



**Human Rights and Equal
Opportunity Commission**
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Submission of the

**HUMAN RIGHTS AND EQUAL OPPORTUNITY
COMMISSION (HREOC)**

to the

GREEN PAPER

on

HOMELESSNESS – WHICH WAY HOME?

4 July 2008

Human Rights and Equal Opportunity Commission

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Table of Contents

Introduction	3
Summary.....	3
Homelessness, human rights and social inclusion.....	4
Legal protection of the rights of people experiencing homelessness	8
Rights protections within the Supported Accommodation Assistance Act 1994 (Cth) 9	
Effective remedies for people whose housing rights are violated.....	11
Protection against forced evictions.....	12
The impact of public space laws.....	14
Women	16
Children and Young people.....	18
Supported Accommodation Assistance Program services	18
Care and protection services.....	19
Services for Indigenous children	20
Indigenous people.....	21
Indigenous definitions of homelessness	21
Indigenous housing crisis	23
Overcrowding – hidden homelessness	24
Family violence	25
Indigenous prisoners.....	26
Mental health	28
Accessibility	31
Immigration	31
Restricted eligibility to entitlements.....	32
Settlement barriers.....	33
Welfare payments	34
Appendix – Recommendations.....	36

Introduction

1. The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to ‘Which Way Home?’, the Green Paper on homelessness.
2. HREOC is Australia’s national human rights institution.¹
3. HREOC commends the Commonwealth government on making homelessness a priority issue and recognising that adequate housing is fundamental to social inclusion. Recognition of homelessness as a human rights issue should assist in the development of policy and programs to address homelessness.

Summary

4. Access to safe and secure housing is a fundamental human right.
5. Safe and secure housing is also fundamental to social inclusion. Achieving social inclusion through the protection of human rights should be central to three important stages of addressing homelessness:
 - prevention of homelessness
 - respecting the rights of people experiencing homelessness
 - creating pathways out of homelessness.
6. Enhanced protection of the rights of people experiencing homelessness and greater accountability to reduce homelessness could be achieved through the incorporation of universal human rights standards, including rights about housing, into Australian law. This could be achieved through the adoption of a federal charter of rights.

¹ HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (‘HREOC Act’). Sections 11 and 31 of the HREOC Act set out HREOC’s functions relating to human rights and equal opportunity in employment respectively. HREOC also has functions under the *Commonwealth Sex Discrimination Act 1984*, *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*.

7. In addition, federal and state legislative frameworks regarding housing and homelessness, such as supported accommodation, public housing, tenancy laws, eviction laws, and public space laws, should be reviewed to ensure compliance with minimum universal human rights standards.
8. This submission focuses on particular issues facing people experiencing homelessness, including issues relevant to:
 - women
 - children and young people
 - Indigenous people
 - people with disability, including mental health and accessibility issues
 - asylum seekers and immigration
 - welfare payments.

Homelessness, human rights and social inclusion

9. HREOC welcomes the recognition in the Green Paper that adequate housing is fundamental to social inclusion, and that the rights and responsibilities of individuals and families are paramount. HREOC also welcomes the commitment that governments are to be held accountable for the delivery of strategies to address homelessness.
10. Breaches of human rights contribute to social marginalisation and homelessness.² In order to promote social inclusion, the government's strategy to address homelessness would benefit from recognition of the relationship between breaches of human rights, social marginalisation and homelessness. The government should use international human rights standards to inform the development of the rights, responsibilities and accountability requirements set out in the strategy.

² Philip Lynch, 'Homelessness, Human Rights and Social Inclusion' (2005) 30(3) *Alternative Law Journal* 116.

11. Access to safe and secure housing is a fundamental human right.³ The Commonwealth government is obliged under international law to devote the maximum of its available resources towards progressively ensuring that all people have somewhere to live in security, peace and dignity.⁴
12. The right to adequate housing is more than simply a right to shelter. This right has been defined by the United Nations Committee on Economic, Social and Cultural Rights (CESCR). Whether housing is adequate depends on a range of factors including: legal security of tenure; availability of facilities and infrastructure; affordability; accessibility by disadvantaged groups; habitability; location; and cultural adequacy.⁵
13. HREOC welcomes the Green Paper's acknowledgment of the interconnectedness of the issues facing people experiencing homelessness. A lack of secure housing can affect a person's enjoyment of a wide range of other human rights, including rights to education, employment, healthcare, privacy, and personal safety.⁶ Enjoyment of these basic human rights is essential to a person's ability to actively

³ The right to adequate housing is recognised by article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and article 27(3) of the *Convention on the Rights of the Child* (CRC). This right is also reflected in article 5(e)(iii) of the *International Convention on the Elimination of all forms of Racial Discrimination* (ICERD) and article 14(2)(h) of the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW).

⁴ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 4: The right to adequate housing*, para 7.

⁵ CESCR, *General Comment 4: The right to adequate housing*, para 8.

⁶ For more detailed discussion of the human rights implications of homelessness, see Human Rights and Equal Opportunity Commission, *Homelessness is a Human Rights Issue*, 2008, available at http://www.humanrights.gov.au/human_rights/housing/homelessness_2008.html. The human rights relevant to people experiencing homelessness include: the right to an adequate standard of living, including adequate housing; the right to life, liberty and security of the person; the right to respect for privacy, family and home, the right to freedom from cruel, inhuman and degrading treatment, the right to the highest attainable standard of health; the right to social security; the right to work; the right to education; the right to vote; the right to participate in cultural and political life; the right to freedom from discrimination; the right to freedom of expression; the right to freedom of association; the right to freedom of movement; the right to a fair hearing and effective remedy for violation of human rights; and the special rights of children and young people.

participate in society. Consequently, the enjoyment of human rights is fundamental to social inclusion.

14. As noted above, achieving social inclusion through the protection of human rights should be central to three important stages of addressing homelessness:
 - prevention of homelessness
 - respecting the rights of people experiencing homelessness
 - creating pathways out of homelessness.
15. Improving protection of the human rights of people at risk of homelessness is a critical step in preventing homelessness. Enjoyment of basic rights is essential to our ability to actively participate in the community and to remain in control of our lives. This approach is outlined in Principles 2 and 3 of the principles for change in the Green Paper.⁷
16. While the ultimate goal of any strategy to address homelessness must be to reduce the incidence of homelessness, it is also important to ensure that those experiencing homelessness are treated with dignity and respect. This principle is fundamental to human rights and is recognised by Principle 4 of the principles for change in the Green Paper.⁸
17. Creating pathways out of homelessness is not just about providing adequate housing. It is also about providing people with tools to make positive decisions about their lives, to build connections with the community and to realise a range of basic human rights. This requires ensuring that all Australians have an adequate income and standard of living, opportunities for education and employment, access to healthcare, and opportunities to participate in the political and social processes which affect them.
18. Recognising the relationship between homelessness, human rights and social inclusion highlights the need to directly and meaningfully involve people who are homeless or who were formerly homeless in the development of solutions to homelessness.

⁷ Green Paper, Principles for change, p57.

⁸ Green Paper, Principles for change, p57.

