of clients, sometimes through case workers, government departments, etc.

Sometimes it can take weeks for a document such as a statement of financial circumstances to be prepared, given the circumstances of clients and the fact that they have limited ability and/or capacity to keep their own records. If a client stops engaging with HPLS in the meantime, as is common for people experiencing homelessness and related intermittent crises, the documents

we have prepared may become outdated and the process must be restarted. One HPLS volunteer mentioned that 'half of our work would be gone' if government departments engaged proactively with each other and the community sector. Instead, current processes require applicants, and by extension advocacy services, to bear the burden of providing all necessary documents.

In our experience, government workers will often apply rigid criteria about what supporting documents will be accepted. Sometimes documents are refused simply because the letterhead isn't correct, for example, even though the document is from the same department and carries the same level of authority. This overly rigid system poses a significant barrier to clients.

An alternative approach is taken in NSW by Victims Services, which allows applicants for victims compensation to elect to be represented by simply ticking a box on a form. Their solicitor is then authorised to speak directly to the police and get information, or to speak to a medical professional. The onus of making these arrangements is not on the vulnerable person, which results in better outcomes for clients and time and efficiency gains for all involved.

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### ***Recommendation 21 – Improve flexibility in relation to documentary evidence***

*The Government should develop and implement less stringent guidelines on which documents can be accepted by Centrelink to assess applications.*

### **Towards a 'no wrong door' approach**

We recommend that government services at all levels adopt a 'no wrong door' approach, and increase integration of services, for example by allowing paperwork to be shared more readily between departments. We also recommend stronger referral processes, and the implementation of a 'duty to assist' across government departments.

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### ***Recommendation 22 – Adopt a no wrong door approach to service provision***

*The Government should implement a 'no-wrong door' approach across government departments, and adopt as a principle that government has a responsibility to endeavour to solve issues facing people experiencing homelessness rather than putting the onus on people who are in a difficult situation with limited capacity to address their issues.*

### **Trauma informed and culturally appropriate services**

Government should also adopt a trauma informed approach across all services. This means that services should be provided in a way that recognises the impact trauma may have on people seeking those services, and be appropriately adapted to needs arising from trauma. For example, some people with a trauma history will not answer calls from a private number, as they may fear continued contact with an abusive figure. Providing trauma informed training to frontline staff would allow them to engage more appropriately with service users who have a trauma history.

Services engaging with people experiencing homelessness should also implement policies that are culturally appropriate, and culturally safe, particularly for Aboriginal and Torres Strait Islander people.

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**Recommendation 23 – Adopt a person-centered approach**

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*The Government should work with all relevant agencies to develop and implement guidelines to create a more flexible, person-centered income support and related services system.*

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**Recommendation 24 – Deliver services in a culturally safe and trauma informed way**

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*The Government should implement policies, including training for frontline workers, that ensure services are delivered in a culturally appropriate and trauma informed way, especially to people experiencing homelessness.*

**Consumer engagement**

The system would also be improved by clearer avenues for service users to flag systemic issues. Consumer insights should be central to service design and delivery. Consumer participation is an important element of dismantling barriers to access and encourages constant improvement of services. Putting consumers and their needs at the centre of service delivery, and supporting them to participate in service and policy design, would go a long way in addressing some of the issues PIAC has identified.

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**Recommendation 25 – Increase consumer engagement in service and policy design**

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*The Government should create more formal avenues for consumer participation in service and policy design, in order to use their experience to improve systemic outcomes.*

**Use of silent numbers**

Finally, we have previously identified a key change that could be implemented immediately. In a consultation in August 2019, we recommended that Centrelink stop calling service users with a hidden/blocked phone number – this issue was raised by several Streetcare members. This change would allow clients to call back more easily, and would make sure no one misses out on services because they were not able to immediately answer the phone.

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**Recommendation 26 – Contact consumers using real phone numbers**

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*The Government should implement policies that ensure that telephone contact with service users is made from a phone number that appears on screen, and can be called back directly.*

**3.3 Housing first and new models of wrap around services**

‘Housing First’ is a strategic response to homelessness that prioritises stable and permanent housing for people experiencing homelessness, as the first and most important step to address their issues. It is a departure from the ‘housing ladder’ and traditional pathway models, that typically require people experiencing homelessness to address personal issues before, or concurrently with, being housed.

