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**A NATIONAL QUALITY FRAMEWORK TO SUPPORT QUALITY SERVICES FOR  
PEOPLE EXPERIENCING HOMELESSNESS**

**SUBMISSION TO THE HOMELESSNES WORKING GROUP, DEPARTMENT OF  
FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGNEOUS AFFAIRS,  
(FaHCSIA) DISCUSSION PAPER 2010**

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## **About the Victorian Aboriginal Legal Service Co-operative Limited (VALS)**

The Victorian Aboriginal Legal Service was established as a community controlled Co-operative Society in 1973 to address the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. VALS plays an important role in providing referrals, advice, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Solicitors at VALS specialise in one of three areas of law, being criminal law, family law and civil law. VALS maintains a strong client service focus which is achieved through the role of Client Service Officer (CSO), acting as a bridge between the legal system and the Aboriginal and Torres Strait Islander community.

VALS is actively involved in community legal education, research and advocacy around law reform and policy development. VALS strives to:

- a) Promote social justice for Aboriginal and Torres Strait Islander peoples;
- b) Promote the right of Aboriginal and Torres Strait Islander peoples to empowerment, identity and culture;
- c) Ensure that Aboriginal and Torres Strait Islander peoples enjoy their rights, are aware of their responsibilities under the law and have access to appropriate advice, assistance and representation;
- d) Reduce the disproportionate involvement of Aboriginal and Torres Strait Islanders in the criminal justice system; and
- e) Promote the review of legislation and other practices which discriminate against Aboriginal and Torres Strait Islander peoples.

## Introduction

The homeless population often experience multiple forms of disadvantage, social exclusion, stigmatisation, discrimination and criminalisation. For Aboriginal and Torres Strait Islander members of this population, these adversities are amplified. Well documented is the data concerning the state of homelessness and risk of homelessness for the Aboriginal and Torres Strait Islander population, such as the following:

- Aboriginal and Torres Strait Islander people are over-represented in the homeless population.
- Overcrowding in Indigenous housing is an additional cause of homelessness.
- The rate of homelessness for Aboriginal and Torres Strait Islander people is significantly higher than for non-Indigenous Australians. Aboriginal and Torres Strait Islanders make up 9% of the homeless population and 18% of SAAP clients across Australia.<sup>1</sup> More than a quarter of accompanying children in SAAP were of Aboriginal and/or Torres Strait Islander origin.<sup>2</sup>
- Homelessness is an issue for Aboriginal and Torres Strait Islander people living in both urban and remote areas. In 2003, Indigenous people comprised 10% of clients in specialist homelessness services in urban areas, 21% in regional areas, and 71% in remote areas. Both urban and remote Indigenous people cited domestic and family violence as the most common reason for seeking SAAP assistance.
- Aboriginal and Torres Strait Islander clients were less likely to name accommodation difficulties as their reason for seeking support, but were twice as likely to cite overcrowding as a reason for seeking help.<sup>3</sup>
- Eviction was a more common reason for accessing a specialist homelessness service for Indigenous people in urban and rural areas than for Indigenous people in remote areas.<sup>4</sup>

For some of VALS' clients, homelessness is a result of contact with the criminal justice system. For others, contact with the criminal justice system is in part a result of homelessness. VALS therefore welcomes the opportunity to comment on the Discussion Paper for the National Quality Framework (NQF) for people experiencing homelessness. In response to the NQF to support quality services for people experiencing homelessness Discussion Paper, VALS will argue the following:

- That the inquiry to refer to the 20 human rights-based recommendations of the Public Interest Law Clearing House's (PILCH) homelessness submission (2008) (see Appendix A) as they are strongly aligned with the NQF's key characteristic to be considered for quality service provision ('rights based, ethical and equitable': page 4, point 3).

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<sup>1</sup> Australian Bureau of Statistics (2008) *Health and welfare of Australia's Aboriginal and Torres Strait Islander peoples, 2008*, Canberra: Commonwealth of Australia, Australian Bureau of Statistics.

<sup>2</sup> Australian Institute of Health and Welfare (AIHW) (2008) 'Homeless people in SAAP: SAAP National Data Collection annual report' *SAAP NDCA report series 12*.

<sup>3</sup> AIHW (2008) op cit.

<sup>4</sup> SAAP NDCA data 2003–04 (unpublished table) in Homelessness Taskforce, Department of Families, Housing, Community Services and Indigenous Affairs (2008) *The Road Home: A National Approach to Reducing Homelessness*, Canberra: Commonwealth of Australia.

- The unique needs of Aboriginal and Torres Strait Islander peoples living in different parts of Australia must be taken into account.
- It should be noted that the way homelessness is understood by homeless Aboriginal and Torres Strait Islander people often differs from that of Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islanders.
- For Aboriginal and Torres Strait Islander people, life circumstances that impel them into homelessness often flow from a lack of suitable housing, substance misuse, violence, jail time, unemployment, family conflict, cultural responses to death and removal of children by welfare services.
- A NQF for support services for people experiencing homelessness must recognise the need to provide outreach before a homeless person's behaviour in a public space becomes a "criminal" issue.
- The NQF must look at supporting services that aim to help prevent or remove the instance of homelessness or risk of homelessness at the point of bail; pre-release from prison and post-release from prison (i.e. reintegration).
- Stable, socially supported housing is clearly associated with staying out of prison and increased social integration. Stable accommodation can become hard to obtain because on release, ex-prisoners do not have the financial means to secure private housing, or may be ineligible for priority public housing.
- There is a need to move away from crisis based responses to approaches addressing all stages of homelessness and risk.
- NQF must support services that prevent homelessness in the case of family and domestic violence such as women children's emergency accommodation. There is also a need to address the impact of the removal of men from their homes and the required availability of appropriate accommodation.
- VALS advocates that a critical element missing from *Closing the Gap* initiatives is the recognition of the broad spectrum impacts that contact with the criminal justice system has on almost all areas of a person's life. VALS therefore argues for the inclusion of concerns around the high level of Aboriginal and Torres Strait Islander contact with the criminal justice system to be included to the *Closing the Gap* platform. This is relevant to the policy context that the NQF must operate within.
- Some examples of how Aboriginal and Torres Strait Islander Peoples can be targeted are to:
  - a. Recognise that there is need for both Aboriginal and Torres Strait Islander specific services *and* mainstream services (not one or the other);
  - b. Regardless of whether mainstream services are the only service option they should be culturally sensitive and Governments should ensure that mainstream services have the capacity to do this.

- c. Ensure Aboriginal and Torres Strait Islander community involvement. This last point goes to the Discussion Paper's question of what is quality service provision.

