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Homelessness Green Paper Submissions
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Dear Chairperson,

Re: NLA submission to the Government Green Paper, *Which Way Home? A new approach to homelessness.*

National Legal Aid (NLA)

NLA represents the Directors of each of the 8 State and Territory Legal Aid Commissions. The Legal Aid Commissions (Commissions) are independent statutory authorities established under respective State or Territory enabling legislation. The Commissions are funded by State or Territory and Federal governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the financial cost of appropriate legal representation;
- Obtain access to the Federal and State and Territory legal systems; or
- Obtain adequate information about access to the law and legal system

NLA welcomes the opportunity to make this submission to the Federal Government's recently released Green Paper on Homelessness, "Which Way Home". Individual Commissions may also make submissions to the Green Paper.

Background to this submission

As the Green Paper states, "the causes of homelessness are multiple, inter-related and directly linked with the breakdown of economic and social support".

Commissions provide legal services to people in the areas of family, criminal and civil law. Issues such as homelessness, risk of homelessness, family violence, mental health and substance abuse are commonly present in the different types of matters which Commissions help people with.

Commissions are also able to provide “an early warning alert system” that gauges the impact of government legislation or policy on particular groups in our community. The success or otherwise of Federal and State and Territory Government policies across a range of areas can be indicated by the number and type of requests for legal help from Commissions and other legal aid service providers. In short, changes to government policy are acutely felt at the consumer level. Commissions and other legal aid service providers are therefore well placed to provide feedback to governments on the effects of legal and social reform policies.

Our interest in the issue of homelessness is our experience in providing legal services to clients with a range of complex legal, health and social needs who are experiencing financial and other problems that cause or result in them being homeless or at risk of becoming homeless.

Accordingly, we will not be responding to the Green Paper’s service model options, but instead will focus on the benefits of providing appropriate legal service interventions in preventing and reducing homelessness.

NLA priorities

NLA has developed *A New National Policy for Legal Aid in Australia*. This policy identifies six priority areas of need which Commissions across Australia believe must be addressed to ensure that all disadvantaged Australians are able to have recourse to the law to protect and enforce their legal rights. At least four of those six priority areas deal with issues relating to homelessness or the needs of particular groups in our community who are most vulnerable to homelessness. These priorities are:

- Supporting Australian families and protecting vulnerable family members.
- Supporting Australians at risk of social exclusion due to poverty.
- Supporting Indigenous Australians at risk of social exclusion.
- Supporting Australians at risk of social exclusion due to special circumstances.

A copy of "A New National Policy for Legal Aid in Australia" is provided with this submission. The Policy describes the emergence of legal aid in Australia, and legal aid's current role as the background to the identified priorities and what might be done to address them.

Homelessness and its impact - research

The profile of homeless people and their legal needs has been clearly articulated in a survey on legal needs by the extensive research program undertaken by the Law and Justice Foundation of NSW¹. This research found that legal issues commonly encountered by homeless people were in the areas of:

- family law
- care and protection
- domestic violence
- victim of crime
- housing (including SAAP Services, boarding houses, caravan parks and villages)
- discrimination
- debt
- social security
- crime (including fines).

Research from Australia, the United Kingdom, Canada and New Zealand highlights the challenges of providing legal services to financially disadvantaged people. This research shows:

- Financially disadvantaged people are more likely to experience legal problems which affect many aspects of their everyday life and their physical and social wellbeing
- Disadvantaged people often experience legal problems in clusters
- Many disadvantaged people do not recognise their problem as “legal” and many do not seek assistance
- Those who do seek assistance may seek help from non-legal services.

Unaddressed legal issues can also prolong homelessness,². Prolonged homelessness in turn exacerbates the difficulties experienced by Commissions in attempting to assist people with their legal problems.

“Homeless people are disproportionately represented in and disadvantaged by the criminal justice system.³ Legal Aid Commissions across Australia commonly report young people in particular being ineligible for bail because they have no secure accommodation.