19. Active and informed participation has the potential to empower people experiencing homelessness and to create more effective and relevant services. Participation is a fundamental element of a human rights approach to homelessness.
20. A strategy which addresses homelessness as a human rights issue involves all levels of government committing to measurable outcomes and taking concrete and targeted legislative, policy and budgetary steps towards the full realisation of the human rights of homeless persons.⁹
21. HREOC commends the Commonwealth government on its leadership and commitment to a national and long-term approach to addressing homelessness.
22. HREOC notes the recommendation of the CESCR in its Concluding Observations on Australia's latest state party report:

The Committee strongly recommends that the State party, at the federal level, develop a housing strategy in keeping with the Committee's General Comments No. 4 and 7, including provisions to protect tenants from forced eviction without reasons and from arbitrary rent increases. In addition, the Committee recommends that the State party ensure that all State and Territory governments establish appropriate housing policies in accordance with this strategy.¹⁰

23. In 2007 the United Nations Special Rapporteur on Adequate Housing called on Australia to develop a 'comprehensive and coordinated national housing policy... [that] embodies an overarching human rights approach, with the primary task of meeting the needs of the most vulnerable groups'.¹¹
24. **Recommendation 1:** The Commonwealth government should develop a national housing strategy. Addressing homelessness would be a key aspect of any housing plan. This strategy should be developed in consultation with people who are

⁹ CESCR, *General Comment 3: The nature of States parties' obligations*, para 2.

¹⁰ CESCR, *Concluding Observations on Australia*, E/C12/1/Add50, 1 September 2000, para 34.

¹¹ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, Miloon Kothari, Mission to Australia, A/HRC/4/18/Add.2, 11 May 2007, para 127.

homeless or formerly homeless, people who are inadequately housed, and their representatives.

Legal protection of the rights of people experiencing homelessness

25. Protection in Australian law of the rights of people experiencing homelessness could be enhanced.¹²

26. HREOC notes that agreed international human rights standards, including rights about housing, have not yet been fully incorporated into Australian law. The UN Special Rapporteur on Adequate Housing has recommended that:

Federal and state authorities should make bigger efforts to explicitly incorporate the wide range of international human rights instruments to which Australia is a party, into the domestic legal system.¹³

27. Australia does not currently have a national law to protect human rights through a mechanism such as a charter of rights. A federal charter of rights could include the protection of economic, social and cultural rights such as the right to adequate housing. A federal charter of rights should include appropriate remedies for those whose rights have been violated. HREOC commends the government on its intention to hold a national consultation on how to best recognise and protect human rights in Australia.¹⁴

28. On 18 June 2008, the United Nations Human Rights Council adopted the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (the *Optional Protocol*).¹⁵ The *Optional Protocol* would allow a person to make a

¹² See *Report of the Special Rapporteur*.

¹³ *Report of the Special Rapporteur* para 32.

¹⁴ Note that the *Human Rights Act 2004* (ACT) and *Charter of Human Rights and Responsibilities Act 2006* (Vic) do not currently include economic, social and cultural rights.

¹⁵ United Nations Human Rights Council, *Draft Report of the Human Rights Council on its Eighth Session*, UN Doc A/HRC/8/L.10 (26 June 2008) paras 109-113.

complaint to the CESCR about a denial of their rights, including their right to adequate housing, under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The Human Rights Council has recommended that the UN General Assembly adopt and open the *Optional Protocol* for signature, ratification and accession.

29. HREOC notes that consideration of the Optional Protocol will be an ongoing issue for the Commonwealth government.

Rights protections within the Supported Accommodation Assistance Act 1994 (Cth)

30. HREOC welcomes the recognition in the Green Paper that all people who are homeless or at risk of homelessness need access to stable and affordable housing.
31. HREOC notes that the *Supported Accommodation Assistance Act 1994 (Cth)* (SAA Act) aims to promote and protect the rights of people experiencing homelessness.¹⁶ However, this legislation could further implement the right to adequate housing in Australia.
32. In particular, the SAA Act could:
 - provide homeless people with a right of access to services or assistance
 - guarantee that emergency and supported housing fulfils the adequacy requirements.
33. As noted in the Green Paper, SAAP services turn away a significant number of people each day, particularly families with children.
34. Further, particular groups of people may be excluded from SAAP services, including people:
 - who use, are dependent on, or are affected by drugs and/or alcohol
 - who exhibit or who have previously exhibited violence or other challenging behaviour
 - affected by mental illness

¹⁶ *Supported Accommodation Assistance Act 1994 (Cth)*, Preamble, section 5.

- with disability, including people with physical disability, intellectual disability or acquired brain injury.¹⁷
35. The failure to ensure access to SAAP services for people defined as homeless may constitute a violation of Australia’s obligation to implement the right to adequate housing.
 36. According to the CESCR, the obligation of states under the ICESCR to progressively realise the right to adequate housing includes a minimum core obligation to provide immediate support for the needs of individuals deprived of basic shelter and housing.¹⁸
 37. Therefore, at a minimum, all Australian governments have an obligation to provide homeless people with a right to access emergency and supported accommodation as an element of the right to adequate housing.¹⁹
 38. A recent model has been developed in Scotland where housing legislation guarantees the right of homeless people to secure adequate housing and requires local authorities to recognise this right. This right is to be progressively implemented over ten years, after which time every homeless person in Scotland will have a right to access housing.²⁰
 39. **Recommendation 2:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to provide for a right, to be progressively realised, to emergency housing and related services for those defined as homeless.²¹
 40. Implementation of the right to adequate housing for homeless people would also require the government to ensure that SAAP accommodation meets the standards

¹⁷ NSW Ombudsman, *Summary Report: Assisting homeless people – the need to improve their access to accommodation and support services*, May 2004, p8.

¹⁸ CESCR, *General Comment 3: The nature of States parties’ obligations*, paras 9-10.

¹⁹ *Homelessness and Human Rights in Australia*, Submission to the Supported Accommodation Assistance Program (SAAP IV) National Evaluation, November 2003, p34, fn9.

²⁰ *Housing (Homeless Persons) Act 1977; Housing (Scotland) Act 2001; Homelessness etc. (Scotland) Act 2003*.

²¹ Such a right could be progressively implemented by gradually broadening the categories of people who may rely on the right. See *Homelessness and Human Rights in Australia*, recommendation 1.

of adequacy under human rights law.²² Although SAAP service standards exist, and might be expected to require accommodation of a standard adequate under human rights law, they do not currently provide this level of guarantee.

41. It is important to recognise that what constitutes adequate housing will differ according to the specific needs of vulnerable groups.
42. **Recommendation 3:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to include national standards providing that housing under the Act must be adequate.²³

Effective remedies for people whose housing rights are violated

43. The provision of effective remedies is fundamental to the implementation of human rights obligations. Certain remedies for breaches of the right to adequate housing exist in Australia. For example, an eviction conducted without proper process may be challenged in a court or a residential tenancies tribunal. However, in many instances, effective remedies have not yet been established.
44. The United Nations Special Rapporteur on Adequate Housing identified the lack of mechanisms for people to complain about breaches of housing rights as a significant problem in Australia.²⁴
45. HREOC's functions are limited with regard to the right to adequate housing as rights under the ICESCR are not part of the definition of 'human rights' under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).²⁵
46. Further, Australia's current anti-discrimination laws do not prohibit discrimination on the grounds of social status or housing status.²⁶ Discrimination

²² See definition of 'adequacy' in CESCR, *General Comment 4: The right to adequate housing*, para 8.

