EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Housing and Homelessness,
the Hon Mark Butler MP)
HOMELESSNESS BILL 2013

HOMELESSNESS (CONSEQUENTIAL AMENDMENTS) BILL 2013

OUTLINE

Homelessness Bill 2013

The Homelessness Bill 2013 is aimed at increasing recognition and awareness of people who are homeless or at risk of homelessness. It is part of a broader reform process to reduce homelessness.

The 2008 White Paper, The Road Home, outlines how the Government intends to reduce homelessness. The targets are to halve the rate of homelessness by 2020, and to provide supported accommodation for all rough sleepers who seek it. These targets will be achieved through a significant boost in spending, new agreements with the states and territories, and an overhaul of the existing legislative framework.

The homelessness legislative framework was the subject of a report by the House of Representatives Standing Committee on Family, Community, Housing and Youth, Housing the Homeless.

With the exception of a legislative right to housing, which is outside current Government policy and, in practice, would be significantly dependent on the actions of the states and territories (which are responsible for housing), the Committee’s recommendations have been incorporated into this Bill to the best extent possible.

The Bill draws national attention to the experience of homelessness, and voices the aspiration that all Australians have access to appropriate, affordable, safe and sustainable housing.

The Bill acknowledges the direct relationship between addressing homelessness and social inclusion. It sets out a range of service delivery principles to which the Commonwealth is committed, and the strategies seen as necessary to reduce homelessness. These statements of principle reflect a Commonwealth perspective. The Bill does not impose them on the states and territories.

The Bill also confirms the Commonwealth’s commitment to cooperation and consultation in reducing homelessness, and promotes the human rights of people facing homelessness.

This new legislation will replace the Supported Accommodation Assistance Act 1994, retaining in law the important statements about homelessness, the partnerships, effort and strategies that are needed to tackle it, and the treatment and support that vulnerable Australians deserve.
The current federal financial relations framework for Commonwealth, state and territory efforts to reduce homelessness – with funding provided through Commonwealth-state mechanisms such as the National Partnership on Homelessness and the National Affordable Housing Specific Purpose Payment – will continue. This Bill is therefore complementary to the comprehensive funding arrangements already in place, and is not a funding instrument in itself.

Similarly, the issue of service quality is being pursued by working with states and territories to develop a non-legislative Homelessness National Quality Framework, which will be the primary strategy for the White Paper goal of ensuring quality services.

**Homelessness (Consequential Amendments) Bill 2013**

The Homelessness (Consequential Amendments) Bill 2012 repeals the *Supported Accommodation Assistance Act 1994*.

The Bill also makes a consequential amendment to the *Commonwealth Electoral Act 1918*. This is to replace the definition of *homeless person*, which applies in the provisions about including itinerant electors in the Electoral Rolls, and which currently partly relies on concepts drawn from the *Supported Accommodation Assistance Act 1994*.

The new definition of homeless person will ensure that the itinerant elector provisions will continue, despite the repeal of the 1994 Act, to apply simply and clearly so that people who are homeless can still effectively participate in electoral activities in the Australian community.

**FINANCIAL IMPACT STATEMENT**

These Bills have no financial impact.

**STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS**

A statement of compatibility with human rights for each Bill appears at the end of this explanatory memorandum.
HOMELINESS BILL 2013

NOTES ON CLAUSES

Part 1 – Preliminary

Summary

Part 1 provides for formal matters in relation to the Homelessness Bill 2013 and defines certain terms.

Explanation of the clauses

Clause 1 sets out how the new Act may be cited – that is, as the Homelessness Act 2013.

Clause 2 provides that the new Act will commence on the day that it receives Royal Assent.

Clause 3 provides that the object of the new Act is to increase recognition and awareness of persons who are experiencing homelessness (in accordance with the definition of the term homelessness in clause 5) and of persons who are at risk of experiencing homelessness.

