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VALS submission in response to the House of Representatives Standing Committee on Family, Community, Housing and Youth's 'Inquiry into homelessness legislation' – sent 25 August 2009.

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) welcomes the opportunity to participate in the Standing Committee on Family, Community, Housing and Youth's inquiry into homelessness legislation. The core message that this submission is aimed at illustrating is the principles that should underpin the provision of services to the homeless. Secondly, legislation related to the social inclusion and human rights of homeless people are multifarious.

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. For these reasons and more, efforts need to be targeted towards Aboriginal and Torres Strait Islander peoples and in a number of areas. A holistic approach is needed to address the composite hardships and barriers to safety, health, social inclusion and rights for the homeless population.

In this submission a number of areas of concern will be outlined in order to illustrate the need for support of the Government to review *all* laws, policies and practices that impact disproportionately and discriminatorily on people experiencing homelessness.

Terms of Reference

Principles

The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness are:

1. Target urban, rural and remote Aboriginal and Torres Strait Islander Persons.

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' (February 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).¹ 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).² Urban Aboriginal and Torres Strait Islander

¹ Taylor J 'Population and diversity: policy implications of emerging Indigenous demographic trends' (Canberra: Centre for Indigenous Australian Economic Policy Research), (2006), p 20 as at http://www.healthinfonet.ecu.edu.au/html/html_population/population_identification.htm#population

² op cit, p5

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peoples were expected to access mainstream services in light of the funding shift from urban areas to remote areas.

It is a concern that whilst the Government document 'The Road Home: A National Approach to Reducing Homelessness' states the need to take into account of the needs of Aboriginal and Torres Strait Islander peoples it only mentions funding or a concrete proposal in relation to people living in remote areas.³

The following realities need to be taken into account in any attempt to reduce homelessness:

- According to the Institute of Health and Welfare, the proportion of households in affordability need was highest in major cities, at 68 per cent.⁴
- According to Taylor "Indigenous people as a group are substantially disadvantaged relative to their non-Indigenous counterparts at each level of the settlement hierarchy, regardless of location."⁵
- The living standards of urban Aboriginal and Torres Strait Islanders have slipped compared with their white neighbours, despite a decade of economic prosperity. Figures show that urban Aboriginal and Torres Strait Islanders did not improve their lot in the 10 years following the last recession in 1991.⁶ "Over the decade since 1991, it appears Indigenous people have comprised a progressively rising share of total population in the lowest status neighbourhoods and (since 1996) a falling share in middle-ranked neighbourhoods."⁷
- We should not reinforce that myth that 'real' Aboriginal and Torres Strait Islander People only live in remote areas and not in the cities.⁸
- In all jurisdictions, the rate of homelessness was 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, and in South Australia, where the rate of Aboriginal and Torres Strait Islander homelessness was 4.7 times as high. The differences between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander homelessness rates were lowest in the Northern Territory, where the rate ratio was 1.3.⁹

³ The following is mentioned in 'The Road Home: A National Approach to Reducing Homelessness' (2008) by the Commonwealth Government : An aim is to "...address the needs of different groups within the homeless population, including families with children, young people, Indigenous people..." (p. vii)

There will be "[b]uilding up to 4,200 new houses and upgrading up to 4,800 existing houses in remote" (p xi)

⁴ Macklin Jenny Media Release 'Indigenous Housing Crisis To Worsen'

22 February 2007 as at

<http://www.jennymacklin.net.au/infocentre.asp?data=04450601020507074858525D5E50794651544B4E4D4C>

⁵ Taylor J (2006) above n1. p 20

⁶ Megalogenis George 'Aborigines in cities worse off *The Australian* , 17 July 2006 as at

<http://www.theaustralian.news.com.au/printpage/0,5942,19812251,00.html>

⁷ ibid

⁸ Bartlett, Andrew (Senator) Media Release 'Hanson's Ghost Lingers on, as Indigenous Housing Under Threat' Thursday, February 22, 2007

⁹ 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>

- The AIHW data also shows that Aboriginal and Torres Strait Islander clients generally attended SAAP agencies in more remote locations than non-Aboriginal and Torres Strait Islander clients. 34% of support periods for Aboriginal and Torres Strait Islander clients were provided by agencies located outside of Major Cities, compared with just 28% of support periods for non-Indigenous clients. The environmental, societal, and spatial makeup of the regional and remote areas need to always be kept in mind as being unique when developing legislative reform and strategies for services.

See Appendix B for further information that highlights the need to target Aboriginal and Torres Strait Islander peoples in relation to issues surrounding homelessness. Appendix A provides background information about cultural and socio-economic factors that provides context for the discussion here.