## A Human Rights Approach

In their *Righting the Wrongs of Homelessness* submission in response to the Australian Federal Government's Green Paper *Which Way Home?*, the Public Interest Law Clearinghouse's (PILCH) Homeless Person's Legal Clinic state that 'homelessness is not just an issue about housing; it is a matter of ensuring that the human rights of *all* individuals are adequately protected and promoted:

*In Australia, people experiencing homelessness are subject to multiple and intersectional human rights violations including, violations of the right to dignity and respect, the right to participation, the right to liberty and security, the right to freedom from cruel, inhuman or degrading treatment, the right to freedom from discrimination, the right to privacy, the right to social security, the right to the highest attainable standard of health and, of course, the right to adequate housing. In particular these violations include that homeless people are not able to adequately exercise their right to vote; that they are regularly discriminated against on the basis of their homelessness; that they are regularly forced to accept inadequate and inappropriate accommodation in preference to living on the streets (2008:2).*

VALS urges the current inquiry to refer to the content and 20 recommendations of the above mentioned PILCH submission (see Appendix A) as they are strongly aligned with the NQF's key characteristic to be considered for quality service provision ('rights based, ethical and equitable': page 4, point 3).

The UN Special Rapporteur on Adequate Housing noted in 2006 that that while the specific issues in the communities he visited can vary, the systemic problems are very similar across the country. These problems include, inter alia:

- The general housing conditions of Aboriginal and Torres Strait Islander Peoples;
- Widespread lack of affordability creating a very large demand for affordable accommodation and public housing;
- Overcrowding;
- Homelessness;
- Inadequate and ageing public housing stock;
- Stigmatisation of people living in public housing;
- Waiting lists for public housing up to 10 years;
- Discrimination in accessing private housing, particularly rental accommodation (in particular for peoples receiving social benefits, Aboriginal and Torres Strait Islander peoples, low income households, households with children, women and people with disabilities);
- Lack of emergency and medium-term accommodations, including women's refuges and transitional housing;
- Lack of planning and interest in State policies for rural areas and their needs;

- Uncoordinated approach to the problem of adequate housing, and the lack of understanding of the various components of this right;
- Lack of secure tenure for tenants in both public and private rental accommodation; and
- Lack of appropriate redress mechanisms.

It is clear that a holistic approach is needed to address the composite hardships and barriers to safety, health, social inclusion and rights for the homeless population as part of a NQF.

## Response to the Discussion Paper

VALS acknowledges the recent report *Indigenous homelessness* commissioned by the Australian Housing and Urban Research Institute (AHURI) that seeks to compare the understandings of Aboriginal and Torres Strait Islander homelessness held by Aboriginal and Torres Strait Islander homeless people, and those providing services to homeless Aboriginal and Torres Strait Islander peoples.<sup>5</sup> It offers an analysis of the relationship between homelessness, household overcrowding and mobility patterns in the context of Aboriginal and Torres Strait Islander cultures. VALS notes the following key report findings as relevant to the formulation of a NQF:

- The way homelessness is understood by homeless Aboriginal and Torres Strait Islander people often differs from that of Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander practitioners. For example, practitioners place great emphasis on the way in which life circumstances in general interact with structural features in the wider society (i.e. ‘their concern is the degree to which structural features of government and departmental policy, agency practice, the Australian economy and the available facilities either hinder or help Indigenous people to exit the homeless state’).<sup>6</sup>

In contrast, the primary concern of homeless Aboriginal and Torres Strait Islander people was found to be the way in which their own specific life circumstances impel them into “the homelessness state” and thereby put them in the path of institutions that:

- 1) raise conflicts between themselves and their own social world; and
- 2) prevent them from exiting the homeless state.

For Aboriginal and Torres Strait Islander people, life circumstances that push them into homelessness often flow from a lack of suitable housing, substance misuse, violence, jail time, unemployment, family conflict, cultural responses to death and removal of children by welfare services.

- Evidence suggests that the most disadvantaged people from Aboriginal and Torres Strait Islander society with regard to accessing housing are Aboriginal and Torres Strait Islander men from remote communities.<sup>7</sup>
- There is a failure of pre-release services.

*If, when the man goes to prison, the various support services which are supposed to operate within the prison do not reach him for various reasons, then upon his release from gaol, he may be destitute, have no legal identification, and be homeless. His partner and children may have had to move on if they were evicted when the rent was not paid, and he must now apply for housing as a single man. He finds himself well down the list of*

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<sup>5</sup> Birdsall-Jones C, Corunna V, Turner N, Smart G and Shaw W (2010) *Indigenous homelessness* Western Australia Research Centre: Australian Housing and Urban Research Institute.

<sup>6</sup> Ibid, p. 7.

<sup>7</sup> ‘There exists a division of responsibility and associated knowledge in Indigenous society according to which housing becomes a woman’s responsibility. Indigenous tradition-oriented men feel shamed if they have to act on their own behalf to obtain housing. This is partly because they associate it with women’s work, and partly because they have only a very limited understanding of how to go about the process of obtaining housing from the public housing provider. This may be one of the reasons that men are apparently better represented among the primary homeless particularly in the north of the state.’ Ibid, p. 8.

*prioritised applicants for housing. If unsupported, this man will certainly be homeless for at least 18 months and during this time he may return to a cycle of drug and alcohol abuse, and potential recidivism. His drug and alcohol issues, and the loss of his partner and children, are a matter of life circumstance, but the effect of these circumstances have been exacerbated by the collective failures of practice, of poor policy follow-through, and a lack of housing fallback facilities such as a hostel or halfway house. Together these act to shape his life circumstances in less than appropriate ways.*<sup>8</sup>

Following prison, there are also reintegration issues. ‘Arrangements are often not made for reintegration into the community by way of supported housing, counselling, or education and training. With no other particular goals, and no means of ongoing support, the released prisoner or rehabilitated addict might return to the lifestyle they led prior to prison or rehabilitation. As well as a renewal of drug and alcohol dependency, one of the results of this is often homelessness.’<sup>9</sup> Issues around homelessness as they relate to the criminal justice system will be discussed later in this submission.

### Target urban, rural and remote

It is important that the unique needs of Aboriginal and Torres Strait Islander peoples living in different parts of Australia are taken into account. The needs of one population set should not be met at the expense of the other. For instance, the *Living in the Sunburnt Country: Indigenous Housing – Findings of the Review of the Community Housing and Infrastructure Programme Final Report* (2007) appeared to redefine the Community Housing and Infrastructure Programme (CHIP) as only applying to people who live in areas classified as remote (10% of the Aboriginal and Torres Strait Islander population).<sup>10</sup> This in effect meant geographic exclusion of urban and rural Aboriginal and Torres Strait Islander peoples (almost three quarters 74% of Aboriginal and Torres Strait Islander peoples). Urban Aboriginal and Torres Strait Islander peoples were expected to access mainstream services in light of the funding shift from urban areas to remote areas.