²³ *Homelessness and Human Rights in Australia*, recommendation 2; CESCR, *General Comment 4: The right to adequate housing*, para 8.

²⁴ *Report of the Special Rapporteur*, para 16.

²⁵ *Human Rights and Equal Opportunity Act 1986* (Cth), s 3.

²⁶ *Homelessness and Human Rights in Australia*, p11. See for example *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1991* (Qld), s 7; *Equal Opportunity Act 1995* (Vic), s 6; *Equal Opportunity Act 1984* (WA).

on these grounds is widely experienced by homeless people in the areas of accommodation and the provision of goods and services.

Protection against forced evictions

47. As noted in the Green Paper, forced evictions can be a key factor in leading people into homelessness.²⁷
48. Forced evictions are considered to be a violation of a wide range of human rights under international law. Forced evictions usually affect the poorest and most economically vulnerable and marginalised sectors of society.²⁸
49. The CESCR has identified forced evictions, in particular, as a violation of the human right to adequate housing. The CESCR notes that:

evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.²⁹
50. The Commonwealth government must ensure that evictions from all forms of housing do not lead to homelessness.
51. Eviction from SAAP accommodation should be a measure of last resort, and no person should be evicted from SAAP accommodation until alternative accommodation is found.
52. **Recommendation 4:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to ensure that forced eviction from SAAP accommodation is a measure of last resort.³⁰

²⁷ Green Paper, Identifying the Problem, p10.

²⁸ *Report of the Special Rapporteur*, para 67. See also Human Rights Council, *Basic principles and guidelines on development-based evictions and displacement*, 2007, A/HRC/4/18.

²⁹ CESCR, *General Comment 7: The right to adequate housing: forced evictions*, para 16.

³⁰ *Homelessness and Human Rights in Australia*, recommendation 3.

53. Evictions from public housing can also lead to homelessness. In certain cases, evictions may be a consequence of breaches of behavioural standards. Eviction in these circumstances may be a disproportionate response. Government public housing authorities are under an obligation to ensure that their decision to evict a tenant does not lead to the person being made homeless.
54. Evictions from private housing can also lead to homelessness. Where a private landlord is entitled to an eviction order against a private tenant, governments are also required to take all reasonable steps to prevent the person being evicted from becoming homeless.
55. The UN Special Rapporteur on Adequate Housing noted that there is no national policy approach to state and territory residential tenancy legislation in Australia. He commented that in most states and territories these laws ‘allow landlords to freely evict tenants, or increase rents requiring the tenant to take formal remedial action to prove such an increase is excessive’.³¹ People who are forcibly evicted are unable to seek adequate compensation and there are no appropriate relocation services for people who cannot secure alternative accommodation themselves.³²
56. In South Africa, the right to adequate housing is protected under the *South African Constitution*.³³ The South African courts have dealt with the obligations on government authorities to prevent homelessness arising from evictions, including evictions from private housing. The courts have decided that, before making an order to evict a person into homelessness, the court may require the government housing authority to advise the court whether the person will be housed following the eviction.³⁴ The court is then able to ensure that the eviction does not lead to the person being made homeless.
57. Residential tenancy laws in Australia could be reviewed to enable courts and tribunals to require government housing authorities to advise the court on housing

³¹ *Report of the Special Rapporteur*, para 17.

³² *Report of the Special Rapporteur*, para 69.

³³ *South African Constitution*, s 26.

³⁴ *Lingwood v The Unlawful Occupiers of R/E of Erf 9 Highlands* (Unreported, High Court of South Africa, Witwatersrand Local Division, Mogagabe AJ, 16 October 2007).

options for a person facing homelessness. This would prevent vulnerable people, particularly where children are involved, from being evicted before arrangements are in place for alternative housing. This is an example of how residential tenancy laws could be improved to help prevent homelessness.

58. **Recommendation 5:** The Commonwealth government should encourage and facilitate a review of state and territory residential tenancy laws in order to ensure compliance with international human rights standards, including protection from forced evictions.³⁵

The impact of public space laws

59. HREOC welcomes the Green Paper's recognition that people experiencing homelessness are disproportionately affected by public space laws which criminalise poverty and homelessness, prohibiting begging, sleeping, bathing, urinating, storing belongings and drinking in public. Homeless people are also affected by 'move on' powers that authorise police to displace people who occupy and live in public spaces.³⁶
60. Public space laws disproportionately affect Indigenous people. 'Living rough' in public spaces is the most visible face of Indigenous homelessness and also one of the most complex. People living in the 'long grass' and other groups of Indigenous people who camp in public places, such as riverbeds and parks, may do so for a variety of reasons. Some camp in public places because they have nowhere else to go or no means to get home. Some may choose to live in these places for cultural or social reasons, in light of the lack of alternative forms of culturally appropriate housing.
61. The Australian Housing and Urban Research Institute argues that:

³⁵ This recommendation was also made in the *Report of the Special Rapporteur*, para 131.

³⁶ See for example: *Police Powers and Responsibilities Act 2000* (Qld), ss 46-48; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 197; *Summary Offences Act 1953* (SA), s 18; *Police Offences Act 1935* (Tas), s 15B; *Summary Offences Act 2002* (NT), s 47A; *Crime Prevention Powers Act 1998* (ACT), s 4.

A person may have a sense of 'home', and a sense of belonging to a place (or set of places), and a recognition and acceptance in such a place, but nevertheless may not have any conventional accommodation.³⁷

62. This complexity requires consideration when developing a range of appropriate responses to Indigenous homelessness, including outreach health, income and support services.
63. Indigenous people living in public places often come into contact with the justice system through 'move on' laws which leave them feeling harassed. There are also concerns that the use of police enforcement measures, such as tasers, on homeless people who have mental illness, heart conditions, are elderly or young, or may be using drugs and alcohol, poses a greater risk of serious harm. Further, contact with the police through the 'move on' laws can easily escalate resulting in more serious charges that may lead to imprisonment. This is of concern given the current over-representation of Indigenous people within the criminal justice system.
64. Enforcement of public space laws through fines, arrest and imprisonment undermines the objectives of bringing people into stable housing and maximising their social inclusion.
65. International jurisprudence suggests that these laws may violate the right to freedom from cruel, inhuman or degrading treatment or punishment.³⁸ Courts in the United States have held that these types of laws violate the constitutional right to freedom from cruel and unusual punishment because they punish homeless people on the basis of their status and not because of their conduct.³⁹ When there

³⁷ Memmott, P., Long, S., Chambers, C., and Spring, F., *Categories of Indigenous 'homelessness' people and good practice responses to their needs*, Australian Housing and Urban Research Institute, 2003, p(i).

³⁸ *International Covenant on Civil and Political Rights* (ICCPR), article 7; CRC, article 37; Lynch, P. and Cole, J., 'Homelessness and Human Rights: Regarding and Responding to Homelessness as a Human Rights Violation', *Melbourne Journal of International Law*, 2003, vol 4, pp147-149.