NLA identifies a clear need for support services to assist those who are vulnerable to homelessness. In this regard, NLA notes the emergence of a

¹ Forell, S McCarron, E & Schetzer, L *No home, no justice? The legal needs of homeless people in NSW*, Law and Justice Foundation of NSW, Sydney, 2005

² Forell, S McCarron, E & Schetzer, L *No home, no justice? The legal needs of homeless people in NSW*, Law and Justice Foundation of NSW, Sydney, 2005

³ Sackville, Ronald J *Homelessness, Human Rights and the Law* (edited version of the speech delivered 10 March 2004) in AJHR [2003] 2. Justice Sackville was the Former Commissioner for the Poverty Commission in the 1970's.

demographic cohort of private renters who are at risk of homelessness. The National Council of the St Vincent De Paul Society reported that “50 per cent of people coming into homeless services across Australia are private renters in trouble”.⁴ Their research found that “most commonly, a family is considered to be in housing stress if it is in the bottom of 40 per cent of incomes and pays more than 30 per cent of its income on housing costs”.⁵

Clients at risk of homelessness are at a critical point when they seek legal assistance. For many, an appropriate and targeted legal intervention complemented by appropriate referrals to other support services can make the difference between achieving a level of social and financial stability or becoming or remaining homeless.

Legal Interventions

To address the legal needs of disadvantaged people the research suggests⁶ that a multidimensional approach is required which includes tailored and proactive strategies to maximise prevention and early intervention, and to enhance the appropriate targeting of limited resources. These strategies include:

- general community legal information and education;
- tailored legal education, information, advice and assistance services to meet the specific needs of different groups and individuals;
- non-legal professionals acting as gateways to legal services;
- improved coordination between different legal services; and
- a more coordinated response from legal and non-legal services for people with multiple legal and non-legal needs.

NLA cautions against tiered referral services that separate or compartmentalise the diverse legal and social needs of homeless people. Frequent onward referral with little follow up can be counterproductive. NLA recommends legal and social support services that fully commit specialist attention and support to the diverse legal and socio-economic needs of homeless people.

⁴ Don't Dream it's Over: Housing Stress in Australia's Private Rental Market July 2007

⁵ Don't Dream it's Over: Housing Stress in Australia's Private Rental Market July 2007 at page 2.

⁶ Coumarelos, C, Wei, Z & Zhou, AH, Justice made to measure: NSW legal needs survey in disadvantaged areas, Law and Justice Foundation of NSW, Sydney, 2006

Examples of programs in which Commissions are involved

1) Homeless Persons' Legal Service, New South Wales

Homeless persons legal clinics are referred to in Section 3 of the Green Paper: "Models of Innovation and Practice".⁷

Following the tabling of the NSW Audit Office performance audit report, Legal Aid NSW negotiated with the Public Interest Advocacy Centre (PIAC), which manages the Homeless Persons Legal Service (HPLS), for Legal Aid NSW to take over their legal advice clinic for the homeless at Parramatta. LANSW commenced this service from 4 July 2007.

In 2008, Legal Aid NSW successfully sought funding from the NSW Public Purpose Fund⁸ to continue to provide this service at Parramatta and to provide similar clinics in regional areas identified as areas of great need (in collaboration with the HPLS). The locations selected are Kempsey, Coffs Harbour, Wollongong, Nowra, Parramatta and Penrith. Legal Aid NSW has also established outreach clinics for the homeless in Newcastle and is investigating other possible locations on the North Coast. The funding enabled Legal Aid NSW to employ three solicitors to service key regional locations to establish specialist legal services for the homeless. These services are also centrally co-ordinated in order to ensure that strategic responses to the legal needs of the homeless are pursued where possible.

The clinics overcome some of the fundamental barriers faced by homeless people in accessing legal services by providing face-to-face legal services in locations that are familiar and frequently visited by homeless people. The clinic services include provision of advice, minor assistance and casework services to homeless people as well as the delivery of community legal education to community workers on areas of law that particularly affect homeless people (such as fines, debt, housing, mental health orders and social security). These clinics also work closely with welfare agencies to also ensure non-legal needs can be addressed where possible.

These outreach clinics (based on the HPLS model) tend to operate out of welfare agencies providing support services to homeless people that may include provision of amenities (meals, showers, washing facilities, accommodation, storage facilities etc) as well as access to free services including counselling services (drug and alcohol, sexual assault, financial), doctors and other medical services, Centrelink, and social activities.

⁷ p.51

⁸ The Public Purpose Fund is created by s. 285 (i) of the Legal Profession Act 2004 (NSW). It is comprised of interest (and other amounts) payable to the Law Society of NSW from a range of sources.

The experience of Legal Aid NSW indicates that homeless people and their service providers benefit from a co-ordinated approach to both legal and non-legal assistance.⁹ The “one-stop shop” supports this strategy.