In all jurisdictions, the rate of homelessness was found to be significantly higher in the Aboriginal and Torres Strait Islander population than in the non-Aboriginal and Torres Strait Islander population. The disparity was highest in Victoria, where the rate of Aboriginal and Torres Strait Islander homelessness was 5.1 times that of non-Aboriginal and Torres Strait Islander homelessness.<sup>11</sup>

Some examples of how Aboriginal and Torres Strait Islander Peoples can be targeted are to:

- Recognise that there is need for both Aboriginal and Torres Strait Islander specific services *and* mainstream services; not one or the other. It is pleasing to see the Discussion Paper giving attention to this issue (p. 5). VALS is critical of mainstreaming because it removes the choice between using an Aboriginal and Torres Strait Islander service or mainstream service. A person of Aboriginal or Torres Strait Islander descent might use the former service in order to

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<sup>8</sup> Ibid, p. 20.

<sup>9</sup> Ibid.

<sup>10</sup> Price Waterhouse Coopers (2007) *Living in the Sunburnt Country. Indigenous Housing: Findings of the Review of the Community Housing and Infrastructure Program. Final Report* Department of Families, Community Services, and Indigenous Affairs

[www.facsia.gov.au/sa/indigenous/pubs/housing/LivingSunburntCountry/Documents/LivingSunburntCountry.pdf](http://www.facsia.gov.au/sa/indigenous/pubs/housing/LivingSunburntCountry/Documents/LivingSunburntCountry.pdf) [accessed 15th March 2010].

<sup>11</sup> Australian Institute of Health and Welfare ‘Indigenous Housing Needs: A Multi-Measure Needs Model’, 2005, p421 as at <http://www.aihw.gov.au/publications/hou/ihn05/ihn05.pdf>

be assured of a culturally sensitive service and one might use the latter service because they know a worker at the Aboriginal and Torres Strait Islander service and desire privacy.

Regardless of whether mainstream services are the only service option (i.e. mainstreaming), they should be culturally sensitive and the Government should ensure that mainstream services have the capacity to do this (see next point). The reception of Aboriginal and Torres Strait Islander Peoples at mainstream services is crucial and if the service is not culturally sensitive then Aboriginal and Torres Strait Islander Peoples are unlikely to return to the service. The following quote elaborates on the lack of access to mainstream agencies and the lack of trust of mainstream services: "... they don't like working with Indigenous people. Sometimes I think they don't want to help, don't want to or can't, can't relate to who we are and the way we are".<sup>12</sup> Extensive research exists that documents how mainstream services do not deliver culturally appropriate services (see Campbell & Goodall, 1999; Coleman, 2000; Finlayson, 1997; Grundy, Tyrell & Wakerman, 2001; McMichael et al., 2000; Keys Young, 1998).<sup>13</sup>

- Ensure Aboriginal and Torres Strait Islander community involvement. One of the factors for the limits of the Howard Government and Rudd Government's Northern Territory Intervention in relation to housing is that it was imposed upon Aboriginal and Torres Strait Islander peoples without their involvement. Now remote housing workers are quitting their jobs in disgust at the "waste of money and mismanagement of Indigenous housing programs".<sup>14</sup> One worker was quoted in the Northern Territory media as saying when she complained that her "job that didn't really exist" she was told she had a "negative attitude". She said "It made me ill, it really made me ill...We were all soaking up wages, feeling bloody guilty about it".<sup>15</sup> The workers also said they supported MLA Alison Anderson's stand on housing, calling it "ludicrous" that \$672 million might only deliver 300 houses.<sup>16</sup> History dictates that such approaches are not effective as it is not conducive to Aboriginal and Torres Strait Islander community acceptance and is counterproductive as Aboriginal and Torres Strait Islander peoples are experts on issues that affect them.

This last point goes to the Discussion Paper's question of what is quality service provision. At point 4 (page 4), a key characteristic to be considered as a starting point for quality service provision is one that 'enables the client to participate in the decision making process and supports them to make their own decisions and achieve goals'.

### *Homelessness and the criminal justice system*

The following section aims to highlight the complex nature of problems to be addressed by the NQF for homelessness services as well as show that one of the areas that cannot be divorced from this consideration involves the criminal justice system.

Between 1999 and 2006, 24,936 police detainees were surveyed as part of the Australian Institute of Criminology's Drug Use Monitoring in Australia (DUMA) program. Of these:

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<sup>12</sup> Cooper L, Morris M (2005) 'Sustainable tenancy for Indigenous families: what services and policy supports are needed?' Australian Housing and Urban Research Institute, Southern Research Centre, p. 39.

<sup>13</sup> Cooper and Morris (2005) op cit, p 5

<sup>14</sup> Langford, B (2009) 'Remote Housing Workers' Disgust' *The Northern Territory News*, 24th August at [www.ntnews.com.au/article/2009/08/24/78101\\_ntnews.html](http://www.ntnews.com.au/article/2009/08/24/78101_ntnews.html)

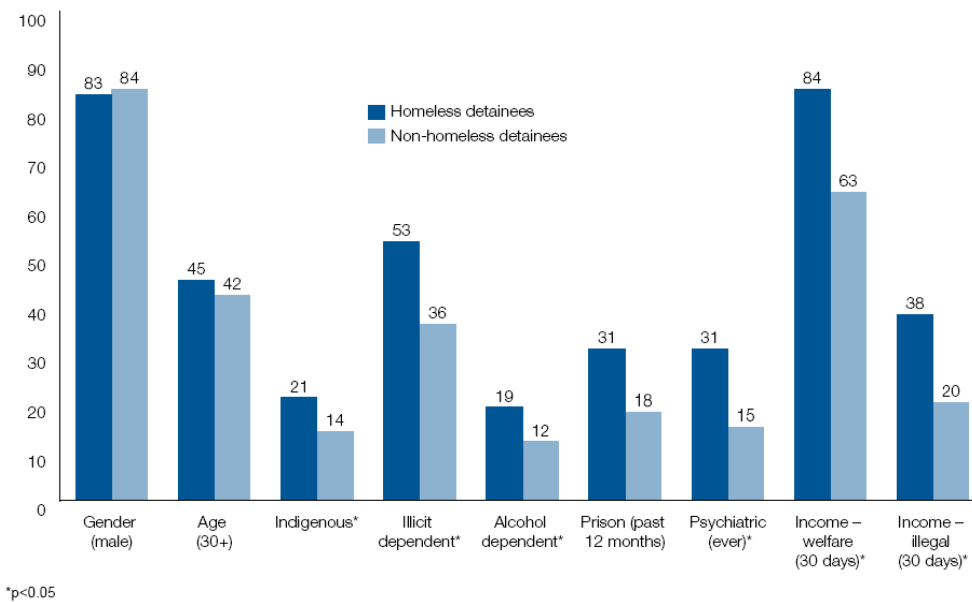
<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

- 1,689 detainees (7%) reported living on the street, having no fixed address or living in crisis accommodation at the time of their apprehension. Although representing only a small number of the overall police detainee population, the homeless, compared with their non-homeless counterparts, were similar in gender and age, more likely to identify as an Aboriginal or Torres Strait Islander person and more likely to report key risk factors.
- Around one in three (31%) had spent some time in prison in the 12 months prior to their arrest. This compared with only 18% of non-homeless detainees.
- Homeless detainees were more likely than non-homeless detainees to report recent and frequent use, as well as dependence on either illicit drugs (53% vs. 36%) or alcohol (19% vs. 12%).
- While more than half of all police detainees sourced income from welfare payments in the 30 days preceding their arrest, homeless detainees were more likely than non-homeless detainees to do so (82%) and more likely to report generating income from illegal activities (38% vs. 20%) such as property offences, prostitution and drug-related crimes.
- Overall, the DUMA data indicates that homeless people who come into contact with the criminal justice system have a complex set of risks and needs, many of which might underlie their current criminal offending patterns as well as their future propensity to reoffend.<sup>17</sup>

The data from this research is made strikingly clear in the visual representation below.