³⁹ *Jones v City of Los Angeles*, No. CV 03-01142 ER, (9th Cir. 2006); *State v. Wicks*, Nos. 2711742 & 2711743, (Ore. Cir. Ct. Multnomah County 2000). See also The National Coalition for the Homeless and The National Law Center on Homelessness & Poverty, *A Dream Denied: The Criminalisation of Homelessness in U.S. Cities*, 2006, pp10, 79-105.

is insufficient crisis accommodation or public housing to support homeless people, homeless people are forced to break the law involuntarily as they have no alternative but to perform these acts in public.⁴⁰

66. The existence of laws which criminalise poverty and homelessness was identified by the Special Rapporteur on Adequate Housing as a significant impediment to Australia's implementation of the right to adequate housing.⁴¹
67. **Recommendation 6:** State and territory governments should be encouraged to review and amend laws that disproportionately impact upon people experiencing homelessness, such as public drinking laws and public sleeping laws, to ensure that fundamental human rights are protected.⁴²

Women

68. As highlighted in the Green Paper, domestic and family violence is the leading cause of homelessness amongst women.⁴³
69. HREOC supports the acknowledgment that finding secure and affordable housing options for all women escaping violence must be a priority. It is also important to ensure that housing is appropriate and adapted to meet the diverse needs of different women.⁴⁴ In some cases, women may require financial support to assist them to remain in the family home after the perpetrator of violence has moved out. In other cases, support must be directed at facilitating the transition from a refuge into independent, appropriate and stable accommodation.⁴⁵

⁴⁰ *Pottinger v Miami*, 810 F Supp 1551 (SD Fla, 1992).

⁴¹ *Report of the Special Rapporteur*, paras 47, 132.

⁴² *Report of the Special Rapporteur*, para 132.

⁴³ Green Paper, pp15, 21, 41.

⁴⁴ Green Paper, p21.

⁴⁵ Tually, S., Beer, A., and Faulkner, D., *Too Big to Ignore: Future Issues for Australian Women's Housing 2006-2025*, Australian Housing and Urban Research Institute, Executive Summary, September 2007, p(v).

70. The government's new approach to homelessness must be fully integrated with strategies to address violence against women and their children, including the proposed National Plan on Reducing Violence against Women and Children, in order to secure the human rights of women experiencing domestic and family violence.
71. **Recommendation 7:** The government's homelessness strategy should be fully integrated with the development of the National Plan on Reducing Violence against Women and Children.
72. Another major factor that affects the housing circumstances of women is relationship breakdown. This is noted by the Green Paper as one of the main socio-economic causes of homelessness in Australia.⁴⁶
73. The termination of a marriage or a long-term relationship can have a significant adverse effect on the financial circumstances of women.⁴⁷ This effect may be particularly acute for women with dependent children and older women who may have had a longer period of dependency on a partner with less ability to secure an independent income. Women overall have a lower earning capacity than men due to several factors including:
- that women primarily fulfil caring responsibilities
 - pay inequity
 - over representation of women in lower paid, insecure, casual employment.⁴⁸
74. Consequently, strategies to address women's economic security and independence, including during and following separation and divorce, and across the lifecycle are essential to ensuring sustainable housing outcomes.
75. **Recommendation 8:** The government's homelessness strategy should incorporate strategies which address the particular vulnerability of women to homelessness due to poverty and lack of economic security.

⁴⁶ Green Paper, p20.

⁴⁷ AHURI, *Too Big to Ignore*, Executive Summary, p(v).

⁴⁸ HREOC, *Listening Tour Community Report* (2008, forthcoming).

Children and Young people

76. As noted in the Green Paper, child and youth homelessness is one of the biggest problems facing Australia. Young people experiencing homelessness are among the most marginalised people in our society and are at risk of serious breaches of their rights as set out in the *Convention on the Rights of the Child* (CRC), including rights to an adequate standard of living, education, safety and health.
77. HREOC supports the range of initiatives outlined in the Green Paper for improving education, training and employment outcomes and family connections of young people experiencing homelessness.

Supported Accommodation Assistance Program services

78. HREOC welcomes the government's acknowledgment that homelessness services often lack the capacity and resources to adequately support the needs of the large numbers of families with children, and independent young people seeking assistance.
79. The Green Paper identifies that children are not counted in SAAP data collection as clients and funding for responding to the needs of children is not specifically allocated through SAAP.⁴⁹
80. Specifically, the SAA Act does not recognise children and young people below school leaving age as a specific group for the purpose of making service agreements, unless they are part of families or accompanying women.⁵⁰ It is assumed that these children and young people will be looked after by state child protection authorities.⁵¹ This means there are no targeted resources to assist children and young people experiencing homelessness.

⁴⁹ Green Paper, Structure of the Supported Accommodation Assistance Program, p29.

⁵⁰ *Supported Accommodation Assistance Act 1994* (Cth), s 13(1).

⁵¹ National Youth Commission, *Australia's Homeless Youth: A Report of the National Youth Commission Inquiry into Youth Homelessness*, 2008, Brunswick, para 9.8.

81. **Recommendation 9:** The SAAP funding framework should be amended to recognise children and young people as a specific client group so that designated funding can be provided for adequate child-specific services.
82. HREOC notes the Preamble of the SAA Act makes reference to the CRC.
83. Article 3 of the CRC requires that in ‘all actions concerning children, whether undertaken by private or public social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.
84. Currently, consideration of this principle and other child rights are not incorporated into processes for developing policy and delivering services to children and young people experiencing homelessness.
85. **Recommendation 10:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to incorporate the best interests of the child as a principle guiding both the development of SAAP policy and the delivery of homelessness services that affect children.

Care and protection services

86. The Green Paper highlights the well-documented correlation between state care and protection and homelessness.⁵²
87. HREOC notes that there is evidence that a large number of children and young people are referred to and seek assistance from SAAP services when state care and protection services are unable to provide them with adequate support.⁵³ There is also evidence that young people who leave care when they reach a certain age are at significant risk of becoming homeless.⁵⁴
88. HREOC acknowledges that the government is currently developing a national child protection framework to address these issues. HREOC urges that this

⁵² Green Paper, Causes of homelessness, p24.

⁵³ National Youth Commission, *Australia's Homeless Youth*, paras 9.9-9.20.

⁵⁴ National Youth Commission, *Australia's Homeless Youth*, paras 9.21-9.44.

framework be fully integrated with the government's new approach to homelessness.⁵⁵

89. **Recommendation 11:** The Commonwealth government should coordinate the development of a national care and protection policy to ensure that children at risk of homelessness are given prioritised support.

Services for Indigenous children

90. As has been frequently reported, most recently in the *Little Children are Sacred* report, there is a high prevalence of child abuse in Indigenous communities.⁵⁶ Indigenous children at risk of abuse are vulnerable to becoming homeless.
91. Access to Indigenous community services is an important means of preventing vulnerable children from becoming homeless.
92. The 2007 Social Justice Report examined the 'Safe Families' program run by Tangentyere Council in Alice Springs as a way of providing culturally appropriate accommodation and support for children at risk or already involved in the child protection system.⁵⁷ Safe Families has achieved great success and provides an essential service but has experienced difficulty in gaining sustainable funding. This demonstrates the need for more streamlined and less bureaucratic funding processes in the homelessness sector.
93. Initiatives like the 'Safe Haven' partnership between the Commonwealth government and Queensland government to provide appropriate accommodation and support to avoid children's placement with child protection authorities should also be considered in other parts of the country.⁵⁸

⁵⁵ Green Paper, Government reforms that will affect homelessness, p73.