Clause 4 defines certain terms that are used in the new Act. In particular, it defines:

- **homelessness** by reference to the detailed definition of that term in clause 5;
- **mainstream services** as the general services provided by government or non-government agencies that are available to the general population. This definition then lists some agencies as examples, including Centrelink (that is, the part of the Department of Human Services overseen by the Chief Executive Centrelink under the Human Services (Centrelink) Act 1997), public and community housing, aged care and community health centres, although the list is not intended to be exhaustive;
- **specialist homelessness services** as including services to assist people who are, or are at risk of, sleeping rough or living in an improvised dwelling. This definition is intended not to be exhaustive, and may also include other services established for the purpose of assisting people facing homelessness, even if they are not sleeping rough or at risk of sleeping rough.
Clause 5 defines the term *homelessness* with express reference to when a person is experiencing homelessness, rather than being at risk of homelessness. The intention, however, is to ensure that the definition operates so that a person is at risk of homelessness when they are at risk of experiencing homelessness in accordance with the definition. It provides that a person is experiencing homelessness if they are in at least one of the following circumstances:

(a) sleeping rough or living in an improvised dwelling;

(b) temporarily living with friends or relatives, having no other usual address and not having the capacity to obtain other suitable accommodation;

(c) having no safe place to live (including because the person is, or is at risk of, experiencing domestic violence). This limb of the definition recognises that the safety of a person is a vital aspect of that person’s living circumstances. Some people may experience homelessness because they have no safe place to live, even if they have a usual address. This means, for example, that a person who is living temporarily with friends or relatives and cannot return home safely because of domestic violence, or the risk of domestic violence, will be recognised to be a person experiencing homelessness;

(d) living in accommodation provided by a specialist homelessness service (within the meaning of the definition of that term in clause 4);

(e) living in a refuge, shelter or similar crisis accommodation. This limb of the definition recognises that people living in crisis accommodation should also be recognised as experiencing homelessness;

(f) living in a caravan park, boarding house, hostel or similar accommodation, whether on a short-term or long-term basis, in respect of which the person has no secure lease and is not living in that accommodation by choice. This recognises that not all people who live in these kinds of accommodation are homeless.
Part 2 – Recognition of persons who are, or are at risk of, experiencing homelessness

Summary

Part 2 provides for the recognition of people experiencing, or at risk of experiencing, homelessness. It recognises that there are certain factors that may contribute to homelessness and that certain people may be particularly vulnerable to experiencing homelessness.

Part 2 also recognises the Commonwealth’s aspiration that all people living in Australia should have access to appropriate, affordable, safe and sustainable housing, and that access to such housing contributes to a person’s social and economic participation. It recognises the direct relationship between addressing homelessness and achieving a socially inclusive society, and sets out a number of service delivery outcomes that the Commonwealth is committed to achieving.

The Part expresses the Commonwealth’s recognition of the importance of having strategies to reduce the number of people who are, or are at risk of, experiencing homelessness. It confirms the Commonwealth’s commitment to cooperation and consultation in reducing homelessness.

It also recognises the steps that the Commonwealth has taken to protect the rights of all Australians, including people who are, or are at risk of, experiencing homelessness, by recognising international standards for the protection of universal human rights and fundamental freedoms.

Explanation of the clauses

Clause 6 recognises that people experiencing, or at risk of experiencing, homelessness should have the same abilities to exercise their human rights and the same opportunities as other Australians. The particular challenges people who are experiencing, or are at risk of experiencing, homelessness face and the support that they should receive are also recognised.

Subclauses 6(1), 6(2) and 6(3) recognise that people who are, or are at risk of, experiencing homelessness, while they have the same rights as other Australians, face more challenges in exercising those rights and should have the same ability to exercise those rights.

Subclause 6(4) recognises that people who are, or are at risk of, experiencing homelessness, contribute to family, social and community life. This subclause acknowledges that a person’s value to society is not defined by whether or not the person has a home.
Subclause 6(5) recognises that people who are, or are at risk of, experiencing homelessness should be supported to enjoy optimum health, safety and social wellbeing. Social wellbeing includes connections to community and the ability to participate in community life without discrimination.

Subclause 6(6) recognises that the support provided to people who are, or are at risk of, experiencing homelessness should be provided in a tailored way that respects their dignity as individuals, enhances their self-esteem, is sensitive to their specific and individual social and economic circumstances, and respects their particular cultural backgrounds and their beliefs.

Subclause 6(7) recognises that people who are, or are at risk of, experiencing homelessness should be supported to achieve greater economic wellbeing and sustainability, greater participation in civic affairs and should have opportunities to participate in employment and education. While the term ‘civic affairs’ is not defined, this phrase is intended to cover the ability to vote in elections and participate in public policy discussion and participation to the same extent as other Australians.

