

NATIONAL HOMELESS PERSONS' LEGAL CLINICS FORUM

17 June 2013

Mr Mark Butler MP
Minister for Housing and Homelessness
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister,

HOMELESSNESS BILL 2013

We, the undersigned members of the National Forum of Homeless Persons' Legal Clinics ('the National Forum'), are writing to you to express our disappointment about the Homelessness Bill 2013 (Cth), presented and read for the first time in the House of Representatives on 5 June 2013.

The National Forum comprises homeless persons' legal clinics from Queensland, the Northern Territory, Western Australia, South Australia, the ACT, Victoria and New South Wales. It met in Sydney last week to discuss key human rights and access to justice issues for homeless people in Australia.

Strong concern was expressed about the Homelessness Bill by National Forum members. The main concern is that the Bill seems to adopt a very similar approach to the much-criticised exposure draft Homelessness Bill 2012, and will not have a meaningful practical impact on the issues that the Government has rightly identified as important in this area.

The National Forum considers that the Homelessness Bill 2013 represents a missed opportunity to take up many of the important recommendations made by the bipartisan Parliamentary Committee which reported on the inquiry into homelessness legislation in 2009. The upshot is that the Bill is unlikely to lead to practical benefits or outcomes for people who are homeless or at risk of homelessness.

The National Forum strongly submits that, at a time where homelessness across Australia is increasing, there is a pressing need to undertake a detailed audit of Federal, State and Territory laws that impact negatively on homeless people on a daily basis. These include State/Territory tenancy and housing laws, and 'public space' laws that often operate in a manner that entrenches people in dire situations of homelessness and housing crisis.

Such an audit was one of many recommendations made by the bipartisan parliamentary committee in 2009, which strongly endorsed new legislation founded on a human rights approach to achieving social inclusion for people who are homeless or at risk of homelessness.

The National Forum is of the view that the current Bill does not reflect this approach.

The Bill provides for 'an aspiration' that all persons living in Australia have access to appropriate, affordable, safe and sustainable housing. However, the National Forum considers this significantly undervalues the right of all people in Australia to adequate housing, as recognised in Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

The National Forum is of the view that by referring to a mere 'aspiration', the Bill is incompatible with Australia's international obligations under Article 11 of ICESCR.

The National Forum is aware that the previous Minister had expressed concerns that the Government could not provide express recognition of the right to adequate housing in the legislation, as it did not have constitutional power to regulate housing and homelessness. The National Forum refers to advice provided to the previous Minister from constitutional experts, Arthur Moses SC and Professor Patrick Keyzer, a copy of which is attached. That advice refers to the recent High Court decisions on this point, and shows that the Federal Parliament clearly has the power to pass effective homelessness legislation that gives effect to Australia's international obligations under Article 11 of ICESCR.

The National Forum cannot support the Homelessness Bill 2013 in its current form as it fails to legislate for standards that ensure the human rights of homeless people are recognised, respected and fulfilled. As indicated above, the National Forum believes that the legislation will not provide practical benefits for homeless people, and fails to adopt a truly human rights approach to achieving social inclusion for people who are homeless or at risk of homelessness.

Should you wish to discuss this further please do not hesitate to contact Louis Schetzer, Senior Policy Officer, Homeless Person's Legal Service, on behalf of the National Forum,

Yours sincerely,

Samantha Sowerwine
Senior Solicitor, Homeless Persons' Legal Service (NSW)

Chris Povey
Manager / Principal Lawyer, PILCH Homeless Persons' Legal Clinic (Victoria)

Amanda Tsoundarou
Co-ordinator, Housing Legal Clinic (South Australia)

Cameron Lavery
Homeless Persons' Legal Clinic Coordinator
Queensland Public Interest Law Clearing House Incorporated

John Thornton
Supervising Solicitor, Street Law: An outreach legal service for homeless people
Welfare Rights and Legal Centre Ltd (ACT)

Ann-Margaret Walsh
Principal Solicitor, Street Law Centre Inc. (Western Australia)

Caitlin Perry
Executive Director, Darwin Community Legal Service (NT)

Encl: Constitutional advice from Arthur Moses SC and Prof Patrick Keyzer

cc. The Hon Julia Gillard MP, Prime Minister