⁵⁶ Northern Territory Government, Board of Inquiry into Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle 'Little Children are Sacred'*, 2007, available at http://www.nt.gov.au/dcm/inquiry/saac/pdf/bipacsa_final_report.pdf.

⁵⁷ HREOC, *Social Justice Report*, 2007, available at http://www.humanrights.gov.au/social_justice/sj_report/sjreport07/index.html.

⁵⁸ See Queensland Government, *Safe Haven*, available at <http://www.communities.qld.gov.au/family/safe-haven/>.

94. **Recommendation 12:** Indigenous community programs and services that provide accommodation and support for Indigenous children at risk should be identified and supported.

Indigenous people

Indigenous definitions of homelessness

95. The Green Paper rightly points out that Indigenous people are likely to experience homelessness because of the high levels of social and economic disadvantage.
96. According to the 2006 Census, there were 41 16 Indigenous people who were homeless on Census night. This included 2283 Indigenous people with no conventional accommodation (i.e. in improvised dwellings or sleeping rough), 662 in hostels, refuges or night shelters, and 1171 residing temporarily with others.⁵⁹ The Northern Territory recorded the largest number of Indigenous homeless people (1143), followed by Queensland (1019).⁶⁰
97. Correspondingly, there were 16 200 Aboriginal and Torres Strait Islander people aged 15 years or over who received SAAP support in 2005-06, making up 17% of all SAAP clients.⁶¹ In every state and territory, Indigenous clients of SAAP services were substantially over-represented relative to the proportion of Indigenous people in those jurisdictions.⁶²
98. However, Indigenous homelessness can be a distinct experience from non-Indigenous homelessness, with different causes, dynamics and solutions. Various reports have argued that there needs to be a distinct definition of Indigenous homelessness:

⁵⁹ Australian Bureau of Statistics (ABS), Australian Institute of Health and Welfare, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Canberra 2008, Table 4.16.

⁶⁰ ABS, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, p46.

⁶¹ ABS, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Table 4.17.

⁶² ABS, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, p47.

the notion of 'home' or 'house' can be differently perceived by Indigenous and non-Indigenous. Housing for Indigenous communities necessitates a close examination of its cultural adequacy to the way of life of these communities.⁶³

99. The 2006 report *Indigenous Homelessness within Australia* recognises five different forms of Indigenous homelessness:
- spiritual homelessness (separation from traditional land or family)
 - overcrowding
 - relocation and transient homelessness (which results in temporary, intermittent and often cyclical patterns of homelessness due to transient and mobile lifestyles, and also results in a larger proportion of the Aboriginal and Islander population, relative to the non-Indigenous population, having to travel to obtain services)
 - escaping from unsafe or unstable homes
 - lack of access to any stable shelter (i.e. 'nowhere to go').⁶⁴
100. These categories are more complex and nuanced than the definition used in the Green Paper (primary, secondary and tertiary homelessness).
101. National consultations undertaken as part of the 2006 *Indigenous Homelessness within Australia* report all argued for the inclusion of the spiritual element to articulate another dimension of homelessness that is distinct from non-Indigenous experience, as well as to reinforce the deep Indigenous connection to land and country.⁶⁵ Disconnection from land and country impacts negatively on individual, family and community wellbeing. Addressing homelessness is not just about bricks and mortar, but helping to re-establish the connections that build strong Indigenous communities.

⁶³ United Nations Special Rapporteur on adequate housing, *Preliminary Observations*, Mission to Australia, 31 July – 15 August 2006, Canberra, 15 August 2006, p8, available at http://www.hreoc.gov.au/social_justice/international_docs/pdf/un_sp_housing_missiontoaustralia_15aug2006.pdf

⁶⁴ Commonwealth of Australia, Commonwealth Advisory Committee on Homelessness and the Department of Families, Community Services and Indigenous Affairs, *Indigenous Homelessness within Australia*, 2006, p9.

⁶⁵ Commonwealth of Australia, *Indigenous Homelessness within Australia*, 2006, p9.

102. Homelessness, like all issues affecting Indigenous people, needs to be treated holistically. Housing and any other support services need to be built on a foundation of cultural safety and as part of broader community development.

Indigenous housing crisis

103. In 2006, the Special Rapporteur on Adequate Housing identified that there was an Indigenous housing crisis in Australia. He argued that the following factors have led to a ‘severe housing crisis’ which is likely to worsen in coming years as a result of the rapid rate of population growth in Indigenous communities:

- lack of affordable and culturally appropriate housing
- lack of appropriate support services
- significant levels of poverty
- underlying discrimination.⁶⁶

104. Further factors that contribute to Indigenous homelessness include:

- Many Indigenous people enter poverty and homelessness as a result of poor educational and employment opportunities
- Indigenous people are vulnerable to homelessness when they are forced to move in order to access employment and income support
- The removal or temporary suspension of welfare benefits can increase the chances of an Indigenous person becoming homeless
- A recent survey of housing in the Northern Territory by Professor Torzillo found that 65% of houses surveyed in remote communities did not have a working shower. Such inadequate housing can severely impact on the health of residents. While we applaud initiatives to improve health through better housing, like the ‘Fixing Houses for Better Health’ program, there is still a long way to go if we are to close the gap in Indigenous and non-Indigenous housing and health outcomes.
- The amendments to the *Aboriginal Land Rights Act 1976* (NT) were a point of concern noted by the Special Rapporteur, as contributing to inadequate housing, by undermining security of tenure. More recently, the Social Justice Report 2007 outlined concerns about the compulsory acquisition of property

⁶⁶ *Report of the Special Rapporteur*, paras 80, 85.

without the protection of just terms compensation as further undermining security of tenure on a community-wide level.

- Ensuring that housing is culturally appropriate is necessary to make a difference to Indigenous homelessness. This means that consultation must occur with local people to ensure that housing design meets local cultural and environmental needs.⁶⁷

105. HREOC supports the broad intention to move away from the crisis model of the SAAP service provision towards a more integrated, holistic response that addresses the Indigenous housing crisis.
106. However, there also seems to be a shift towards provision of services through mainstream agencies. The experience of mainstreaming Indigenous services thus far has been problematic. Given that Indigenous homelessness is so complex, a one size fits all approach will not give enough flexibility and creativity to solve the problem of Indigenous homelessness. In this regard, it is important to ensure that specific services for Indigenous people, especially services provided by Indigenous staff, are well resourced and made accessible to Indigenous communities.
107. **Recommendation 13:** The work of the National Joint Policy Commission on Indigenous Housing should be integrated with the strategies targeting homelessness to ensure a comprehensive national approach to Indigenous housing and homelessness.

Overcrowding – hidden homelessness

108. Overcrowding is the hidden face of Indigenous homelessness. In 2004-05, nationally, 26.9% of Indigenous people (aged 18 years and older) were living in

⁶⁷ The CESCR has noted that cultural adequacy is an essential aspect of housing adequacy: “the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing”: CESCR, *General Comment 4: The right to adequate housing*, para 8(g).

overcrowded households, with a staggering 65.3% experiencing overcrowding in the Northern Territory.⁶⁸

109. Overcrowding results in poor health outcomes and can also increase the risk of family violence and child protection issues, as documented in the *Little Children are Sacred* report. In this report, Anderson and Wild found that children living in overcrowded housing were more likely to be exposed to pornography, adults having sex and intoxicated adults.⁶⁹ Lack of privacy and space can contribute to tempers fraying and family violence affecting women and children.
110. Overcrowding can also lead to long-term housing problems. Breach of tenancy agreements by overcrowding, and resulting anti-social behaviour complaints by neighbours, can be lasting strikes on Indigenous people's tenancy records, which can lead to them being moved down the list in the allocation of public housing. This may lead to Indigenous people waiting longer than they should for adequate housing.

