



Submission to the Department of Families, Housing, Community Services and Indigenous Affairs: *Homelessness Bill 2012* Exposure Draft consultation

August 2012

Introduction

The Mental Health Council of Australia (MHCA) is the peak, national non-government organisation representing and promoting the interests of the Australian mental health sector. The membership of the MHCA includes national organisations of mental health services, consumers, carers, special needs groups, clinical service providers, community and private mental health service providers, national research institutions and state/territory peak bodies.

In 2009, the MHCA released *Home Truths: Mental Health Housing and Homelessness in Australia*.¹ This report documents the intimate and clear links between mental illness and homelessness and the need for key cross-sectoral, whole of government approaches to address the urgent housing needs for people with mental illness. The full report is available at the MHCA website (www.mhca.org.au).

General comments

The purpose of the Bill is unclear. It is not at all apparent how the Bill will affect the lives of people who are homeless or at risk of homelessness.

The MHCA acknowledges that the Draft Bill articulates in legislation a standard national definition of homelessness, a broad framework for the delivery of services, and a commitment to addressing homelessness nationally. We also acknowledge that the Commonwealth may have limited power to legislate in this area without the agreement of states and territories. However, the absence of concrete measures to address homelessness in the Draft Bill is disappointing and could be interpreted as a lack of commitment to effecting change for homeless people and those at risk of homelessness. The MHCA urges the Australian Government to take this opportunity to entrench in legislation the right of all Australians to adequate housing.

Because of the significant link between homelessness and mental illness the MHCA is keen to support activities that will strengthen a national approach to addressing homelessness. However, we are concerned that the lack of specific reference to mental health issues in the Draft Bill will exclude mental illness from any measures or initiatives to address homelessness that the Bill is intended to support.

Additional comments about specific issues arising from the Draft Bill are set out below.

¹ Mental Health Council of Australia, 2009, *Home Truths: Mental Health, Housing and Homelessness in Australia*, MHCA

Proposed definition of homelessness

The proposed definition assumes that people facing multiple disadvantages are exercising real choice by making a decision to live in a boarding house or refuge. This definition does not recognise the lack of choice inherent in the circumstances of some people with a severe and persistent chronic or episodic mental illness. These vulnerable people are very often not in a position to organise their own accommodation and many have little access to support services.

In addition, the proposed definition does not address some of the key elements of the definition of homelessness previously set out in the *Supported Accommodation Assistance Act 1994*, which the Draft Bill is intended to supersede. The *SAA Act's* definition made clear that someone's housing situation is inadequate if:

- *it damages, or is likely to damage, the person's health;*
- *it threatens the person's safety;*
- *it marginalises people by failing to provide adequate access to amenities or economic and social supports; or*
- *they are at risk of eviction because their house or flat is too expensive.*²

These features should be captured in the Homelessness Bill to better reflect the circumstances that can lead to or exacerbate homelessness and housing instability.

The Australian Bureau of Statistics has undertaken an extensive review of the definition of homelessness, including consideration of the role of choice. Notwithstanding the comments above, this work should inform the definition proposed in the Draft Bill.³

The purpose of the Bill

The Draft Bill acknowledges the direct relationship between homelessness and social exclusion and the need for a consistent framework for the delivery of homelessness services, along with a recognition that people who are homeless or at risk of homelessness have the same rights as other Australians. The Draft Bill outlines these as a set of very broad national policy principles and lists the associated UN treaties and covenants on human rights to which Australia is a signatory. However, it is not clear how the legislation of these principles will affect national policy or services if, as the Draft Bill states:

1. *This Act does not create or give rise to any rights (whether substantive or procedural), or obligations, that are legally enforceable in judicial or other proceedings.*
2. *No action suit or proceeding is to be instituted in reliance on the terms of the Act or the operation of this Act.*

These exclusions raise questions about why the Commonwealth is seeking to legislate to address homelessness if it is not prepared to recognise the rights of homeless people, even where such rights are enshrined in existing international agreements. This includes Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, which affirms 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of

² *Supported Accommodation Assistance Act 1994*, Section 4.2.

³ Australian Bureau of Statistics. (2011). *Definition of Homelessness*. Accessed from the ABS website on 15 August 2012.
<http://www.abs.gov.au/ausstats/abs@.nsf/0/90DB868E528D3EEBCA2578DF00228CEE?opendocument>.

living conditions.⁴ The apparent lack of commitment evident in the Draft Bill is reinforced by the reference to ‘the Commonwealth’s *aspiration* ... that all persons living in Australia have access to adequate housing’ (emphasis added). Adequate housing should be every Australian’s right, not an aspiration of government.

The link between mental illness and homelessness

Mental illness, housing instability and homelessness share much common ground. An acknowledgement of the relationship between these experiences in legislation, policy and service delivery is essential if homelessness is to be tackled effectively. Unfortunately, the Draft Bill does not acknowledge these relationships at all.

An important reason why so many people with mental illness are homeless is that they lack access to appropriate health and community supports to assist them to maintain accommodation and other essential aspects of daily living such as employment. This can worsen mental illness and result in loss of accommodation and social networks. The more often people relapse into mental illness, the greater the risk that they will continue to struggle to recover their health and re-establish their usual living arrangements.

Measures to address homelessness must at a minimum aim to do the following:

- Ensure people with mental illness have access to community support to assist them with their day to day living if required.
- Increase access to low cost affordable housing and mitigate the stress and illness that can be caused by housing insecurity.
- Target other common barriers to accommodation, including for people with disabilities, people recently released from gaol and people with drug or alcohol dependence.

These principles need to be reflected in the Bill.

Effective discharge planning

Effective discharge planning is a critical factor in reducing the entry of people with mental illness and psychosocial disability into homelessness. One major barrier, recognised in the Australian Government’s White Paper on homelessness, *The Road Home*, is the lack of adequate discharge planning. Discharge plans, including accommodation options, should be developed well before a person’s exit from hospital, gaol, residential treatment facility, state care or other institution. Inadequate discharge planning for people with mental illness can greatly increase their risk of homelessness. Currently, comprehensive discharge planning does not occur consistently across hospitals and institutions despite the existence of relevant service guidelines.

While discharge planning is a state responsibility in most cases, the need for strict requirements around discharge planning should be reflected in the Draft Bill.

Consumer and carer centred service provision

The importance of mental health consumer and carer participation in the development of services to ensure service quality, effectiveness and sustainability cannot be overstated.

⁴ *International Covenant on Economic, Social and Cultural Rights*, Article 11.

Mental health consumers and carers provide key expertise on what works and does not work in mental health and related service provision. A commitment to consumer and carer participation needs to be clearly articulated at all levels of the policy process to ensure it is not neglected.

Conclusion

The Mental Health Council of Australia strongly supports initiatives to further the interests of Australia's most vulnerable people. There are few groups more marginalised than people with mental illness who are homeless or at risk of homelessness.

The Draft Homelessness Bill is an attempt to develop legislative mechanisms for addressing these needs, but without commitment at all levels and jurisdictions of government, little will change. It will therefore be disappointing if the commitment of the Australian Government is not reflected in the Homelessness Bill 2012.