Law Council
OF AUSTRALIA

Office of the President

18 October 2023

Mr Ray Griggs AO CSC
Secretary
Department of Social Services
GPO Box 9820
Canberra ACT 2601

By email: HousingandHomelessnessPlan@dss.gov.au

Dear Mr Griggs

Submission on the National Housing and Homelessness Plan Issues Paper

1. The Law Council of Australia appreciates the opportunity to make a submission to the Department of Social Services in relation to its *National Housing and Homelessness in Australia Issues Paper.*[1] We are grateful to Queensland Law Society (**QLS**), a constituent body of the Law Council, for its significant contribution to this submission.

2. A National Housing and Homelessness Plan (**Plan**) is being developed by the Australian Government, in collaboration with state and territory governments, to 'set out a shared national vision across the responsibilities of different levels of government to improve housing outcomes and help address homelessness in Australia'.[2] The Issues Paper seeks input on an overview of 'key issues in different parts of the housing and homelessness systems' to inform the development of the Plan.[3]

3. We have not provided a comprehensive response to the questions posed in the Issues Paper. Many of the questions require expertise beyond the remit of the Law Council—the peak national representative body of the legal profession. Instead, we have provided the following targeted input:

   - an overview of chapters of the **Final Report** of the Law Council's Justice Project that focus on the challenges that people who experience homelessness and housing problems in a diverse range of groups have in accessing justice, along with extracts from complementary submissions (Part 1); and

   - an overview of current issues from a Queensland perspective, provided by QLS (Part 2).

4. We hope that this targeted input will assist the Department in the development of the Plan.

[1] Commonwealth of Australia (Department of Social Services), *The National Housing and Homelessness Plan* Issues Paper (August 2023) <https://engage.dss.gov.au/wp-content/uploads/2023/08/national-housing-and-homelessness-plan-issues-paper_2.pdf>
[2] Ibid 9.
[3] Ibid 14.

Telephone +61 2 6246 3788 • *Email* mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612 • Level 1, MODE3, 24 Lonsdale Street, Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

Part 1—Overview of relevant findings in the Law Council's Justice Project

5. The Justice Project was a review conducted in 2017–2018 of the state of access to justice in Australia.[4] It aimed to provide a platform for addressing significantly disadvantaged people in Australia by, amongst other things, identifying measures and strategies that have been effective in addressing barriers to access to justice.[5]

6. The Final Report of the Justice Project, published in August 2018, incorporated 129 submissions from various individuals and organisations.[6] It comprises 22 chapters and 59 recommendations with accompanying case studies. The Law Council draws attention to chapters of the Final Report that may assist in the development of the Plan.

Homelessness

7. The Final Report includes a dedicated chapter titled 'People who are Homeless'.[7] The analysis in this chapter, summarised at a high-level below, may be relevant to the 'homelessness' and 'social housing' focus areas of the Issues Paper.

8. The 'People who are Homeless' chapter examines: the legal needs of people who are homeless; how people who are homeless respond to their legal problems; barriers constraining people who are homeless from accessing justice; critical gaps in services necessary to deliver justice to people who are homeless; and laws, policies and practices that exacerbate access to justice barriers for people who are homeless.

9. This chapter concludes, relevantly, that an acute shortage of affordable housing and temporary, crisis accommodation is a key underlying factor precipitating or exacerbating a person's interaction with the justice system.[8] For example, a lack of safe and stable accommodation can increase the likelihood of a person being denied bail and instead being placed on remand, prevent a person from escaping domestic and family violence, and increase the risk of recidivism amongst recently released prisoners.[9]

10. It also observes, in conclusion, that:

- 'complex housing laws and policies that fail to prioritise homelessness prevention … can make it challenging for vulnerable persons to maintain precarious tenancy arrangements or re-enter public housing or other rental arrangements if evicted';[10]
- 'exit strategies and lack of transition support for people leaving government institutions … is resulting in high rates of homelessness amongst persons exiting state care';[11]
- 'enforcement-based laws, policies and practices to address homelessness … in effect, criminalise homelessness and expose people who are homeless to increased interaction with police and the criminal justice system';[12] and

---

[4] Law Council of Australia, 'Final Report of the Justice Project', (August 2018) 7 https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20_%20Final%20Report%20in%20full.pdf.
[5] Ibid 9.
[6] Ibid 11.
[7] See Law Council of Australia, 'People who are Homeless' (August 2018) https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf.
[8] Ibid 4.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.

- ‘integrated legal assistance and social support has proven to be effective in preventing homelessness and addressing some of the underlying issues placing people at risk of homelessness’.[13]

11. This chapter also notes the difficulties of affordable and secure housing for certain groups in the society, notably, Aboriginal and Torres Strait Islander peoples,[14] prisoners,[15] women,[16] LGBTIQA+ people,[17] children and young people,[18] and people with disability throughout the chapter.