Family violence

111. Family violence is the most common reason for Indigenous people to be seeking assistance from a SAAP organisation. The dynamics of Indigenous family violence and subsequent need for housing are often different to that of non-Indigenous women and children, particularly in remote areas. Indigenous women may access a safe house to escape immediate situations of violence, to prevent violence from occurring or to have some time out. It is often a temporary way to manage violence in the community rather than a means to escape or to end contact with the violent partner.
112. Indigenous male perpetrators of family violence have also identified a need for 'time-out places', where they can remove themselves from the family home for a temporary period, thus removing themselves from situations where they might

⁶⁸ Australian Institute of Health and Welfare, Analysis of National Aboriginal and Torres Strait Islander Housing Survey (2004–05) and National Health Survey (2004–05), Table 2.02.2, available at <http://www.aihw.gov.au/publications/ihw/atsihpf06r/atsihpf06r-c02-02.pdf>.

⁶⁹ *Little Children are Sacred*, p195.

carry out acts of family violence. Such places can also be an opportunity for men to meet and obtain support from other men. Having a 'time-out place' could benefit some men by giving them options, other than moving out of home, that will assist them in stopping their acts of family violence, and could contribute to reduced homelessness among men in this situation.

113. The 2007 Social Justice Report provided a number of case studies about promising practice in addressing family violence and child abuse, including a case study of the Yuendumu Safe House. However, HREOC has also heard about communities like Balgo in Western Australia where, despite the very high levels of family violence, there is no safe house in the community.
114. In addition to providing essential emergency accommodation for women, the presence of a community controlled safe house can also serve to empower women and reinforce the view that family violence is unacceptable. Safe houses are often run by women's groups that provide other services, such as night patrol and children's services, representing a multidimensional service that can address the causes of homelessness.
115. **Recommendation 14:** Indigenous community services to provide accommodation support and assistance for Indigenous women and children experiencing family violence should be supported, and mainstream SAAP services should be adequately resourced to meet the specific needs of Indigenous women and children.

Indigenous prisoners

116. Indigenous people exiting prison or juvenile justice facilities are particularly at risk of homelessness. Indigenous prisoners are one of the most disadvantaged groups of prisoners and often have very poor access to housing when they leave custody. Lack of accommodation has been found to be a critical factor in the continuation of the cycle of crime, thus preventing rehabilitation and reintegration.
117. The 2004 Social Justice Report focused on the post-release needs of Indigenous women prisoners and found significant gaps in housing support for women

leaving prison. Indigenous women leaving prison have very few options. Crisis accommodation is limited and there are few medium to long-term accommodation programs. Many Indigenous women prisoners face either returning to a violent partner or ending up on the streets, both of which increase the likelihood of reoffending.⁷⁰

118. Indigenous women and men prisoners may also have mental health or substance abuse issues which can further limit their accommodation options. Ogilvy comments:

the special need of prisoners frequently make accessing programs of one sort or another difficult. For example, many domestic violence shelters exclude people with drug problems and many hostels exclude women with children. Given that for women prisoners, coping with drug related issues and motherhood are often critical to their re-integration back into the community, these sorts of exclusions can seriously impede successful re-integration into the general community.⁷¹

119. Not only do these concerns hinder a woman's chances of obtaining secure accommodation but they also contribute to the likelihood of re-offending. Accommodation services that can cope with these complex issues in a holistic fashion are urgently required.
120. Another concern is the situation of juvenile offenders being granted bail pending suitable accommodation. In NSW, for homeless youth or youth who cannot return home, magistrates have the option of setting bail with a condition that relies on the responsible government department providing accommodation. In these circumstances, the child will not be released on bail unless the government department allocates accommodation. In the absence of available accommodation, a child can remain in detention even if the original charge is minor and, if convicted, would not attract a custodial sentence. There is a pressing need for bail

⁷⁰ HREOC, *Social Justice Report 2004*, available at http://www.humanrights.gov.au/social_justice/sj_report/sjreport04/index.html.

⁷¹ Ogilvy, E., 'Prisoners Post Release'-release', *Parity - Post Release-release and Homelessness Issue*, vol 14, no 10, November 2001, pp16-17.

support accommodation, especially in rural areas where accommodation is very limited.⁷²

121. **Recommendation 15:** Adequate and culturally appropriate accommodation support services should be provided to Indigenous people exiting prison or juvenile justice facilities and bail support accommodation should be made available, especially in rural areas.

Mental health

122. HREOC welcomes the recognition of people with disability and in particular people affected by mental illness, as being at particular risk of homelessness and as having needs which are not adequately addressed by current service and policy models. HREOC urges the focus on these issues to be maintained in the development and implementation of a national strategy on homelessness.
123. HREOC's own work supports the need, as identified in the Green Paper, for integrated approaches to homelessness.⁷³ Rather than housing issues being addressed in isolation, an integrated approach could include issues such as income support, assistance and supports in gaining or retaining employment, and access to health services and related supports.
124. The principal recommendation of the National Inquiry on Employment and Disability was for the development of a national strategy on disability and employment issues, including addressing issues of co-ordination between services and programs administered by different areas and levels of government. HREOC welcomes the commitment of the new government to such a strategy and the

⁷² See for example, Bailey, B., *Submission to the Inquiry into Children and Young People 9-14 Years in NSW*, Public Interest Advocacy Centre, 15 May 2008, p6, available at <http://www.piac.asn.au/publications/pubs/08.04.23-PIAC%20CC%209%20to%2014yrs%20sub.pdf>.

⁷³ See for example Report of the National Inquiry on Employment and Disability, 2007, available at http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm; *Not for Service*, Report of consultations undertaken by HREOC, the Mental Health Council of Australia and the Brain and Mind Research Institute, available at http://www.humanrights.gov.au/disability_rights/notforservice/index.html.

commencement of work towards its development. HREOC urges co-ordination between the development of a national strategy on homelessness and the National Mental Health and Disability Employment Strategy.