**Table 1: Characteristics of police detainees by homelessness (percentage)**



Source: DUMA 1999-2006, AIC [computer file] in AIC (2008)

The majority of prisoners released for custody are eventually re-incarcerated due to failures at “rehabilitation” during their prison term and are as a result less likely to integrate into society once released from prison. “The prison treadmill is socially and financially very expensive for the ex-

<sup>17</sup> Australian Institute of Criminology (2008) ‘Homelessness, drug use and offending’ *Crime Facts Info* No. 168:1-1.

prisoner and society, and thus finding out how to increase an ex-prisoner's chances of making a successful transition is highly desirable'.<sup>18</sup> Housing is a crucial factor in prison releasees making a successful transition from prison back into society.

Research by Baldry et al (2003) found that significant associations existed between: returning to prison and being homeless; not having accommodation and support; being of Aboriginal and Torres Strait Islander descent; and being a woman. Significant associations were shown between staying *out* of prison and: not moving at all or moving only once in a three month period; having employment; and for those that had support and contact with agencies, that contact was assessed by participants in a positive light.<sup>19</sup>

Of note is the research finding that Aboriginal and Torres Strait Islander participants, especially women, fared the worst in finding suitable accommodation and staying out of prison: 'The institutional barriers to their progress appear enormous'.<sup>20</sup>

This research concluded that stable, socially supported housing was clearly associated with staying out of prison and increased social integration. Not having housing was associated with slipping back into transitory life style, problematic drug use and being re-arrested and re-incarcerated. In terms of policy implications, the research report results support that (inter alia):

- Each and every prisoner have a trained case worker for housing, personal and advocacy prior to and post-release;
- Up-to-date and accurate release and post-release information be provided prior to release;
- A multi-agency team approach be taken;
- A continuum of supported housing be developed;
- Support to parents and other family members of ex-prisoners be available;
- Stable housing be established for releasees for the outset;
- Specialised Aboriginal and Torres Strait Islander women's post-release support housing be established;
- Holistic strengths-based (rather than deficit based) post-release programs be established; and
- Bail houses be established.

VALS also acknowledges the research finding that a geographical concentration of ex-prisoners in cumulatively disadvantaged suburbs and towns was very marked. There are therefore implications for housing and other authorities and services to build community strengths in these areas. This idea is very closely aligned with the idea of "Justice Reinvestment" as outlined in the 2009 *Social Justice Report* of the Australian Human Rights Commission.<sup>21</sup>

### Public Space

It has previously been documented that the imposition of essentially non-Aboriginal and Torres Strait Islander standards of public behaviour are resultant of increased police activity in relation to public behaviour (Cunneen 1999).<sup>22</sup> This concern highlights a failure to consider Aboriginal and Torres Strait

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<sup>18</sup> Baldry E, McDonnell D, Maplestone P and Peeters M (2003) *Ex-prisoners and accommodation: what bearing do different forms of housing have on social reintegration?* RMIT NATSEM Research Centre for the Australian Housing and Urban Research Institute.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, p. ii.

<sup>21</sup> [www.hreoc.gov.au/social\\_justice/sj\\_report/sjreport09/pdf/sjr\\_2009\\_web.pdf](http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/pdf/sjr_2009_web.pdf)

<sup>22</sup> This is commonly referred to as "Zero Tolerance Policing".

Islander peoples use of open space as *cultural* space. Where there is concentration on policing of street offences, coupled with the increased surveillance of public places, it is understandable that many Aboriginal and Torres Strait Islander people will perceive such actions as aimed directly to their specific use of public space.

A further example of the potential impact of increased surveillance activity on the Aboriginal and Torres Strait Islander community is in relation to public drunkenness. It is an offence to be drunk in a public place in Victoria. VALS has previously argued, and continues to argue, that legislation that allows for drunken people to be locked up because the occurrence exists out in the open, or what is deemed “public space”, is implemented in a manner towards Aboriginal and Torres Strait Islander peoples that is indirectly discriminatory. There lies an assumption that individuals using the public space when consuming alcohol have access to an alternative space (i.e. appropriate housing/public housing) that would render their behaviour legal. It can therefore be argued that by removing a person’s state of homelessness, there is a increased likelihood that contact with the criminal justice system will be reduced.

Consequences for the same behaviour are based on whether the drunkenness is visible or behind closed doors and under a roof in a *private* space. The reality is that much of what is considered public space by councils and law enforcement is considered cultural space by others such as some members of the Aboriginal and Torres Strait Islander community and the homeless community.

When considering that in October 2002, custody incidents were 17 times more likely to involve Aboriginal and Torres Strait Islander peoples than non-Aboriginal and Torres Strait Islander peoples and 19% of all Aboriginal and Torres Strait Islander people’s custody incidents were for public drunkenness compared with eight percent of all non-Aboriginal and Torres Strait Islander peoples (Taylor and Bareja 2005), it is clear that this is a significant issue.

*The increased commercialisation, regulation, privatisation and policing of public spaces in which many homeless people congregate, particularly young people and indigenous people, can violate an individual’s rights to public space and freedom of association. This constitutes a barrier to radical change in the public perception of homelessness and people experiencing homelessness (PILCH Homeless Person’s Legal Clinic 2008:21).*

The PILCH Homeless Person’s Legal Clinic equally recognises how public space laws have the effect of criminalising poverty and homelessness in addition to disproportionately impacting upon homeless people they do nothing to address the root of the problem which is clearly poverty and lack of adequate housing and income (2008).