For example, having to abstain from using drugs and alcohol to access temporary accommodation, secure social security benefits before to be able to access social housing, etc. A housing first approach is increasingly being recognised as the best practice model when it comes to addressing primary and secondary homelessness.<sup>36</sup> Since the first program in the United States in the early 1990s, many countries in North America, Europe and elsewhere have adopted a housing first approach to addressing homelessness. In Australia, evaluation of a pilot project

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<sup>36</sup> See AHURI Brief (2018) ‘What is the Housing First model’ – Available [here](#).

conducted by Mission Australia found that 97% of clients were still housed after 24 months, an outstanding result compared to traditional programs.

The development of housing first approaches in Australia is constrained several factors. These include:

- a) the lack of appropriate social housing stock to move people experiencing homelessness into,
- b) the split responsibilities between State and Federal levels of government, and
- c) the lack of wrap around services to support people housed in maintaining tenancies and address any other underlying issues they may have.

In particular, the requirement for people experiencing homelessness to access social security benefits before they can be housed in social housing is an issue that compounds homelessness for certain cohorts with limited capacity to engage with the service system in order to secure housing and address any other personal issues they may have.

Housing first models such as the Common Ground complex in Camperdown in Sydney have been shown to make a tremendous difference to the lives of people with complex needs experiencing prolonged primary homelessness. Overall, this model reduces costs borne by government due to reduced strain on the justice system, hospitals, and psychiatric care services.<sup>37</sup>

Providing stable affordable, safe, stable housing to people exiting institutions, specifically the criminal justice system, would reduce both homelessness and recidivism. Unstable housing is both a consequence and a key driver of incarceration, particularly for Aboriginal and Torres Strait Islander people. HPLS solicitors identify this as an issue in relation to remand, recently released prisoners and access to community based orders in particular. Unfortunately, many released prisoners will return to prison due to homelessness and lack of services.

PIAC calls for federal support, including funding, for housing first responses to primary homelessness based on the common ground model. This funding could be provided through the NHHA and matched by the States. One way to do this within traditional responsibilities would be for the States to provide housing while federal funding would fund wrap around support services, including to assist people in maintaining their tenancies.

### ***Recommendation 27 – Provide funding for housing first strategies***

*As part of a National Housing Strategy developed by states and territories (Recommendation 1), commit to working towards a response to homelessness primarily focused on housing first, or housing led, measures, including by provide funding through the NHHA for housing first responses to primary homelessness, including housing and wrap around support services.*

## **3.4 No Return to the Streets: The COVID-19 health crisis as an opportunity to end rough sleeping in Australia**

Commonwealth and State Governments have implemented a relatively comprehensive emergency response to the COVID-19 public health crisis. In NSW, people rough sleeping have

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<sup>37</sup> Ibid.

been provided with a month of temporary accommodation (TA), which could be extended as required. Assertive outreach approaches were used to contact people sleeping rough and support them to access TA for immediate shelter, and to identify appropriate longer-term housing on a priority basis. In NSW this approach has also seen an impressive level of coordination between NSW Government, key agencies such as the Department of Communities and Justice and police, local government, and non-government service providers. The current crisis has created a window for policy change that could have a lasting impact.

In our experience, assertive outreach models can work quite well to house rough sleepers. In Inner-Sydney, the Homelessness Outreach Support Team and Homelessness Assertive Response Team have been successful in removing bureaucratic barriers to rough sleepers getting access to support and temporary accommodation, both before and during the COVID-19 crisis. Their trauma informed, person-centered approach and highly integrated coordination of State agencies has had promising results. However, the outcomes secured by Assertive Outreach models are ultimately limited because they cannot address systemic issues such as the lack of post-crisis long-term support and the continuing shortage of social housing in NSW.<sup>38</sup>

In our view, the next stage of the policy response must be underpinned by the principle that no one should return to the streets. People with the highest level of capacity, who can live independently with minimal support, can be moved into available social housing stock. However, it is necessary to identify viable options for those who cannot be accommodated by the current social housing stock, whether due to the underlying shortage or specific individual needs, or who need longer term or more intensive support.

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***Recommendation 28 – support state and territory efforts following the COVID-19 response***

*The Government should work with states and territories to support a housing first approach to housing former rough sleepers, with an emphasis on the principle that no one should return to the streets.*

### **3.5 NDIS: A path to secure housing for homeless people with disability**

People with disability are over-represented amongst people experiencing, or at risk of homelessness. This is due to generally lower income, limited opportunities to secure a full time, well paid job, and low levels of appropriate, affordable stock in the private rental market<sup>39</sup>. Many of the people experiencing homelessness have a psycho-social disability, or another form of disability, and may be eligible for the National Disability Insurance Scheme. The NDIS does not usually fund cost of accommodation, unless costs are significantly higher due to someone's disability, and only funds Specialist Disability Accommodation (SDA) when it is 'reasonable and necessary' for someone with very high support needs.

