

On the Cusp of Change: Western Australia's timely need for a substantive equality framework to respond to homelessness

Annabel Seow

Aviva Freilich
School of Law

The University of Western Australia

Stephen Hall
CEED Client: Shelter WA

Abstract

On any one night, there are 105,000 people experiencing homelessness in Australia with many more living in insecure housing, one step away from being homeless. As part of the 2017 election campaign promise to reduce inefficiencies in the public sector, the Western Australian Labor Party announced the amalgamation of the new Department of Community Services. The ergonomics of this timely reassessment of the machinery of government provides a unique opportunity to alter the very philosophy of the public sector by implementing a client centric service delivery model through the principles of substantive equality. Through the lens of the traditional dimensions of substantive equality and with reference to the Indigenous Australian homeless experience, it is evident that the current model is a vehicle that perpetuates systemic discrimination. Establishing a substantive equality model from the outset, would enable positive cross portfolio collaboration with a meaningful response to homelessness that extends beyond 'managing homelessness' to reducing homelessness and maintaining people in sustainable housing. Though there is much to be optimistic about, this submission remains cautious that the very success of such a policy relies solely on the government's positive commitment to make a philosophical change from the top of government down.

1. Introduction

Homelessness is a part of the continuum of housing need. Responding to homelessness requires a multi-faceted approach from the government shifting the departmental mentality from asset managing to a client centric focus. With the recent Department of Community Services merger, the newly elected Labor government has an opportunity to devise and implement a theoretical framework of substantive equality into all streams of service delivery. Given housing insecurity is a major socio-economic issue for many Western Australians, these changes would be timely and necessary as access to housing can affect health and education, and therefore labour market productivity (MacLennan, et al., 2016).

The considerable wealth of research into homelessness indicates that prevention and early intervention are the most effective methods to ensure measurable reductions in homelessness (MacKenzie, 2016). Currently, Western Australia's policy and objectives with respect to housing and homelessness sit within the broader framework of the National Affordable Housing

Agreement (NAHA), which was established in January 2009 along with three subsequent national partnership agreements.

The aim of this project, in light of the current policy deficiencies, was to provide a critical analysis of the requisite need for a substantive equality framework to be built into all streams of government service delivery. In doing so, three key elements were addressed. Firstly, in order to understand the nexus between homelessness and substantive equality, it is necessary to analyse the legal conception of homelessness and the traditional and contemporary substantive equality frameworks. Secondly, the importance of the government cannot be understated as their desire to effectuate meaningful change will rely solely on their commitment to dismantling silo mentalities and enacting the principles of substantive equality from the outset. Finally, an analysis of the current model of service delivery with a focus on the Indigenous experience exemplifies that such a change in the machinery of government is timely as the current model is ultimately a vehicle perpetuating systemic discrimination.

2. Process

Resolving Definitional Issues of Homelessness

A significant portion of the project involved consideration of how a lack of definitional consensus can hinder the adoption of a coherent policy framework. As there is no singular, universal understanding as to how homelessness should be defined, this project adopted a holistic approach that is centred on the widely accepted Chamberlain and MacKenzie's 'cultural definition' which canvasses community and generally accepted standards of accommodation to create a minimum standard that people can expect to enjoy in Australia (Chamberlain and MacKenzie, 1992).

Canvassing Ideas of Substantive Equality

In a similar manner to defining homelessness, specific attention was given to conceptualising substantive equality for the purposes of policy development. The majority judgement of Gummow, Hayne and Heydon JJ in *Purvis v NSW Department of Education and Training*, articulated the theory as the following:

“Substantive equality’ directs attention to equality of outcome or to the reduction or elimination of barriers to participation in certain activities. It begins from the premise that ‘in order to treat some persons equally, we must treat them differently”.