125. HREOC also welcomes the government's commitment, within the framework of its Social Inclusion Agenda, to the development of a broader National Disability Strategy.
126. In view of the evidence referred to in the Green Paper of the scale of overlap between homelessness issues and mental health and disability issues, HREOC urges close co-ordination between the development of a national strategy on homelessness and of the National Disability Strategy. In each case these should integrate policy and strategy across areas and between levels of government.
127. HREOC welcomes the commitments noted in the Green Paper for additional funding specifically for community housing for people with disabilities. HREOC also notes however, that substantial additional provision of funding is required to address the needs and rights of those people with disability who require housing and related support.
128. HREOC notes the importance of addressing the specific needs of Indigenous people with mental health and disability issues in the context of homelessness.
129. It is important to integrate the homelessness strategy with other national strategies that address mental health concerns of Indigenous people. In particular the homelessness strategy should be cognisant of:
 - *Aboriginal and Torres Strait Islander Social and Emotional Well-Being Framework*: this focuses on the need for a holistic and 'whole of life' approach to achieving the conditions for well-being. The Framework supports self-determination and recognises the impact of trauma, grief, loss, discrimination and human rights issues on the social and emotional well being of Aboriginal and Torres Strait Islander communities.⁷⁴

⁷⁴ Social Health Reference Group for National Aboriginal and Torres Strait Islander Health Council and National Mental Health Working Group, *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Well Being (2004–2009)*, available at

- *National Mental Health Plan 2003-2008*; this emphasises the need for partnerships between mental health services and Indigenous specific health services, with Aboriginal and Torres Strait Islander peoples taking a lead role.⁷⁵

130. There is currently no national data collection process that is able to provide accurate information on the incidence of mental health disorders among Indigenous people. The data currently collated is limited to hospitalisation reports for suicide, substance abuse and family and community violence alone. In 2006, 5% and 3% of all hospitalisations of Indigenous males and females respectively were for mental and behavioural disorders.⁷⁶

131. Despite the prevalence of mental health problems in Indigenous communities, there is a reported lack of response services available for Indigenous people. Government reports show that non-Indigenous models of mental health and ill-health have only limited application for Indigenous peoples: 74% of residents of discrete communities have inadequate access to visiting or resident mental health workers; Indigenous people have disproportionately low access to general practitioners and private medical specialists, such as psychiatrists, because of the cost of such services; and only 38% of Commonwealth funded Aboriginal Community Controlled Health Services have a dedicated mental health or social and emotional wellbeing worker.⁷⁷

132. The lack of available services to address mental health disorders experienced by Indigenous people makes them vulnerable to homelessness and social exclusion.

[http://www.health.gov.au/internet/main/publishing.nsf/Content/8E8CE65B4FD36C6DCA25722B008342B9/\\$File/wellbeing.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/8E8CE65B4FD36C6DCA25722B008342B9/$File/wellbeing.pdf).

⁷⁵ Australian Health Ministers, *National Mental Health Plan 2003–2008*, available at [http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/EE630ADE7F40F80FCA2572220002D081/\\$File/plan03.pdf](http://www.health.gov.au/internet/wcms/Publishing.nsf/Content/EE630ADE7F40F80FCA2572220002D081/$File/plan03.pdf).

⁷⁶ ABS, *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2008*, p111.

⁷⁷ Social Health Reference Group (2003), *Consultation Paper for the Development of the National Strategic Framework for Aboriginal and Torres Strait Islander Mental Health and Social and Emotional Well Being 2004-2009*, Office of Torres Strait Islander Health in the Commonwealth Department of Health and Ageing.

133. **Recommendation 16:** Consideration should be given to development and oversight through the Ministerial Council on housing of a national agenda on housing and people with disability including people affected by mental illness.

Accessibility

134. The preceding section has set out recommendations for actions in relation to people with disability including people affected by mental illness which HREOC considers should be taken in the interests of ensuring that measures to address homelessness are effective and consistent with Australia's international commitments on human rights. HREOC also wishes to highlight specific issues in relation to disability which in our view need to be addressed to ensure not only that measures to address homelessness are effective, but also that they are consistent with the requirements of federal law under the *Disability Discrimination Act 1992* (Cth).
135. HREOC welcomes the acknowledgment in the Green Paper of the need to address barriers for people with disability in access to accommodation and related services. HREOC recommends that this acknowledgment should be translated into more specific measures to address these barriers.
136. **Recommendation 17:** The Commonwealth government should ensure that:
- federal funding for construction of new housing or other accommodation is applied only to accessible facilities
 - state and territory governments similarly adopt universal access standards in construction of new public housing and any other accommodation facilities.

Immigration

137. Asylum seekers who seek refugee status in Australia and who are living in the community are particularly vulnerable to homelessness.

138. While refugees and asylum seekers represent only a small proportion of clients of housing assistance services, research has found that the unique circumstances of this group places a greater level of demand on their resources.⁷⁸
139. Risk factors of housing vulnerability amongst asylum seekers and refugees include:
- restricted eligibility to entitlements, such as Medicare and social security
 - settlement barriers, such as language problems
 - personal issues, such as survival of torture and trauma.⁷⁹

Restricted eligibility to entitlements

140. Asylum seekers are commonly granted bridging visas to enable them to remain in Australia while they apply for a substantive visa or make arrangements to leave Australia.
141. Bridging visas granted to asylum seekers often restrict the rights of the visa holder to work, receive social security, and access Medicare and the Pharmaceutical Benefits Scheme.⁸⁰ Restricted bridging visas are often granted to asylum seekers who come to Australia under a valid visa and wish to apply for a Permanent Protection visa, but do not lodge their application within 45 days of arriving in Australia.
142. Many asylum seekers on bridging visas are also ineligible for support through the Asylum Seeker Assistance Scheme (ASAS).⁸¹ The ASAS provides financial assistance, accommodation and healthcare to asylum seekers in financial hardship, unaccompanied minors or elderly people, parents with children under 18, and people who are unable to work due to disability, illness, torture or trauma.

⁷⁸ Hanover Welfare Services, *A New Country – But No Place to Call Home*, 2004, Melbourne, p45.

⁷⁹ Hanover Welfare Services, *A New Country*, p(xiv).

⁸⁰ Australian Government, Department of Immigration and Citizenship, *Fact Sheet 62 – Assistance for Asylum Seekers in Australia*, available at <http://www.immi.gov.au/media/fact-sheets/62assistance.htm>.

⁸¹ Hanover Welfare Services, *A New Country*, p17; Hotham Mission, *Minimum Standards of Care for Asylum Seekers in the Community*, 2004, available at <http://www.asp.hothammission.org.au/index.cgi?tid=25> [10 June 2008].

However, eligibility for the ASAS ceases if a person seeks review of their application beyond the Refugee Review Tribunal.⁸²

143. As a result of these restrictions, many asylum seekers and refugees face poverty and homelessness. Without the ability to support themselves through work or social security, they are entirely dependent on community services for their basic subsistence. Research has also shown that these pressures can have negative effects on the physical and social well-being of asylum seekers, including anxiety, depression, mental health issues and family breakdown.⁸³
144. HREOC is concerned that conditions and restrictions attached to bridging visas may significantly impact on the ability of asylum seekers and refugees to exercise their basic human rights, including the right to work, the right to social security, the right to an adequate standard of living and the right to the highest attainable standard of health.⁸⁴
145. **Recommendation 18:** Asylum seekers living in the community should be granted work rights and access to Medicare. Those who are unable to work should be granted access to financial and medical assistance through the ASAS.

Settlement barriers

146. Barriers to settlement have been shown to contribute to levels of poverty and housing vulnerability amongst asylum seekers and refugees in Australia. As a result of language difficulties, lack of knowledge about services, lack of community connections and support networks, and torture and trauma issues, many asylum seekers are socially isolated and unable to seek assistance.⁸⁵
147. Children and young people seeking asylum in Australia have been found to be at even greater risk of homelessness due to their distinct needs that must be

⁸² Department of Immigration and Citizenship, *Fact Sheet 62*.

⁸³ Network of Asylum Seeker Agencies Victoria, *Seeking Safety, Not Charity: A report in support of work-rights for asylum-seekers living in the community on Bridging Visa E*, 2005, pp27-30.