A review of the HPLS model in 2005 found that it is a successful legal service delivery model for homeless people.¹⁰

2) The Homeless Persons Court Diversion Project (HPCDP), Queensland

The Homeless Persons Court Diversion Project (HPCDP) that has been operating in the Brisbane Magistrates Court since 2005-06. This project was originally funded as a pilot program as part of the whole-of-government Responding to Homelessness initiative. The project involved establishing an alternative criminal law list for homeless people, who have a range of mental health and social needs and are charged with minor criminal offences. The traditional justice responses to offenders with complex needs generally fail to have any impact on offending. Many of these people recycle through the criminal justice system without getting the support and treatment they need, with all of the costs to the system associated with criminal prosecution. The project provided limited case management for defendants and linked them with appropriate services to address their health, social and housing needs etc. Legal Aid Queensland provided unfunded support for the HPCDP by way of provision of duty lawyers to represent clients appearing in the HPCDP.

3) Safe At Home, Tasmania

Safe At Home is also referred to in Section 3 of the Green Paper: "Models of Innovation and Practice"¹¹. The Legal Aid Commission of Tasmania receives funding to provide state-wide assistance victims of family violence. The Commission agrees that Safe At Home has increased co-operation and communication across services and believes that safety for adult victims has improved, and expects that the risk of homelessness for victims as a result of needing to flee the violence has been reduced.

4. Youth Law Centre, ACT

The Youth Law Centre is run by the Legal Aid ACT in partnership with Clayton Utz and the Australian National University. It provides legal advice and minor assistance to young people. The Legal Aid Office of the ACT co-operates with Community Youth Centres who are encouraged to refer homeless young people to the Youth Law Centre for assistance.

Legal Aid ACT is also currently introducing new outreach advice services, which it anticipates being better able to directly assist homeless people when

⁹ Forrell S, McCarron E, Schetzer L, *No Home, No Justice? The Legal Needs of Homeless People in NSW*, Access to Justice and Legal Needs Volume 2 (Law and Justice Foundation of NSW, 2005) at pp 176-177.

¹⁰ Public Interest Advocacy Centre, *Homeless Persons' Legal Service, Evaluation Report* (September 2005)

¹¹ p.216

legal aid lawyers attend at the premises of partner organizations providing emergency assistance – eg, UnitingCare, the Salvation Army and Centacare.

New Programs - Models and Design

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the human right to adequate housing. As Australia is a party to the ICESCR, homelessness must be a national responsibility and priority for all levels of government.

We would encourage the government to consider establishing a fund to provide special grants for legal projects to address and reduce homelessness and associated social exclusion. Some legal programs that would assist people who are homeless or at risk of homelessness might include:

- New or expanded specialist problem-solving courts such as the HPCDP that offer a holistic response to homelessness. These services offer case management of offenders, integrated service responses to clients' complex needs and increase confidence in the justice system by providing services that help end the cycle of offending.
- Providing civil legal assistance to assist clients to enforce and/or protect basic rights, such as the right to adequate housing, to be safe from violence, to be released from unconscionable contracts etc. These legal services should also deliver holistic responses to clients' complex needs including services from social workers and support workers who can make referrals to complementary social services that will assist clients to stabilise their lives and reduce their on-going legal problems. The availability of such legal services can also provide an important role in the prevention of homelessness.
- Investment in complementary social services which would work collaboratively with, and support the delivery of, legal services, including accepting client referrals from legal service providers.

The Green Paper documented legislative mechanisms that safeguard people from homelessness citing Scotland's housing program that requires agencies to be advised of any person at risk of homelessness¹². Under Scotland's *Homelessness Act*, relevant authorities must be notified and provide appropriate support to avoid a person or family being homeless. NLA acknowledges the value of having legislative protections and safeguards that ensure emergency support are offered at the time the person is at most risk of being homeless. NLA would support the introduction of legislation and models of service delivery providing for notification and appropriate support and referral.

¹² p.58

Conclusion

The homeless are among the most disadvantaged in our community. Commissions are committed to making a contribution to solve this problem.

Thank you for considering our submission. If you would like further detail in relation to the submission please do not hesitate to contact us. Ms Smith at the NLA Secretariat will refer matters accordingly.

Yours faithfully,

A handwritten signature in black ink, appearing to read "H. Gilmore". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

H. Gilmore
Chairperson
National Legal Aid