Examples

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

- i. Specifically refer in the legislation to specific measures to consider and address Aboriginal and Torres Strait Islanders homelessness. VALS agrees with ALSWA in relation to this suggestion.¹⁰
- ii. Boost the stock of larger dwellings to reduce overcrowding for Aboriginal and Torres Strait Islander households in mainstream public housing.
- iii. Provide supported tenancy programs to improve the sustainability of tenancies specifically for Aboriginal and Torres Strait Islander Peoples.
- iv. Protect Aboriginal and Torres Strait Islander Peoples from discrimination (i.e. by real estate agents, landlords).
- v. Ensure accountability of housing/homelessness service providers to Aboriginal and Torres Strait Islander Peoples.
- vi. Ensure funding is set aside for the Aboriginal and Torres Strait Islander community only. For instance, there is only one Aboriginal and Torres Strait Islander women's family violence refuge in Melbourne and it can only help four families at a time.
- vii. Recognise that there is need for both Aboriginal and Torres Strait Islander specific services *and* mainstream services, not one or the other. 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 be assured of a culturally sensitive service and once might user 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) or a service option,

¹⁰ Aboriginal Legal Service of Western Australia, submission re 'Inquiry into Homelessness Legislation', sent 21st to the House of Representatives Standing Committee on Family, Community, Housing and Youth. August 2009, p8

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".¹¹ 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).¹²

- viii. Ensure cultural competency (including cultural awareness training on an ongoing basis and culturally appropriate dispute resolution regarding housing).
- ix. Ensure awareness of holistic needs and the impact of crime on homelessness and homelessness on crime (i.e. causal nexus).
- x. 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".¹³ 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".¹⁴ The workers also said they supported renegade MLA Alison Anderson's stand on housing, calling it "ludicrous" that \$672 million might only deliver 300 houses.¹⁵ 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.

¹¹ Cooper Lesley, Morris Mary 'Sustainable tenancy for Indigenous families: what services and policy supports are needed?' (Australian Housing and Urban Research Institute – Southern Research Centre), page 39, February 2005

¹² Cooper and Morris (2005) above n11, p 5

¹³ Langford, Ben 'Remote Housing Workers' Disgust' *The Northern Territory News*, 24 August 2009 as at http://www.ntnews.com.au/article/2009/08/24/78101_ntnews.html

¹⁴ Ibid

¹⁵ Ibid

2. Reflect international human rights standards

Not only should they reflect international human rights instruments, but take into account international scrutiny.¹⁶ The UN Special Rapporteur on Adequate Housing noted in the 2006 Report that while the specific issues in the communities he visited can vary, the systemic problems are very similar across the country. These problems include:

- The general housing conditions of Aboriginal and Torres Strait Islander Peoples (the fact that Aboriginal and Torres Strait Islander Peoples are specifically mentioned here heightens the need for point 1 above at page 3 (i.e. targeting Aboriginal and Torres Strait Islanders);
- 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 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.

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).

¹⁶ ALSWA (2009) above no 10, page 7

VALS submission in response to the House of Representatives Standing Committee on Family, Community, 5 Housing and Youth's 'Inquiry into homelessness legislation' – sent 25 August 2009.

3. Eviction should be a last resort.¹⁷

Scope

The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights should be broad. In addition to legislation relating to homelessness there should be complimentary legislation that:

- decriminalises public drunkenness;
- includes discrimination on the basis of homelessness as a category of discrimination as well as discrimination on the basis of criminal record;
- introduces a uniform spent conviction scheme;
- relates to human rights (i.e. Bill of Rights).

Effectiveness

The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas was discussed in the Aboriginal Legal Service of Western Australia in relation to this enquiry and VALS agrees with it which means existing legislation requires improvement:

The current SAAP regime is often not effective for Aboriginal and Torres Strait Islander peoples because in order to remain in SAAP housing, clients must attend regular programs and meetings regarding other areas of their lives. Often, the programs are not culturally appropriate or not easily accessible to Aboriginal and Torres Strait Islander peoples. If they do not comply with the programs, then they can be evicted from SAAP housing. Once a person is evicted from SAAP housing, they are no longer eligible for public housing”¹⁸

Conclusion

VALS endorses the PILCH Homeless Person’s Legal Clinic’s recommendation that the Government undertake to review and amend *all* laws, policies and practices that impact disproportionately and discriminatorily on people experiencing homelessness. In order to do so ‘a human rights approach to the issue of homelessness in Australia requires the Government to adopt an integrated and holistic legislative framework which acknowledges the interconnectedness of human rights’ (PILCH 2008:2).