*Many of the findings of this research challenge the way in which homelessness is constructed and defined, and consequently the way homelessness is responded to as an issue in the public sphere and the policy arena. The historical tendency to construct homelessness as a dangerous state threatening to the social order, and homeless people as outsiders...Reactive policing focusing on removal responses frequently does little else than move a perceived problem to another area, where the same issues persist. In place of reasoned and articulated policy regarding the use of public space, police must accept the role of de facto negotiators of public space issues.<sup>23</sup>*

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<sup>23</sup> Coleman (2001:176-177) in Memmott, Long and Chambers (2003) *A National Analysis of Strategies Used to Respond to Indigenous Itinerants and Public Place Dwellers* Prepared for the Commonwealth National Homelessness Strategy, Commonwealth of Australia  
[http://fahcsia.gov.au/sa/housing/pubs/homelessness/nas\\_itinerants\\_dwellers/Documents/IIPPD.pdf](http://fahcsia.gov.au/sa/housing/pubs/homelessness/nas_itinerants_dwellers/Documents/IIPPD.pdf)

A VALS Criminal Law Solicitor expressed her major concern in regards to our clients experiencing homelessness or risk of homelessness:

*I think there needs to be more of an outreach component to existing housing services. Much seems to rest upon the person attending appointments, and for someone who is homeless and sleeping rough it is pretty hard to keep track of dates and times. Missing appointments obviously delays assessments and progress in terms of finding accommodation. I say this particularly following the experience with a client who has been homeless for months, has issues with substance use, and either misses his appointments or attends them whilst substance affected. This person has mostly been sleeping in parks since at least October last year and probably longer.*

A NQF to support services for people experiencing homelessness must recognise the need to provide outreach before a homeless person's behaviour in a public space becomes a "criminal" issue. The link between Victoria's public space and public drunkenness laws and homelessness and Aboriginal and Torres Strait Islander people's use of public space must be considered when supporting services that address problems arising from homelessness.

### Bail

The NQF must also look at supporting services that aim to help prevent or remove the instance of homelessness or risk of homelessness at the point of bail. According to VALS' solicitors, homelessness is a factor in bail being denied to their clients. The high rate of Aboriginal and Torres Strait Islander persons on remand is indicative of this. In the June quarter of 2005 the remand rate for Aboriginal and Torres Strait Islander Victorians was approximately 15 times higher than for non-Aboriginal and Torres Strait Islander Victorians.

In 2007 the proportion of prisoners on remand was 22% of the entire prison population (ABS, 2007). Because of the increase in the numbers of people on remand, there has been an increased interest in bail support programs for Indigenous and non-Indigenous people as a viable alternative to remand.<sup>24</sup> Bail support includes services, interventions or other supports that are specifically designed to assist a person to complete their bail period successfully. Whether these programs are entered into voluntarily or are mandated as a condition of bail, they aim to provide a magistrate with and police with a viable alternative to remand or incarceration.<sup>25</sup>

Gabrielle Denning-Cotter (2008) notes the philosophy behind the Scottish model of juvenile justice that defines the nature of a young person's engagement with the criminal justice system as assuming that the behaviour is a result of unmet social and welfare needs and therefore provides programs to meet those needs. Therefore, best practice for bail support of young people must be synchronous with the United Nations' Convention on the Rights of the Child (CROC) that recognises the importance of diverting young people away from the criminal justice system and instead employ diversionary programs that:

- are available at all stages of the criminal justice system;
- are age appropriate;

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<sup>24</sup> Denning-Cotter G (2008) 'Bail Support in Australia' *Indigenous Justice Clearinghouse* Brief 2:1-8.

<sup>25</sup> Ibid. This is in addition to attempts to reduce re-offending while on bail and increase the court appearance rate.

- aim to reduce further conflict between the young person and the law; and (most important to the discussion at hand)
- promote the young person's reintegration and assuming a constructive role in society.<sup>26</sup>

The most significant obstacles facing young people in regards to being granted bail (and meeting bail conditions) are: access to appropriate accommodation; absence of a responsible adult/guardian; and access to after hours support services.<sup>27</sup> *The* most significant deficiency in bail support programs for young people in all States and Territories is the lack of available accommodation for young people. 'This is the single most significant factor associated with young people being remanded in custody'.<sup>28</sup> Victoria has a Central After-Hours Assessment and Bail Placement Service that aims to address the needs of young people after-hours, however this service does not have the funding to provide accommodation.<sup>29</sup>

The Koori Youth Bail Intensive Supervision Support program in Victoria aims to specifically target the overrepresentation of Aboriginal and Torres Strait Islander young people in remand. This is done by providing intensive support not only for the Aboriginal and Torres Strait Islander young person, but for their family also. There is still, however, a lack of Aboriginal and Torres Strait Islander specific programs and services with Aboriginal and Torres Strait Islander people being referred to non-Aboriginal and Torres Strait Islander specific programs. Because Aboriginal and Torres Strait Islander people are less likely than non-Aboriginal and Torres Strait Islander people to be diverted into programs due to lack of stable accommodation and/or other community supports, a viable option for diversion is not provided.<sup>30</sup>

Similarly, a research study into the psychological needs of court defendants in NSW found that the significant impediments to adults meeting bail requirements included a lack of support services to meet social needs, such as housing, and that adult bail support programs that address these difficulties are scarce.<sup>31</sup>

Principles of best practice for bail support services include, amongst other things, holistic and broad needs assessment and responses in addition to coordinated and interdepartmental efforts that are adaptable and responsive to local conditions.<sup>32</sup> VALS strongly advocates that the proposed NQF look at supporting services such as those mentioned above (and their counterparts in other jurisdictions) as way of assisting some of the most at-risk sections of the population away from homelessness.

### Reintegration

Reintegration is a process aimed to assist ex-prisoners to re-enter the community as individuals with capacity to overcome disadvantage and risk factors that lead to offending. Housing and homelessness must also be addressed at the point of re-entry into society following incarceration. Without support at this juncture, homelessness is more likely (as is the probability of reoffending and returning to prison).

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<sup>26</sup> Human Rights and Equal Opportunity Commission (HREOC) (2001) in Denning-Cotter (2008) op cit.

<sup>27</sup> Denning-Cotter (2008) op cit.

<sup>28</sup> Ibid, p. 5.

<sup>29</sup> This program operates in the metropolitan regions around Victoria and can only offer phone assessment for people in rural and remote areas (as at 2008).

<sup>30</sup> Denning-Cotter (2008) op cit.

<sup>31</sup> Jones and Crawford (2007) in Denning-Cotter (2008) op cit.

<sup>32</sup> Ibid.

Willis and Moore's report on the reintegration of Aboriginal and Torres Strait Islander prisoners outlines how on re-entering the community, ex-prisoners can be preoccupied with finding housing in addition to searching for employment, supporting themselves and sometimes a family and re-establishing relationships.<sup>33</sup> The report also reveals that while also facing the same issues of violence, alcohol and other substance abuse that often led to offending in the first place, stakeholders emphasise the importance of developing programs in the community around the basic needs of ex-prisoners with a focus on homelessness.<sup>34</sup>

Willis and Moore state that the problems faced by ex-prisoners in returning to the community with little money or other resources are exacerbated for Aboriginal and Torres Strait Islander peoples. One stakeholder group consulted for the report noted that many Aboriginal and Torres Strait Islander prisoners receive very short sentences (14 days or less) which means that they are not entitled to a Centrelink on release, and are therefore faced with leaving prison in a destitute state.