12. The Final Report identifies the following key priorities that need to be addressed:

    (a) provide reliable, secure and recurrent funding of specialist homelessness legal services and related critical supports;[19]

    (b) improve legal, policy and service frameworks to prioritise homelessness prevention through investment in safe, secure, and appropriate housing;[20]

    (c) invest in better exit strategies, including wraparound supports, transition services, through care and affordable accommodation, for people exiting government institutions;[21]

    (d) review and amend laws that criminalise homelessness;[22] and

    (e) review problematic tenancy laws, policies and practices, with a view to achieving an appropriate balance between the human rights of tenants at risk of homelessness and the rights of property owners.[23]

13. The Law Council has not undertaken a comprehensive review of the extent to which these proposed reform priorities have been given effect since the Final Report was published. It raises them for consideration to assist the Department to develop the Plan.

14. We also draw attention to a recent Law Council submission to the Australian Human Rights Commission relating to youth justice. In that submission we briefly noted that homelessness or the inability to access crisis housing has been found to dramatically affect a child’s ability to sleep and participate in education, increasing the likelihood of reoffending or antisocial behaviour.[24]

---

[13] Ibid 5.
[14] Ibid 10-13, 22-24.
[15] Ibid 21-22.
[16] Ibid 22-23.
[17] Ibid 24.
[18] Ibid 8-10, 24-26.
[19] Ibid 55.
[20] Ibid.
[21] Ibid 56.
[22] Ibid.
[23] Ibid.
[24] Law Council of Australia, submission to the Australian Human Rights Commission, ‘Youth Justice and Child Wellbeing Reform’ (24 July 2023) [10] https://lawcouncil.au/publicassets/71bf9867-542b-ee11-9489-005056be13b5/4391%20-%20S%20-%20Youth%20Justice%20and%20Child%20Wellbeing.pdf.

Aboriginal and Torres Strait Islander Housing

15. The Final Report includes a chapter specifically dedicated to discussing the access to justice concerns faced by Aboriginal and Torres Strait Islander peoples.[25] Aspects of this chapter may be relevant to the Aboriginal and Torres Strait Islander Housing focus area in the Issues Paper.

16. The 'Aboriginal and Torres Strait Islander People' chapter of the Final Report considered tenancy problems and homelessness experienced by Aboriginal and Torres Strait Islander people giving rise to some of the access to justice issues summarised above.[26] It emphasised a range of contributors who identified that a lack of access to housing contributes to the inability of Aboriginal and Torres Strait Islander women to leave violent relationships.[27]

Homelessness Services

17. The Final Report includes a dedicated chapter titled 'Critical Support Services',[28] which may assist work through the issues in the 'Homelessness services' focus area of the Issues Paper.

18. The Final Report emphasises that critical support services, including accommodation support, 'underpin justice responses, by aligning with justice-related services to offer therapeutic, problem-solving, and diversionary strategies'.[29]

19. The Final Report emphasises the significance of providing individuals with safe and stable housing, as well as crisis accommodation, as a means of prevention and early intervention for different demographic groups.[30] It recognises the importance of ensuring access to bail accommodation, particularly for homeless people, Aboriginal and Torres Strait Islander people and young people.[31] The Final Report emphasised the role of housing in facilitating successful transition out of the justice system, which encompasses parole as part of an effective exit strategy.[32]

Climate Change and Housing Security

20. We also draw the Department's attention to the Law Council's Climate Change Background Paper, published in November 2021. The Background Paper, which supports the Law Council's Climate Change Policy, describes the legal implications oft climate change and climate change mitigation and adaptation measures. Noting that the Issues Paper addresses the impact of climate change on housing security, we note that the Background Paper briefly examines potential implications of climate change on the construction and housing sectors.[33]

---

[25] See Law Council of Australia, 'Aboriginal and Torres Strait Islander Peoples', (August 2018) https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf.
[26] Ibid 22-24, 93-94.
[27] Ibid 23.
[28] See Law Council of Australia, 'Critical Support Services', (August 2018) https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Critical%20Support%20Services%20%28Part%202%29.pdf.
[29] Ibid 4.
[30] Ibid 14-21.
[31] Ibid 55 -58.
[32] Ibid 76 -79.
[33] See Law Council of Australia, '*Legal Implications of Climate Change*', (November 2021) [1.78], [1.131], [3.17] and [3.36].

Part 2—Overview of current issues from a Queensland perspective

21. The Law Council is grateful to the QLS for its thorough overview of current issues described from a Queensland perspective. The QLS's views are set out at [22]–[45].