In relation to the terms of reference, VALS argues that the principles underlying homeless legislations should be to:

1. Target urban, rural and remote Aboriginal and Torres Strait Islander Persons
2. Reflect international human rights standards
3. Eviction should be a last resort

¹⁷ See ALSWA submission for further details (above n 10)

¹⁸ ALSWA (2009) above no 10, page 7

VALS argues that the scope of the legislation should be broad and provides some examples of how this can be achieved (i.e. decriminalise public drunkenness). VALS quotes from the Aboriginal Legal Service of Western Australian submission to this inquiry in relation to effectiveness of existing legislation. Existing legislation requires improvement.

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Taylor N and Bareja M (2005) *2002 National Police Custody Survey* Canberra: Australian Institute of Criminology [online] www.aic.gov.au/publications/tbp/tbp013/tbp013.pdf

Victorian Aboriginal Legal Service (2009) *VALS' submission to the Community Consultation Panel: Mental Health Act 1986 Review* Melbourne: VALS.

Victorian Aboriginal Legal Service (2007) VALS' submission to Federal Minister for Families, Community Services and Indigenous Affairs, Mal Brough, in response to 'Living in the Sunburnt Country: Indigenous Housing – Findings of the Review of the Community Housing and Infrastructure Programme Final Report (February 2007)

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.

APPENDIX B – CONTEXT

Risk Factors

VALS highlighted the following in a submission to the Australian Government in relation to the context of homelessness of Aboriginal and Torres Strait Islander peoples. The submission is ‘VALS’ submission to Federal Minister for Families, Community Services and Indigenous Affairs, Mal Brough, in response to ‘Living in the Sunburnt Country: Indigenous Housing – Findings of the Review of the Community Housing and Infrastructure Programme Final Report (February 2007) – sent 27 April 2007.

It was argued in the submission that Aboriginal and Torres Strait Islander peoples are over-represented in the risk factors for homelessness outlined below.

- Major risk factors for homelessness:
 - Family violence;
 - Domestic violence;
 - Alcohol and drug abuse;
 - Overcrowding; and
 - Poverty.¹⁹

- Other risk factors for homelessness:
 - History of unstable accommodation;
 - Anti-social behaviour (noise, drinking, mental illness);
 - Mental illness; and
 - Contact with the criminal justice system.²⁰

- Risk factors for tenancy failure:
 - Debt (personal);
 - Partner debt;
 - Racism in the private rental market and amongst mainstream service providers;
 - Discrimination based on race, gender and economic circumstances;
 - No formal supports;
 - Few informal supports;
 - Safety issues;
 - Few life skills;
 - Poor housing living skills; and
 - Literacy skills.²¹

¹⁹ Cooper and Morris (2005) above n11, pg 95

²⁰ *ibid*

²¹ *Ibid*

Specifics of risk factors

This section below combines research VALS has done that is relevant to the topic of homelessness. It provides more detail about some of the risk factors outlined above.

Domestic/Family Violence

Family Violence is a critical problem in the wider Australian public and the damage caused by family violence is embodied in the Aboriginal and Torres Strait Islander community through many data sources, including the following. During 2006–07, 37,800 Aboriginal and Torres Strait Islander peoples attended a Supported Accommodation Assistance Program (SAAP) agency. Of these, 20,100 (18%) were clients and 17,700 (27%) were accompanying children. A greater proportion of Indigenous clients were female (72%) than for non-Indigenous clients (59%) and Indigenous clients were generally younger than non-Indigenous clients, with a median age of 28 years compared with 30 years (Australian Institute of Health and Welfare 2009).

The Australian Institute of Health and Welfare (AIHW) reveal in a 2009 report that in 2006–07, 38% of support periods for Indigenous clients were provided by SAAP agencies primarily targeting women escaping domestic violence, compared with 21% for non-Indigenous clients. This single data set alone demonstrates a group of people at grave risk of transitory or longer-term homelessness as a result of family violence.

Homelessness, Drug Use and Offending

Between 1999 and 2006, a total of 24,936 police detainees were surveyed as part of the Australian Institute of Criminology's Drug Use Monitoring in Australia (DUMA) program. Of those surveyed, 1,689 detainees reported living on the street, having no fixed address or living in crisis accommodation at the time of their apprehension (Australian Institute of Criminology 2008).

Although representing 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.

For example, AIC research (2008) provides that:

- 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. Similarly, one in three (31%) reported having ever been admitted previously to a psychiatric hospital - a prevalence rate twice that reported by non-homeless detainees (15%).
- 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% versus 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.