While social housing is primarily a state responsibility, there is a crucial need to assist people experiencing homelessness in securing housing. This is often their primary need. Secure housing also lays the basis upon which other issues may be addressed. In the context of severe shortage of social housing, and very long waiting lists in all jurisdictions, allowing people with disability

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<sup>38</sup> Homelessness NSW (2019) Homelessness NSW Consultation Paper: Review of the HOST and HART models for addressing rough sleeping in Inner City Sydney. Accessible [here](#).

<sup>39</sup> For a recent, in-depth quantitative analysis using the Index of Relative Homelessness Risk, see Beer, Baker, Lester and Daniel (2019) The Relative Risk of Homelessness among Persons with a Disability: New Methods and Policy Insights, International Journal of Environmental Research and Public Health 2019, 16, 4304.

experiencing homelessness to use money secured through the NDIS for SDA with support services could play an important role in the policy response to homelessness. We note that this idea for policy reform was suggested and strongly supported by some Streetcare members, who believe it would make a tremendous difference to the lives of people experiencing homelessness.

Clients would be able to access both housing and support services, allowing them to maintain their tenancies and deal with issues they may have in a holistic and efficient way. NDIS funds could assist in making models like Common Ground more financially viable. As previously mentioned, Common Ground is a housing first approach offering support services and housing to people who have experienced long term primary homelessness. It has an excellent track record in helping people exit homelessness, but given the high level of support needed for residents, it comes with relatively high costs. Changes to the NDIS policy to allow use for SDA for this specific client cohort would greatly increase the number of long term rough sleepers that are able to permanently exit homelessness, and relieve pressure on specialist homelessness services.

### ***Recommendation 29 – Consider approaches to allow people to access housing through NDIS funds***

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*The Government should explore options for allowing people experiencing homelessness with disability, including a psycho-social disability, to access housing through use of NDIS funds. For example, this could be done by amending National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2016, section 3.7, to explicitly recognise that people with disability, including a psycho-social disability, and a prolonged experience of homelessness, are considered to have ‘very high support needs’ under the NDIS (SDA) Rules 2016.*

### **3.6 Towards an enforceable right to housing?**

The Australian Human Rights Commission (AHRC) has emphasised that access to safe, secure housing is a fundamental human right,<sup>40</sup> and that people experiencing homelessness face ‘violations of a wide range of human rights’.<sup>41</sup> It is common in public debate to think about homelessness as a social and economic issue, or to think of people experiencing homelessness as deserving of charity from the wider public. As the AHRC reminds us, it is important to keep in mind that people experiencing homelessness are also people ‘entitled to the protection and promotion of their human rights’.

As a party to the International Covenant on Economic, Social and Cultural Rights, Australia has a legal obligation to progressively implement the right to adequate housing. In August 2000, the Committee on Economic, Social and Cultural Rights expressed concern about evictions and rent increases, and recommended creation of a National Housing Strategy to progressively implement the right to adequate housing.<sup>42</sup> This was not implemented. Australia has since consistently failed to do so, as noted by the United Nations Special Rapporteur in 2006:

In the light of the number of homeless people, the housing conditions in camps and indigenous communities, housing affordability and other issues described above, the

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<sup>40</sup> As recognised in several international human right treaties including ICESCR, article 11; CRC, article 27; CERD, article 5(e); CEDAW, article 14(2); UDHR, article 25.

<sup>41</sup> Australian Human Rights Commission (2008) ‘Homelessness is a Human Rights Issue’

<sup>42</sup> Miloon Kothari (2007) Report of the Special Rapporteur on the Right to Adequate Housing as a component of the right to an adequate standard of living: Mission to Australia (31 July to 15 August 2006)

Special Rapporteur has come to the conclusion that Australia has failed to implement its international legal obligation to progressively realize the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country.<sup>43</sup>

Since 2006, Australia's housing situation has deteriorated. Rates of homelessness were shown to have increased by the 2010 census, which showed a 14% increase nationally and a striking 37% increase in NSW.<sup>44</sup> As the Special Rapporteur predicted, housing issues have now started to affect moderate income earners as well as lower income earners.

Terms of reference of the inquiry mention the interest of the committee in international best practices regarding homelessness. While housing policy reform will obviously remain necessary, and legislative changes can only go so far in addressing homelessness, PIAC would support domestic legislation evolving towards an enforceable right to housing in order to implement Australia's international legal obligation.