22. QLS recognises the significant challenges for the Queensland community in accessing and maintaining housing, and the State and Federal Governments' role in developing appropriate policy responses.

23. QLS supports a national approach to addressing housing and homelessness, in collaboration with State, Territory and local governments. QLS supports the Federal Government considering a range of policy reforms and urges it to continue to assess all possible options to respond to the housing and related cost-of-living pressures. This necessarily requires a sound evidence base for any subsequent legislative changes.

Homelessness

24. As mentioned in part 3.1 of the Issues Paper, older, single women are among the fastest growing cohorts of homeless people. Therefore, it is important that any approach to homelessness and housing addresses not only the immediate needs of older women facing homelessness, but also its myriad causes, including economic instability, domestic and family violence, and elder abuse.

25. Contributors to homelessness for other groups must also be examined and addressed, such as the lack of services available to people released from custody or the delay in access to services when released on parole. QLS notes, for example, that some parolees face immediate difficulty upon release if they do not have transport to their new address or if they have arranged to live with family members but the relationship breaks down.

26. In terms of collection of data and the 'invisible' homeless, QLS notes that many people experiencing domestic and family violence or family breakdown fall into this category. Therefore, the Federal Circuit and Family Court of Australia may be a source of de-identified data. For example, additional data could be collected at the time of filing a divorce application or where applications are made for exclusive possession of a property (given that applicants for exclusive possession are often in insecure accommodation).

Homelessness services

27. While part 3.2 of the Issues Paper focuses on homelessness services, QLS believes the plan should also address other services that intersect with housing. Homelessness is not just about housing; it is also about all the supports around it. QLS supports a whole of government approach which reflects the complex and interconnected nature of housing and homelessness issues.

28. For example, any consideration of homelessness services also needs to consider services such as social work support and mental health support as well as other wraparound services as discussed further below. QLS is of the view that there is scope for additional involvement of local government in coordinating services, as highlighted by the case study on the City of Gold Coast Council on page 34 of the Issues Paper, given the unique circumstances of each local government area and that councils manage important services that intersect with housing and liveability, such as public transport.

29. Additionally, QLS highlights the need for additional legal assistance funding, particularly to assist tenants in residential tenancy disputes. Certain and adequate funding is required to ensure that any disputes between landlords and tenants are resolved quickly and appropriately. If tenants are able to be assisted to retain their existing housing, this will reduce risk of homelessness.

Domestic and family violence

30. Additional support and protections should be provided for people attempting to escape domestic and family violence. QLS urges the government to implement policies that increase housing security and safety for people experiencing domestic and family violence to reduce the risk of these vulnerable people becoming homeless or staying in unsafe homes for fear of becoming homeless. In particular, the location of domestic violence support services and emergency housing must be considered.

31. QLS members are aware that emergency accommodation is often not available in proximity to where it is required. This results in women and children being sent to refuges far away from their usual home, support network, schools and service providers (e.g., medical and allied health). There are also consequences in terms of legal processes in that parents who relocate to emergency accommodation in a different region can face applications by the other party in the Federal Circuit and Family Court of Australia for the return of the children. Aggrieved parties also face difficulties in fully participating in domestic violence proceedings if they have had to move far away from the court in which the proceedings are taking place.

32. The impact of misidentification of victims as perpetrators on homelessness must also be considered, particularly where the misidentified victim has been forced to leave the home due to an ouster order as part of domestic and family violence proceedings but are not prioritised for housing support.

33. Wraparound services for victim-survivors who have secured accommodation are also critical. This will include social work and mental health services as mentioned above but may also include assistance with everyday tasks such as gardening, cleaning and household maintenance. People who are living alone for the first time or who have suffered trauma may have difficulty maintaining a property and therefore face difficulties when it comes to renewing a tenancy or getting bond back at the end of a tenancy, which can in turn impact their ability to secure another rental.

Social housing

34. In addition to the need to increase the overall supply of public housing, QLS notes the importance of ensuring a diverse range of fit for purpose dwellings in terms of location, the size of family that can be accommodated (noting that placing a single person in a larger property can also be detrimental) and accessibility features of the home.

Housing costs, home ownership and the private rental market in Australia

35. An important issue affecting older people's housing security is the relationships they have with their families and the potential for elder abuse by family members. For example, as home ownership is becoming less affordable, it is becoming more common for older adults to guarantee their adult children's mortgages with their own homes as security. However, this leaves the older person vulnerable if the adult child defaults on their mortgage and the older person cannot pay the mortgage arrears. In this situation, the older person may face repossession of their own home, which may be their only asset, to satisfy their child's debt.