Clause 7 recognises that there are certain factors that may contribute to homelessness and that certain people may be particularly vulnerable to experiencing homelessness.

Subclause 7(1) provides a non-exhaustive list of these factors, referring to the examples of unemployment, a lack of appropriate, affordable, safe and sustainable housing, physical or mental health issues, substance abuse, family conflict, discrimination, domestic violence and physical, emotional or sexual abuse.

Subclause 7(2) recognises that certain people leaving institutional settings, such as custodial, juvenile detention or mental health institutions, or non-institutional settings, such as guardianship and foster care arrangements, may be at risk of experiencing homelessness.

Clause 8 recognises the Commonwealth’s aspiration that all people living in Australia should have access to appropriate, affordable, safe and sustainable housing, and recognises that access to such housing contributes to a person’s social and economic participation. The purpose of this provision is to provide legislative recognition of the object of the National Affordable Housing Agreement, which is to ensure that all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation.

Clause 9 recognises the direct relationship between addressing homelessness and achieving a socially-inclusive society.
Subclause 9(1) recognises a number of barriers that people who are, or are at risk of, experiencing homelessness may face in achieving social inclusion, including barriers to participating in education, employment and civic affairs, accessing basic needs such as healthcare, and maintaining community and social links.

To help more people living in Australia achieve social inclusion, subclause 9(2) expresses a commitment by the Commonwealth to a cooperative approach with the states and territories, local government, and the not-for-profit and for-profit sectors to address homelessness.

Clause 10 sets out five service delivery outcomes in relation to mainstream services and specialist homelessness services for people experiencing, or at risk of experiencing, homelessness, to which the Commonwealth expresses its commitment. These are that mainstream services and specialist homelessness services:

- are of the highest quality;
- are, within available resources, based on priority of access, taking into account an assessment of the needs and vulnerability of those people;
- are timely, responsive, appropriate to the circumstances of those people, accessible and integrated;
- address the individual needs of those people, and are culturally appropriate, taking their views into account; and
- are provided in a way that does not prejudice the universal human rights of those people.

Clause 11 expresses, in subclause (1), the Commonwealth’s recognition of the importance of having strategies to reduce the number of people who are, or are at risk of, experiencing homelessness, including strategies for:

- prevention and early intervention (measures to stop people becoming homeless in the first place and to respond quickly with effective support for those who do become homeless, to help them get back on their feet);
- increasing the supply of affordable housing;
- increasing the range of available appropriate accommodation options;
- ongoing support and services, including individual case management where appropriate.
Subclause 11(2) recognises the importance of research, and acknowledges that research into homelessness helps identify and target strategies to address the individual needs of people experiencing, or at risk of experiencing, homelessness. It recognises the value of evidence-based policy in preventing and responding effectively to the complexity of homelessness.

**Clause 12** confirms the Commonwealth’s commitment to cooperation and consultation in reducing homelessness. It recognises that, to reduce the number of people experiencing, or at risk of experiencing, homelessness, it is important for the Commonwealth to adopt a cooperative and consultative approach.

Subclause 12(1) recognises the Commonwealth’s commitment to working cooperatively with all levels of government, the not-for-profit sector, the for-profit sector, and people who are, or are at risk of, experiencing homelessness, to reduce the number of people who are, or are at risk of, experiencing homelessness.

Subclause 12(2) recognises the Commonwealth’s commitment to its agencies (including, as appropriate, departments of state, statutory agencies and Commonwealth authorities) working cooperatively to reduce the number of people who are, or are at risk of, experiencing homelessness.

Subclause 12(3) recognises the Commonwealth’s commitment to maintaining a consultative approach with stakeholders to the development of policies to address the issue of homelessness.