There are many barriers to successful reintegration for Aboriginal and Torres Strait Islander ex-prisoners who have reduced opportunity to pursue non-offending lives due to entrenched and multifaceted disadvantage.

#### *Pre and post-release programs*

In 2008, the Link Out consortium was approached by Corrections Victoria to develop and implement a state-wide Aboriginal and Torres Strait Islander specific ex-offender support program. Konnect is a voluntary program for Aboriginal and Torres Strait Islander sentenced individuals who want help leaving prison. It is aimed at participants who are willing to work with an Aboriginal or Torres Strait Islander Case Manager pre and post-release in an attempt to address the issues that may have contributed to them being incarcerated.

The program expires in June 2010, whereby it is planned that the program will be transferred to Aboriginal and Torres Strait Islander services. Four Aboriginal or Torres Strait Islander Case Workers have been employed by Jesuit Social Services and VACRO and the Program Co-ordinator and Research Evaluation Officer are based at Australian Community Support Organisation. This program has commenced providing support to Indigenous prisoners and building partnerships with Indigenous services and communities. VALS sees this program as a key area for support to be considered under the NQF.

#### *Public housing*

Stable accommodation can become hard to obtain because on release, ex-prisoners do not have the financial means to secure private housing, or may be ineligible for priority public housing.<sup>35</sup>

#### *Prevention and Early Intervention: Moving away from crisis based responses to approaches addressing all stages of homelessness and risk.*

The Family Homelessness Prevention Pilot (FHPP) sought to intervene early to prevent families drifting into homelessness. It was hoped that while helping families gain the necessary resources to

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<sup>33</sup> Willis M and Moore J (2008) 'Reintegration of Indigenous prisoners' *Australian Institute of Criminology Research and Public Policy Series* No. 90:a-188.

<sup>34</sup> In addition to employment, poverty and family support.

<sup>35</sup> Social Exclusion Unit (2002) in Borzycki M and Baldry E (2003) 'Promoting integration: the provision of prisoner post-release services' *Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice* No. 262:1-6.

remain housed in the long term, the cost to families, individuals and the community would also be reduced. The pilot sites were designed as partnerships between non-government service providers and Centrelink in each state. Specifically, the pilot aimed to stabilise families' economic circumstances by addressing:

- employment, education and training circumstances;
- accommodation circumstances;
- health circumstances; and
- community participation and social engagement.

The pilot also aimed to:

- develop the capacity of families themselves by strengthening family relationships;
- re-establishing and strengthening family and community support networks;
- build strong relationships between key service delivery agencies;
- enhance local capacity building to respond more effectively to families;
- develop strategies to identify families at risk of homelessness; and
- facilitate the participation of diverse family groups including Aboriginal and Torres Strait Islander families.<sup>36</sup>

At the time of evaluation, the pilot had reached a significant number of Aboriginal and Torres Strait Islander peoples. 23% of all families helped had at least one Aboriginal and Torres Strait Islander adult member.<sup>37</sup> Interestingly, all of the pilot services helped a higher proportion of Aboriginal and Torres Strait Islander peoples than exist within the communities they serve. This is demonstrated in Table 2 below.<sup>38</sup>

**Table 2: Aboriginal and Torres Strait Islander representation among FHPP clients**

Site	Families with at least one A&TSI adult family member (ALL cases)		Families with at least one A&TSI adult family member (Closed cases)		A&TSI Australians within the service catchment area <sup>(a)</sup>
	N	%	N	%	%
Wyong NSW	12	20.7	8	20.5	2.0
Dandenong Vic	8	9.4	7	9.5	0.4
Beenleigh Qld	13	15.5	12	15.6	2.4
Mandurah WA	35	39.3	32	41.0	1.7
Launceston Tas	4	5.2	4	5.8	2.8
Belconnen ACT	4	4.9	4	5.5	1.0
Darwin NT	41	59.4	28	58.3	8.5
Salisbury SA	10	100.0	1	100.1	2.9

<sup>(a)</sup> Data are compiled for A&TSIC A&TSI areas/localities, so may not correspond exactly to FHPP catchments. In some cases there is a substantial number of people who have not stated A&TSI status, probably resulting in an underestimate.

Source: FaCS DB; ABS Population Distribution Aboriginal and Torres Strait Islander Australians 2001 Cat No 4705.0

<sup>36</sup> Ryan P and Merlo R (2005) *Family Homelessness Prevention Pilot: Final Evaluation Report* RPR Consulting [http://fahcsia.gov.au/sa/housing/pubs/homelessfamilies/fhpp/Documents/FHPP\\_Final\\_Report.pdf](http://fahcsia.gov.au/sa/housing/pubs/homelessfamilies/fhpp/Documents/FHPP_Final_Report.pdf)

<sup>37</sup> This is a higher proportion of Aboriginal and Torres Strait Islander peoples that that use SAAP services (18% 2002-03), per Ryan and Merlo (2005) op cit.

<sup>38</sup> Ibid, p.15.

It is suggested that the significant proportion of families with Aboriginal and Torres Strait Islander members helped by the program could aid the development of more effective strategies to reduce Aboriginal and Torres Strait Islander homelessness. This is relevant to the Discussion Paper that considers a key starting point for quality service provision is enabling the client to participate in the decision making process and supports them to make their own decisions and achieve goals (page 4, point 4).

The FHPP Pilot also highlighted that while many of the experiences and circumstances of families using the pilot services are similar, Aboriginal and Torres Strait Islander families differ significantly in many respects such as follows. These differences need to be considered in the NQF in supporting services that support Aboriginal and Torres Strait Islander clients.

**Table 3: Comparison of characteristics of A&TSI and non-A&TSI families helped under FHPP, closed cases as at 30 June 2004**