Homelessness and Mental Illness

Aboriginal and Torres Strait Islander people are vastly over represented among both people who are homeless and people living with mental illness. The impact of poor mental health on housing for Aboriginal and Torres Strait Islanders needs to be assessed urgently, particularly when these are considered in conjunction with other barriers to social inclusion (Mental Health Council of Australia 2009).

People with a mental illness face a number of barriers in their attempts to achieve and maintain stable housing. These include housing affordability, insecure tenure, poor housing conditions, financial difficulties, administrative issues, behavioural and social issues, stigma and discrimination, and a lack of support and treatment. Certain groups will experience additional difficulties due to their increased social isolation. Mental illness can also result from, or be exacerbated by, the experience of homelessness or unstable housing (Mental Health Council of Australia 2009:7).

As noted in the Mental Health Council of Australia's *Home Truths* report (2009) for some people mental health issues precipitate or lead to homelessness, while others experience mental illness as a result of their homelessness, or it has been made worse by it.

Consequences of homelessness related to mental health may include low self-esteem, social isolation, and the exacerbation or development of specific mental health disorders including schizophrenia, depression, bipolar disorder and post-traumatic stress disorder_(22).

VALS recently contributed to a Community Consultation Panel for a review of the *Mental Health Act 1986* (Vic) and responded to linkages that have been found between mental health and cognitive impairment issues and contact with the criminal justice system. In this submission (2009) the unique conception of what Aboriginal and Torres Strait Islander communities consider constitutes mental health and wellbeing, as well as what is considered mental illness, was recognised. The incorporation of such conceptions into legislation that deals with decisions around the treatment of persons was supported.

When considering appropriate measures for mental health that focuses on Aboriginal and Torres Strait Islanders, the *Ways Forward* report (1995) remains a significant source. The state of affairs at the time of *Ways Forward* writing was described as follows:

Where there was contact with or use of mainstream health services they were frequently seen as unhelpful, non-responsive, inaccessible or unavailable, and totally failing to respond to the needs of Aboriginal people with mental illness. Misdiagnosis, the inappropriateness of Western models, failure to recognise language differences, ignorance of Aboriginal culture and history, and racism complicated the picture. On occasion there were helpful individuals or models of service, but the overall picture is one of gross inadequacy and perceived need (Swann & Raphael 1995:44).

The report identified a wide range of unmet service needs for Indigenous Australian people with mental health problems, including a lack of:

- Aboriginal and Torres Strait Islander places of care/healing and access to traditional healers;
- Crisis teams;
- Culturally appropriate early intervention, inpatient mental health and rehabilitation and recovery programs;
- Direct involvement of consumers and carers in service development;
- Appropriate supportive accommodation options for the chronically mentally ill
- Alignment of mental health legislation with Indigenous Australian people's human rights and cultural needs.

The *Ways Forward* report importantly also noted the following:

- It is important to consider mental health and substance abuse issues together rather than rather than separately.
- It is of vital importance to build Indigenous-appropriate models of counselling.
- Workforce development requires cultural competency.
- Aboriginal and Torres Strait Islander people and communities need to build capacity so that such services can be delivered more effectively.
- Consistent data collection, research and evaluation is needed to establish a reliable baseline of information on Indigenous Australian health.
- Of critical and fundamental importance is that all of the above initiatives would need to occur within a broader framework of Indigenous Australian self-determination.

While significant, it must be kept in mind that the *Ways Forward* report was written over thirteen years ago. However, subsequent policy frameworks have used some of its key elements. Examples include the *National Mental Health Plan 2003-2008*, the *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples Mental Health and Social and Emotional Wellbeing 2004-2009*, and of course the Department of Human Services' 2008 *Because Mental Health Matters*.

Homelessness and Bail

According to VALS' solicitors, homelessness is a factor in bail being denied to Aboriginal and Torres Strait Islander 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.

Public Space

VALS is well versed in the issues and arguments around the policy and policing of what is considered public space. This stems from an awareness of long running negative ramifications for the Aboriginal and Torres Strait Islander community (among other marginalised groups) as a result of conflicting definitions of what constitutes legitimate and illegitimate use of public space. As articulated in VALS' research (2008), certain behaviours, gatherings, areas, and times draw attention to what is considered "appropriate" use of 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).²² This concern highlights a failure to consider Aboriginal and Torres Strait 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 that would render their behaviour legal.

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 etc).

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 percent 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).

²² This is commonly referred to as "Zero Tolerance Policing".