**Clause 13** acknowledges that the Commonwealth has acted to protect the rights of all Australian citizens, including people who are, or are risk of, experiencing homelessness, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

- the ratification of the *International Convention on the Elimination of all Forms of Discrimination*;
- the ratification of the *International Covenant on Economic, Social and Cultural Rights*;
- the ratification of the *International Covenant on Civil and Political Rights*;
- the ratification of the *Convention on the Elimination of All Forms of Discrimination Against Women*;
- the ratification of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*;
- the ratification of the *Convention on the Rights of the Child*;
• the ratification of the *Convention on the Rights of Persons with Disabilities*;

• the acceptance of the *Universal Declaration of Human Rights*;

• the acceptance of the *Declaration on the Elimination of Violence Against Women*;

• the statement of support for the *United Nations Declaration on the Rights of Indigenous Peoples*; and

• the enactment of legislation that includes the *Human Rights (Parliamentary Scrutiny) Act 2011* and the *Australian Human Rights Commission Act 1986*.

Subclause 13(2) recognises that addressing the problem of homelessness by reducing the number of people who are, or are at risk of, experiencing homelessness is part of meeting Australia’s international human rights obligations.
Part 3 – Other matters

Summary

Part 3 provides that, once enacted, the Act is not to create or give rise to any rights or obligations. It also provides that the Act is not intended to apply to the exclusion of any law of a state or territory that provides for the recognition of people who are, or are at risk of, experiencing homelessness.

Explanation of the clauses

Clause 14 provides that the Act does not create or give rise to any rights or obligations.

Subclause 14(1) is intended to ensure that the Act does not give rise to legally enforceable rights in a court or other proceedings (including in a tribunal), whether of a substantive or procedural nature.

Subclause 14(2) provides, to avoid doubt, that no action, suit or proceeding is to be instituted in reliance on the terms of the Act or the operation of the Act.

Clause 15 provides that the Act is not intended to apply to the exclusion of any law of a state or territory that provides for the recognition of people who are, or are at risk of, experiencing homelessness.
NOTES ON CLAUSES

Clause 1 sets out how the new Act may be cited – that is, as the Homelessness (Consequential Amendments) Act 2013.

Clause 2 provides that sections 1 to 3 of the new Act will commence on the day the new Act receives Royal Assent. It also provides that Schedule 1 will commence at the same time as the Homelessness Act 2013 commences.

Clause 3 provides that each Act that is specified in a Schedule is amended as set out in the applicable items in the Schedule concerned, and that any other item in the Schedule has effect according to its terms.
Schedule 1 – Amendments

Part 1 – Repeal

Summary

Part 1 provides for the repeal of the whole of the Supported Accommodation Assistance Act 1994 (Supported Accommodation Assistance Act).

Background

The new Homelessness Act 2013 is intended to replace the Supported Accommodation Assistance Act, retaining the important statements about homelessness, the partnerships, effort and strategies that are needed to tackle it, and the treatment and support that vulnerable Australians deserve.

However, in recognition of the current federal financial relations framework for Commonwealth, state and territory efforts to reduce homelessness – with funding provided through Commonwealth-state mechanisms such as the National Partnership on Homelessness and the National Affordable Housing Specific Purpose Payment – a number of the aspects of the Supported Accommodation Assistance Act are no longer required, including the funding arrangements it outlines between the Commonwealth and states and territories.

Explanation of the changes

Clause 1 repeals the whole of the Supported Accommodation Assistance Act.
Part 2 – Consequential amendment

Summary

Part 2 makes a consequential amendment to subsection 96(13) (definition of *homeless person*) of the *Commonwealth Electoral Act 1918* (Commonwealth Electoral Act).

Background

The amendment to the Commonwealth Electoral Act made by this Part is consequential upon the repeal of the Supported Accommodation Assistance Act. A minor amendment is made to the definition of *homeless person*, which applies in provisions about including itinerant electors in the Electoral Rolls. The amendment will ensure that the definition will continue to apply by reference to the natural meaning of the term ‘homeless’ so that people who are homeless can still effectively participate in elections.

This amendment preserves the operation of existing provisions in the Commonwealth Electoral Act despite the repeal of the Supported Accommodation Assistance Act.

Explanation of the changes

Clause 2 repeals the definition of *homeless person* in subsection 96(13) of the Commonwealth Electoral Act, and substitutes a new definition. Under the new definition, a homeless person includes a person living in crisis accommodation or transitional accommodation and a person who has inadequate access to safe and secure housing.

This amendment will effectively preserve paragraph (a) of the current definition in subsection 96(13) of the Commonwealth Electoral Act and remove the reference, in paragraph (b) of the current definition, to the Supported Accommodation Assistance Act.