⁸⁴ ICCPR, articles 6; ICESCR, articles 9, 11, 12; CRC, articles 22, 24, 26, 27; CERD, article 5(e).

⁸⁵ Hanover Welfare Services, *A New Country*, pp26-31.

addressed independently of their family or carers' needs.⁸⁶ Many young people have had limited or disrupted schooling, they may come to Australia alone or in the care of someone unfamiliar to them, and there may be significant religious and cultural barriers that prevent them from taking advantage of available services.⁸⁷

148. **Recommendation 19:** Services for assisting settlement of asylum seekers and refugees should be improved and expanded, including further language support, health and education services, and free information and advice about housing and settlement issues and special assistance for children.

Welfare payments

149. HREOC notes the recognition in the Green Paper of the potential of 'breaching' regimes and former provision for suspension of social security payments for eight week periods, to render disadvantaged people (and in some cases their families) homeless or put their housing at risk.
150. Access to welfare benefits can be an important means of preventing homelessness and related social exclusion.
151. However, conditions in the current welfare regime often prevent people from accessing vital welfare benefits and leaving them vulnerable to homelessness.
152. The Social Policy Research Centre has found that up to 30% of those faced with an eight-week no payment penalty can lose their accommodation. This is significant given the high numbers of people being subjected to the eight-week no payment penalty. The Welfare Rights Network has reported that a total of 40 868 of these penalties have been applied since the commencement of 'Welfare to Work'.⁸⁸ Startlingly, in northern Australia, 68% of those who lost all social security payments for eight weeks were Indigenous people, and in Western

⁸⁶ Drummond, S., 'Homeless Twice: Exploring Resettlement and Homelessness for Refugee Young People', *Parity*, vol 14, issue 1, 2001, pp10-11.

⁸⁷ Drummond, 2001, pp10-11.

⁸⁸ Raper, M., 'Social Security, homelessness and participation: Summary of address given at Green Paper Roundtable', National Welfare Rights Network, Sydney, 28 March 2008.

Australia, 29% of those who lost payments for eight weeks were Indigenous people.⁸⁹

153. In addition, homeless people are not categorised as being ‘exceptionally vulnerable’ within certain components of the welfare regime, thus preventing them from accessing specific benefits for vulnerable people. For example, within the current penalty regime, there is a Financial Case Management (FCM) system to give some people who lose their payments for eight weeks access to an equivalent weekly amount paid directly on their behalf for ‘essential expenses’ such as food. However, under the rules for the case management system, homeless people are not considered ‘exceptionally vulnerable’ and therefore unable to avail themselves of this interim assistance.⁹⁰
154. Similarly, the Crisis Payment available to people on a social security payment is limited to a number of defined ‘extreme circumstances’ – for instance, people just out of prison, experiencing domestic violence or on a qualifying humanitarian visa, is inadequate and insufficient to provide the level of assistance needed to prevent homelessness for people in even these few defined circumstances.⁹¹
155. **Recommendation 20:** There should be continued review of the impact of compliance measures in the social security system on people who by reason of mental health or other disability issues have particular difficulty in meeting social security compliance requirements.
156. **Recommendation 21:** Welfare regimes should be reviewed and amended to ensure that no welfare recipient is made vulnerable to homelessness as a result of a welfare penalty.

⁸⁹ Senate Standing Committee on Finance and Public Administration, Human Services Portfolio, Additional Estimates, February 2008, HS 22, Questions on Notice, cited in National Welfare Rights Network, Media Release, *New data uncovers massively increased level of eight week no payment penalties hit Indigenous Australians hardest*, 14 April 2008, Table1: Data on Indigenous penalties, available at <http://www.welfarights.org.au/Policy%20papers%20%20submissions/Gt3108.doc>.

⁹⁰ Raper, '2008.

⁹¹ Raper, 2008.

Appendix – Recommendations

157. **Recommendation 1:** The Commonwealth government should develop a national housing strategy. Addressing homelessness would be a key aspect of any housing plan. This strategy should be developed in consultation with people who are homeless or formerly homeless, people who are inadequately housed, and their representatives.
158. **Recommendation 2:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to provide for a right, to be progressively realised, to emergency housing and related services for those defined as homeless.
159. **Recommendation 3:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to include national standards providing that housing under the Act must be adequate.
160. **Recommendation 4:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to ensure that forced eviction from SAAP accommodation is a measure of last resort.
161. **Recommendation 5:** The Commonwealth government should encourage and facilitate a review of state and territory residential tenancy laws in order to ensure compliance with international human rights standards, including protection from forced evictions.⁹²
162. **Recommendation 6:** State and territory governments should be encouraged to review and amend laws that disproportionately impact upon people experiencing homelessness, such as public drinking laws and public sleeping laws, to ensure that fundamental human rights are protected.⁹³
163. **Recommendation 7:** The government’s homelessness strategy should be fully integrated with the development of the National Plan on Reducing Violence against Women and Children.

⁹² This recommendation was also made in the *Report of the Special Rapporteur*, para 131.

⁹³ *Report of the Special Rapporteur*, para 132.

164. **Recommendation 8:** The government's homelessness strategy should incorporate strategies which address the particular vulnerability of women to homelessness due to poverty, and lack of economic security.
165. **Recommendation 9:** The SAAP funding framework should be amended to recognise children and young people as a specific client group so that designated funding can be provided for adequate child-specific services.
166. **Recommendation 10:** The *Supported Accommodation Assistance Act 1994* (Cth) should be amended to incorporate the best interests of the child as a principle guiding both the development of SAAP policy and the delivery of homelessness services that affect children.
167. **Recommendation 11:** The Commonwealth government should coordinate the development of a national care and protection policy to ensure that children at risk of homelessness are given prioritised support.
168. **Recommendation 12:** Indigenous community programs and services that provide accommodation and support for Indigenous children at risk should be identified and supported.
169. **Recommendation 13:** The work of the National Joint Policy Commission on Indigenous Housing should be integrated with the strategies targeting homelessness to ensure a comprehensive national approach to Indigenous housing and homelessness.
170. **Recommendation 14:** Indigenous community services to provide accommodation support and assistance for Indigenous women and children experiencing family violence should be supported, and mainstream SAAP services should be adequately resourced to meet the specific needs of Indigenous women and children.
171. **Recommendation 15:** Adequate and culturally appropriate accommodation support services should be provided to Indigenous people exiting prison or juvenile justice facilities and bail support accommodation should be made available, especially in rural areas.

172. **Recommendation 16:** Consideration should be given to development and oversight through the Ministerial Council on housing of a national agenda on housing and people with disability including people affected by mental illness.
173. **Recommendation 17:** The Commonwealth government should ensure that:
- federal funding for construction of new housing or other accommodation is applied only to accessible facilities
 - state and territory governments similarly adopt universal access standards in construction of new public housing and any other accommodation facilities.
174. **Recommendation 18:** Asylum seekers living in the community should be granted work rights and access to Medicare. Those who are unable to work should be granted access to financial and medical assistance through the ASAS.
175. **Recommendation 19:** Services for assisting settlement of asylum seekers and refugees should be improved and expanded, including further language support, health and education services, and free information and advice about housing and settlement issues and special assistance for children.
176. **Recommendation 20:** There should be continued review of the impact of compliance measures in the social security system on people who by reason of mental health or other disability issues have particular difficulty in meeting social security compliance requirements.
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