<p>At the start of support, <b>non-A&amp;TSI families</b> were most likely to:</p> <ul style="list-style-type: none"> <li>• be single parents (66%)</li> <li>• be living in <b>private</b> rental housing before receiving support (49%)</li> <li>• have <b>two or fewer</b> children (71%)</li> <li>• have children under the age of 10 (82%), 72% of children in non-A&amp;TSI families being under the age of 10 and 41% being four years of age or under</li> <li>• be living on a total household income of \$449 per week or less (66%), with 14% living on less than \$300 per week</li> <li>• have moved <b>twice or more</b> in last two years (47%).</li> </ul>	<p>At the start of support, <b>A&amp;TSI families</b> were most likely to:</p> <ul style="list-style-type: none"> <li>• be single parents (63%)</li> <li>• be living in <b>public or community</b> rental housing before receiving support (43%)</li> <li>• have <b>two or more</b> children (63%)</li> <li>• have children under the age of 10 (85%), with 69% children in A&amp;TSI families being under the age of 10 and 40% being four years of age or under</li> <li>• be living on a total household income of \$449 per week or less (64%), with 20% living on less than \$300 per week</li> <li>• have moved <b>three times or more</b> in the last two years (55%).</li> </ul>
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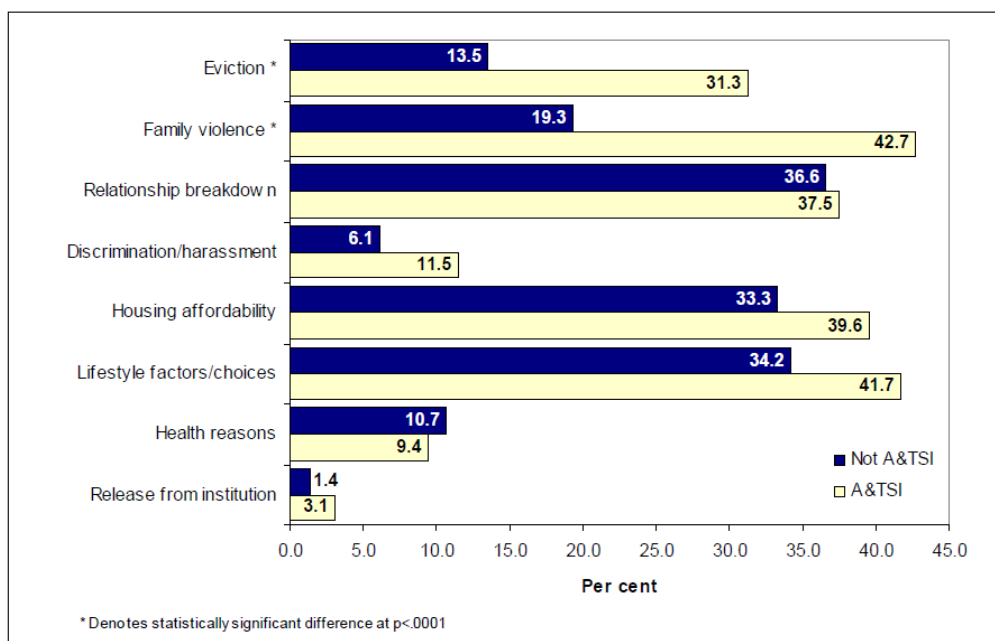
Source: Ryan and Merlo (2005) op cit, p. 16.

Not surprisingly, the Pilot revealed that families seeking assistance had multiple and complex needs and issues relating to individual vulnerabilities (including health and disability) and broader structural issues (such as lack of access to public transport or a telephone) as linked to their geographic isolation and/or poverty. Aboriginal and Torres Strait Islander families were found to be significantly more likely to have high complexity factors identified (51% compared to 30% of non-Aboriginal and Torres Strait Islander families) involving living skills, family conflict, violence and abuse, illness and disability, legal issues, addictive behaviour, and child protection issues.

Additionally, a greater proportion of Aboriginal and Torres Strait Islander families had experienced prior homelessness, with Aboriginal and Torres Strait Islander families experiencing homelessness at the time of support at 15% compared to 8% for non-Aboriginal and Torres Strait Islander families. Also, Aboriginal and Torres Strait Islander families were reported to be significantly more likely to have less stability in housing with almost three-quarters (69%) having lived in their current address for less than 12 months (compared to 42% for non-Aboriginal and Torres Strait Islander families).

The reason given by those that sought services for the Pilot for moving are as follows. Table 4 shows that the leading reason given for moving related to family violence (closely followed by lifestyle choices and housing affordability). This reason for moving is statistically significant in the dramatically lower account of this reason by non-Aboriginal and Torres Strait Islander families (42.7% compared with 19.3%). It is imperative that the NQF support services that prevent homelessness in the case of family and domestic violence such as women children’s emergency accommodation. There is also a need, however, to address the impact of the removal of men from their homes and the required availability of appropriate accommodation. One service of note is the Elizabeth Hoffman House that offers domestic violence shelter for Aboriginal and Torres Strait Islander women and children as well as other support services.

**Table 4: Reasons for moving house in the last two years by Aboriginal and Torres Strait Islander status.**



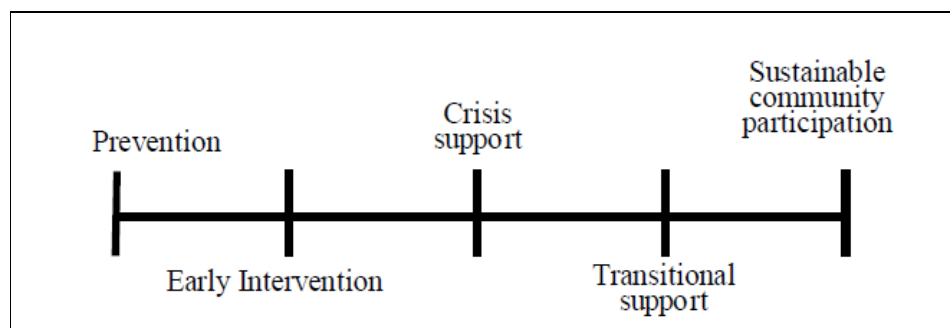
Source: Ryan and Merlo (2005) op cit, p. 22.

To address early intervention in pathways to homelessness, and to achieve sustainable community participation as an outcome of service provision, the Pilot looked at: prevention services such as affordable housing schemes; relationship education and financial literacy education; crisis and transitional support/accommodation services; domestic violence crisis outreach services; and transitional housing services.

*Early intervention sits between prevention and crisis support: some pilot service interventions, such as courses on budgeting for people in debt, are located more at the prevention end; others, such as helping families to negotiate rent arrears repayments when threatened with eviction, sit closer to crisis support.*<sup>39</sup>

<sup>39</sup> Ibid, p. 28.

**Figure 1: Continuum of services to support families**



Source: Ryan and Merlo (2005) op cit, p.28.

In 2009, the Australian Government acknowledged in their response to the Senate Select Committee on Housing Affordability in Australia's *A good house is hard to find: Housing affordability in Australia* that Aboriginal and Torres Strait Islander populations in remote areas present the greatest level of housing need. This response contained the following data:

- In 2004-05, 30.8% of Aboriginal and Torres Strait Islander people aged 15 years and over in remote areas, and 60.4% in very remote areas, lived in overcrowded households.
- Including children, the proportion in very remote areas was higher still (63.4% ).
- Using data sourced from the Australian Bureau of Statistics, Community Housing and Infrastructure Needs Survey (CHINS) 2006, the average occupancy per dwelling in remote areas is estimated to be 8.8 persons per dwelling.<sup>40</sup>

Furthermore, overcrowding combined with Aboriginal and Torres Strait Islander population growth leads to more stress being placed on existing Aboriginal and Torres Strait Islander housing-related infrastructure and stock in remote areas.<sup>41</sup> The Government agrees with the Senate Committee per recommendation 2.1 that given the very high levels of housing stress, overcrowding and homelessness experienced by Aboriginal and Torres Strait Islander peoples, all levels of Government should give priority to addressing their high level of unmet need for public and community housing under all existing programs.