This amendment to the definition of homeless person in the Commonwealth Electoral Act is purely consequential to the repeal of the Supported Accommodation Assistance Act, and is not intended to change the operation of the definition. The new definition of homeless person is an inclusive, non-exhaustive definition that relies on the ordinary and natural meaning of ‘homeless person’.
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Homelessness Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Bill provides an Act for the recognition of people who are, or are at risk of, experiencing homelessness to maintain a national focus on the issue of homelessness.

The Bill calls attention to the seriousness of homelessness, and seeks to increase awareness and understanding in the Australian community about homelessness and how it challenges people’s ability to achieve social inclusion. The Bill sets out the Commonwealth’s views on the strategies and partnerships needed to address homelessness and how people facing homelessness deserve to be treated and supported.

Human rights implications

Increasing awareness of human rights

The Bill engages the human rights enjoyed by all Australians and seeks to advance the awareness of these rights as they apply to people who are, or are at risk of, experiencing homelessness.

The Bill lists the ratified international standards and enacted legislation of the Commonwealth that forms the basis for the human rights and freedoms of all Australians. The Bill highlights that people who are, or are at risk of, experiencing homelessness should have the same ability to exercise their rights as other Australians. The Bill also recognises that people who are, or are at risk of, experiencing homelessness face more challenges than other Australians in exercising their rights.

As the Bill highlights and reaffirms the existing human rights of people who are, or are at risk of, experiencing homelessness, the Bill neither extends nor limits the human rights of those who are, or are at risk of, experiencing homelessness, or any other people. The Bill explicitly links Australia’s reduction of homelessness with meeting its international human rights obligations.
Demonstrating the Commonwealth’s support of international human rights obligations

The Bill sets out the Commonwealth’s goal to reduce the number of people who are, or are at risk of, experiencing homelessness through its commitment to working cooperatively with key stakeholders and its recognition of the importance of key strategies. The Bill also sets out the Commonwealth’s aspiration that all people living in Australia have access to appropriate, affordable, safe and sustainable housing. This demonstrates the Commonwealth’s support towards Australia’s international human rights obligations and, in particular, engages Australia’s obligations under Article 11 of the *International Covenant on Civil and Political Rights*, the right to an adequate standard of living, which includes the right to adequate housing.

This complements and is consistent with the practical steps towards progressively realising the right to housing that Australia has taken through its investments under the National Affordable Housing Agreement and related National Partnerships. It also supports Australia’s obligations to a wide range of other rights which are affected by homelessness, including, but not limited to, the right to health, personal safety, privacy and social security. These obligations relate to Australian ratified treaties, including the *International Covenant on Civil and Political Rights* and the *Convention on the Rights of the Child*.

**Conclusion**

The Bill is compatible with human rights because it seeks to promote the existing human rights of people who are, or are at risk of, experiencing homelessness. It does not create any limitations to human rights. This Bill demonstrates the Commonwealth’s support of Australia’s international human rights obligations under a number of treaties.

Minister for Housing and Homelessness,
the Hon Mark Butler MP
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights
(Parliamentary Scrutiny) Act 2011

Homelessness (Consequential Amendments) Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

The Bill provides an Act to supplement the Homelessness Bill 2013. Because the new Homelessness Act 2013 will replace the Supported Accommodation Assistance Act 1994, this Consequential Amendments Bill repeals the Supported Accommodation Assistance Act to make way for the new legislation.

The Bill also makes a consequential amendment to the Commonwealth Electoral Act 1918. At present, the definition of homeless person in the Commonwealth Electoral Act partly relies on concepts drawn from the Supported Accommodation Assistance Act. That element of the definition needs to be removed because of the repeal of that Act.

Human rights implications

Maintaining the right to civic participation

The Bill’s amendment to the Commonwealth Electoral Act 1918 preserves the administrative arrangement that allows Australians who are experiencing homelessness to participate in federal electoral activities. This maintains the right to political participation, and the right to vote, for Australians experiencing homelessness. These rights are part of Australia’s international human rights obligations under Article 25 of the International Covenant on Civil and Political Rights and Article 21 of the Universal Declaration on Human Rights.

Conclusion

The Bill is compatible with human rights because it supports the right to vote for Australians experiencing homelessness.

Minister for Housing and Homelessness,
the Hon Mark Butler MP