There are a number of jurisdictions that have implemented an enforceable right to housing. In Scotland, this was a key part of a strategy that has been very successful in reducing the incidence of homelessness. The *Housing (Scotland) Act 1987* places a responsibility on local government to provide adequate housing to people who are unable to access it. Following the recommendations of the 2000 Homelessness Task Force, the Homelessness provisions of the *Housing (Scotland) Act 2001* established that 'unintentionally homeless people are entitled to accommodation'.<sup>45</sup> Through the *Homelessness etc. (Scotland) Act 2003*, anyone who finds themselves homeless 'through no fault of their own' is entitled to settled accommodation through council housing, a housing association or private rental.

This enforceable right to housing, in which Councils have a legal duty to assist people who are homeless or at risk of becoming homeless, has been instrumental in prompting government to act to end homelessness. There are no silver bullets to end homelessness, and as noted in the Homelessness and Rough Sleeping Action Group 2018 report,<sup>46</sup> better data collection, addressing the wider causes of homelessness and prevention will be central to end homelessness by 2023. The rights based approach adopted by Scotland, however, and the strong political will to be recognised as a world leader on homelessness policy, ensured a strong, continuous action on homelessness, in the midst of changing circumstances. Scotland managed to reduce homelessness during the 2010-2015 period despite austerity measures then in place in the UK.<sup>47</sup>

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<sup>43</sup> Ibid.

<sup>44</sup> ABS 2016 Census figures/Homelessness NSW (2016) Census Infographics.

<sup>45</sup> Anderson, I. (2019). Delivering the Right to Housing? Why Scotland Still Needs an 'Ending Homelessness' Action Plan. *European Journal of Homelessness*, Volume 13(2).

<sup>46</sup> HARSAG (2018f) Ending Rough Sleeping in Scotland: An Interim Report on the Activity of the HARSAG (Edinburgh: Scottish Government).

<sup>47</sup> Fitzpatrick, S., Pawson, H., Bramley, G., Wilcox, S. and Watts, B. (2015) *The Homelessness Monitor: Scotland* (London: Crisis).

Partly inspired by the Scottish model,<sup>48</sup> France has also created a right to an adequate and individual home. This right creates a positive obligation on the state, and it can be enforced by administrative courts. This was created through the DALO<sup>49</sup> law 2007-290 of the 5<sup>th</sup> of March 2007 'instituting an *opposable* [enforceable] right to housing and comprising of diverse measures in favour of social cohesion'.<sup>50</sup> We note that it includes people who have been waiting for social housing for an 'unreasonable' amount of time. People wishing to have their right enforced can apply to a commission, which then orders the 'prefet' (local representatives of the state) to obtain housing on behalf of the applicant if their request is recognised as warranted. Like the Scottish model, this right is part of a broader policy response, and some concerns remain. France is historically one of the OECD countries with a high level of social housing, so the DALO might be understood as another mechanism to access social housing. For example, some analysts have expressed concerns that the implementation of DALO, due to complex interaction with broader eligibility and allocation policies, could be no more than a reshuffle of priority levels on the waiting list.<sup>51</sup>

While the number of people re-housed under this legal proceeding has been very low compared to the level of identified need, the enforceable right to housing law has sparked action from government due to the litigation risk from people experiencing homelessness who are not being housed appropriately and/or within a reasonable amount of time.

Drawing on this experience, PIAC supports the human right to adequate housing being enshrined into domestic legislation.

There are other jurisdictions, mostly in Europe, that have implemented a right to housing enforceable by administrative courts. Best practice examples show that instituting an enforceable right to housing has the potential to trigger the ambitious, far reaching action that is needed from government to end homelessness. PIAC recommends that the Committee supports the introduction of an enforceable right to housing at the Commonwealth level.

### ***Recommendation 30 – A right to housing***

*The Government should consider how best to enshrine the human right to adequate housing into Australian legislation, including how it could be enforceable by administrative and civil tribunals.*

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<sup>48</sup> Houard, N. (2012). Construction et mise à l'agenda du droit au logement opposable (Dalo): le rôle des associations. [Construction and implementation of the enforceable right to housing (Dalo): the role of NGOs] Informations sociales [Social information], (4), 64-73.

<sup>49</sup> DALO stands for 'Droit Au Logement Opposable', the 'Enforceable Right to Housing'.

<sup>50</sup> LOI n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale [Law No 2007-290 of 5<sup>th</sup> March 2007 instituting an enforceable right to housing and comprising of diverse measures in favour of social cohesion],(France), JORF n. 55, 6 March 2007, p4190.

<sup>51</sup> Weill, P. E. (2013). Le droit au service des personnes défavorisées? [Law for the benefit of people facing disadvantage?]. Gouvernement et action publique [Government and public policy], (2), 279-302.