36. Another example is granny flat arrangements between older people and their adult children, which are becoming more attractive to families facing rising housing costs. While there are many economic and social benefits of granny flat arrangements, an inadequately documented arrangement can leave an older person vulnerable. If the relationship between an older person and their adult child breaks down, the older person may be forced to move out and could potentially lose their investment in the property. Therefore, any policy that encourages granny flat arrangements should incentivise the parties to enter into a formal written agreement that clearly sets out each party's rights and obligations.

37. Use of powers of attorney by family members can also impact an older person's housing security. For example, as property values increase, an older person's attorney may choose to sell the older person's house and relocate them to alternative accommodation, such as an aged care facility. Similarly, an older person's housing security may be in the hands of an attorney who neglects to adequately maintain their house or fails to pay their financial obligations on time, such as rent or aged care fees.

38. The loneliness experienced by some older people is also relevant and may be taken advantage of by family members when it comes to housing arrangements.

39. A further issue that is particularly relevant to older women, is the difficulty in obtaining a private rental property or home loan where the person has little to no regular income but a reasonable sum of money in the bank, as may occur where a relationship has ended and a property settlement has been reached. Such people are often at a disadvantage in both the private rental market and the property market, given the difficulties they face in securing home loans. QLS members report that it is not uncommon for property settlements in family law matters to be delayed due to a party's reluctance to accept a sum that will not allow them to buy a property outright, given that they are aware of the difficulties they will face in obtaining a loan.

40. QLS also notes that older people and people with impairments or mental health conditions may purchase a manufactured home in a manufactured home park as a housing option of last resort as it is all that they can afford. Often homes in parks at the lower end of the market in Queensland will sell for between $80,000 and $300,000. Vulnerable people who cannot afford to purchase a home or apartment in the mainstream property market or who are struggling to find affordable rental accommodation may purchase a manufactured home to avoid homelessness. They may make this decision even if they know that the housing is not of an adequate standard, or does not meet their needs (such as disability access).

41. QLS members report the practices of some manufactured home parks are exploitative. Home owners may face a lack of security of tenure, increasing site rents that eventually make living in the park unaffordable, and often live under overly restrictive park rules regarding what they can and cannot do with their own homes (such as having a family member come to stay, or keeping pets or assistance animals). Some members report that residents have also experienced intimidation or harassment from park managers or owners. This has a significant impact on the wellbeing of older people, particularly those who are very frail or may suffer from cognitive decline. QLS members report that many home owners are afraid of park managers or other residents and feel trapped in the park because once they have bought in, they may have trouble selling.

42. Manufactured home owners with disability or mental health conditions have also experienced discrimination. Park managers will often have rules with which the person may struggle to comply. For example, QLS members have reported:

- A home owner may need a live-in carer, but the park manager will not allow a person to live in the park unless they are part owner of the home and are a party to the site agreement.

- A home owner may need an access ramp, but they are not permitted to modify their home.

- A home owner with schizophrenia may receive a breach notice because they cause a disturbance resulting from experiencing delusions or hallucinations. If they cannot control their behaviour, it is likely their site agreement will be terminated, and they will be required to vacate the park. Consequently, they may end up losing a large portion of the capital they used to buy the home. In some instances, the home owner may give up their home and end up sleeping rough or living in a tent.

The importance of planning, zoning and development

43. Manufactured home parks are often built on land where a developer cannot get approval for any other type of development, such as land with poor drainage in a flood or bushfire zone. This is particularly problematic given the older demographic living in these parks (which are often marketed as over 50s resorts) who may be frail or have mobility issues. This is also related to the impact of climate change and disasters on housing security.

The impact of climate change and disasters on housing security, sustainability, and health

44. In the QLS's view, any housing plan must consider whether we are building the most resilient homes possible for future climate impacts. For example, in Queensland, this may need to include ensuring that properties are flood, fire and cyclone resistant. Increasing intensity of heavy rainfall events[34] may bring more frequent flooding, which will necessitate a focus on ensuring homes are more resilient to flooding, particularly homes that are permitted to be built in flood plains.

45. Further, while Australia has seen a decrease in tropical cyclone activity in recent years, it is possible cyclone intensity will increase.[35] Therefore, in the future, cyclone resilience may become an issue for parts of Australia that do not currently experience cyclones.

Contact

46. Please contact Mr Matthew Wood, Principal Policy Lawyer, on 02 6246 3755 or at matthew.wood@lawcouncil.au at first instance to discuss any aspect of this submission.

Yours sincerely



Greg McIntyre SC
President-elect

[34] CSIRO and The Bureau of Meteorology, *State of the Climate 2022* (Report, 2022), http://www.bom.gov.au/state-of-the-climate/
[35] Ibid.