The Government states they will establish working groups through the Council of Australian Governments (COAG) to ensure equality of opportunity to housing for Aboriginal and Torres Strait Islander peoples and non-Aboriginal and Torres Strait Islander peoples. The COAG Working Group on Indigenous Reform highlighted *Healthy Homes* as a building block in its framework to address *Closing the Gap* in Indigenous Life Outcomes. VALS currently advocates that a critical element missing from *Closing the Gap* initiatives is the recognition of the broad spectrum impacts that contact with the criminal justice system has on almost all areas of a person's life. VALS therefore argues for the inclusion of concerns around the high level of Aboriginal and Torres Strait Islander contact with the criminal justice system to be included to the *Closing the Gap* platform. This is relevant to the policy context that the NQF must operate within.

<sup>40</sup> Australian Government (2009) *Government Response to 'A good house is hard to find: Housing affordability in Australia' Report by the Senate Select Committee on Housing Affordability in Australia* Canberra: Australian Government [http://fahcsia.gov.au/sa/housing/funding/haf\\_round\\_2/haf\\_round2\\_guidelines/Documents/housing\\_affordability\\_gov\\_response.pdf](http://fahcsia.gov.au/sa/housing/funding/haf_round_2/haf_round2_guidelines/Documents/housing_affordability_gov_response.pdf)

<sup>41</sup> Ibid.

## Conclusion

For some of VALS' clients, homelessness is a result of contact with the criminal justice system. For others, contact with the criminal justice system is in part a result of homelessness. A NQF for support services for people experiencing homelessness must recognise the need to provide outreach before a homeless person's behaviour in a public space becomes a "criminal" issue. Stable, socially supported housing is clearly associated with staying out of prison and increased social integration. Stable accommodation can become hard to obtain because on release, ex-prisoners do not have the financial means to secure private housing, or may be ineligible for priority public housing. Therefore the NQF must look at supporting services that aim to help prevent or remove the instance of homelessness or risk of homelessness at the point of bail; pre-release from prison and post-release from prison (i.e. reintegration).

There is a need to move away from crisis based responses to approaches addressing all stages of homelessness and risk. Where there is a crisis situation, however the NQF must recognise support services that prevent homelessness in the case of family and domestic violence such as women children's emergency accommodation. There is also a need to address the impact of the removal of men from their homes and the required availability of appropriate accommodation.

If the NQF is to truly promote quality service provision through enabling the input and participation in decision making and address the unique needs of the Aboriginal and Torres Strait Islander community (individuals, families, communities and organisations), the NQF needs to recognise quality service provision encompassing the following:

- a. Recognition that there is need for both Aboriginal and Torres Strait Islander specific services *and* mainstream services (not one or the other);
- b. Regardless of whether mainstream services are the only service option, they should be culturally sensitive and Governments should ensure that mainstream services have the capacity to do this; and
- c. Ensure Aboriginal and Torres Strait Islander community involvement.

We look forward to the outcomes of this national consultation process to be made available by 30 June 2010 and the second round of consultations based around a more detailed discussion paper following its development late 2010.

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## **Appendix A**

The PILCH Homeless Person's Legal Clinic makes the following recommendations for reform (2008:3-5):

### Recommendation 1

The Federal Government must recognise that homelessness is a human rights issue and that any effective response to homelessness must incorporate a human rights approach.

### Recommendation 2

The Federal Government must review and amend all legislation, policies and procedures that impact disproportionately and discriminatorily on people experiencing homelessness, including: residential tenancy laws, anti-discrimination laws, electoral laws, public space laws, etc.

### Recommendation 3

The Government should enact a Federal Homelessness Act which provides for the promotion and protection of human rights, particularly the right to adequate housing.

### Recommendation 4

The Government must undertake to review and amend State and Federal tenancy laws to ensure realisation of the right to adequate housing (refer to recommendation 2 above). For example, to ensure security of tenure, public and community housing authorities should be required to obtain Court Orders from residential tenancy tribunals prior to serving a notice to vacate upon tenants.

### Recommendation 5

The Federal Government should consider the legislative approaches adopted by comparative jurisdictions in tackling the issue of homelessness in Australia.

### Recommendation 6

The Government establish a Consumer Advisory Council comprised of people currently experiencing homelessness or who have experienced homelessness in the past, which reports directly to the Federal Minister of Housing. Such a Council would involve a minimum of two representatives from a similarly formed Council at the State or Territory level.

### Recommendation 7

The Government should provide funding for consumer based initiatives such as vocational training; further education and peer support and mentor programs.

### Recommendation 8

The Federal Government should amend the Human Rights and Equal Opportunity Commission Act 1986 (Cth) to include social status (including homelessness, unemployment or the receipt of social security payments) as a protected attribute. Equivalent State and Territory laws must also be amended to enshrine social status as a protected attribute.

### Recommendation 9

The federal law prohibiting criminal record discrimination should be amended to more clearly establish criminal record as a protected attribute. In particular, the prohibition should be set out solely in the Human Rights and Equal Opportunity Commission Act 1986 (Cth). The 'inherent requirements defence' should also be repealed and replaced with specific enumerated exceptions to the prohibition, and a provision via which an employer may apply for an exemption in its particular workplace.

Recommendation 10

The Federal Government should provide federal funding to the Clinic on a recurrent basis.

Recommendation 11

The Federal Government in its legal procurement policies should incorporate social justice obligations similar to those currently in place in Victoria.

Recommendation 12

A Housing Ombudsman should be established in each State and Territory with the powers and functions set out above.

Recommendation 13

That the Federal Government introduce express protection of the human right to social security to ensure that access to social security for the most vulnerable is realised.

Recommendation 14

That the Federal Government review income support levels and ensure they sit above the poverty line.

Recommendation 15

That the Federal Government repeal the eight-week penalty regime for non-compliance with Centrelink participation requirements.

Recommendation 16

The Federal Government should provide the Clinic and its counterparts with recurrent funding to enhance the service provision of these organisations.

Recommendation 17

The Government must encourage and facilitate the transposition of the Clinic model into other service sectors in a way that promotes an integrated mode of service delivery such as through 'community hubs' where legal, health and financial services are provided at the one location.

Recommendation 18

The Federal Government should enact a legally enforceable human rights document in the form of a Charter of Rights.

Recommendation 19

The Federal Charter of Rights should protect all rights included in the ICCPR and ICESCR:

Recommendation 20

The Charter of Rights should apply to all institutions comprising the Federal Government – including the Parliament, the Executive, the Judiciary and public authorities, including private entities entrusted with government functions – and require that those institutions respect, protect and fulfil human rights.