This notion was further broken down through the analysis of the Fredman approach to substantive equality which deliberately frames the theory into four dimensions (Fredman, 2005) in order to resist asserting a pre-established 'lexical priority' (Areson, 1999). The right to equality under the Fredman model establishes the dimensions of redistribution, recognition, participation and transformation. The claim of redistribution speaks to the equitable distribution of resources and goods in order to facilitate a redistribution of wealth. Through the removal of the economic effects of prejudice and unequal opportunity, this combats domination and breaks down the cycle of disadvantage for people with a protected attribute. Comparatively, the recognition dimension recognises that wealth, or lack thereof, is not the only factor that perpetuates systemic inequality and recognition of the distinctive perspective of ethnic, racial and sexual minorities and gender differences also needs to be fulfilled. Penultimately, the participative dimension is the last requirement of the traditional framework of substantive equality. It calls for genuine social inclusion and political voice that goes beyond universal

suffrage and the right to vote. The final dimension of transformation extends beyond the traditional notion of substantive equality and makes explicit the idea that is implicit in many formulations of substantive equality, that is, unless the social system and its structures are transformed to be more inclusive, then inequality will continue to be pervasive and persistent. It is this theoretical understanding that forms the basis of the substantive equality framework utilised in this project.

3. Western Australia's Unique Geography

Throughout the process of research into a substantive equality framework, Western Australia's unique geography played an integral role in better understanding the challenges facing service delivery. Western Australia inherently faces delivery issues as the result of its large geographic size, the most expansive of any Australian State or Territory, combined with its relatively small population. The inclusion of the principles of substantive equality services to rural, regional and remote communities is not practical in the same way it is to metropolitan areas (McDonnell & Westbury, 2002). In order to provide services in a manner that incorporates substantive equality, the antecedent of structural disadvantage of Indigenous Australians needs to be overcome (de Vos, 2001). This speaks to the recognition paradigm of substantive equality as Indigenous people face specific barriers in accessing mainstream housing including intergenerational poverty and racism. These barriers and lack of cultural understanding mean that state wide programs are not being effectively translated towards critical need in rural communities. Furthermore, the government's lack of invitation for community participation means that the current model of services lacks meaning and more importantly, permanent change.

4. Indigenous Experience of Homelessness

The critical example utilised in this report to explore the need for substantive equality was the Indigenous experience of homelessness in Western Australia. The research looked into the overrepresentation of Indigenous people relative to their population size in terms of homelessness and how intergenerational poverty is a large factor in demand for public and community housing. Specifically, the inequalities found at all of tenure were examined and it is believed that a preventative approach to homelessness has the potential to help end systemic discrimination.

Home ownership is the most secure form of tenure however, only 39.6% per cent of Indigenous people have been able to enjoy such security as indicated by the 2016 Census results. The low numbers of home ownership may be improved if positive steps are taken to ensure that security of purchasing a home, the second level of tenure, adopts principles of substantive equality's second frame of redistribution. As the second level of tenure typically involves the maintaining of mortgage repayments which are coupled with fluctuating interest rates, the state government should look towards funding more financial literacy programs to ensure that Indigenous people are less likely to default on their mortgages and have a greater chance of moving into the first level of tenure of home ownership. Additionally, the *National Consumer Credit Protection (Transitional and Consequential Provisions Act)*, repealing the *Consumer Credit (Western Australia) Code*, allows for hardship variations to be made to the terms of loans therefore aiding to remove the economic effects of prejudice and unequal opportunity.

The inclusion of positive duties also extends to the third form of tenure, the private rental market. In Western Australia, private tenancy is governed by the *Residential Tenancies Act 1987* (WA) ('RTA') which provides protections for both landlords and tenants at a statutory level. When viewed through the lens of the principles of substantive equality, the RTA exemplifies how the law can operate as an instrument for maintaining structural disadvantage. Section 64 of the RTA has been particularly contentious as it allows for the termination by the lessor without any ground giving rise to claims to discrimination particularly towards Indigenous people. The eviction of individuals into homelessness is a disproportionate response to the reasons that can give rise to eviction such as anti-social behaviour, overcrowding and failure to pay rent (Solonec, 2008). In particular, overcrowding as a contributory reason towards eviction is testament to the failure to recognise different cultural obligations. As 'one of the core values in being Aboriginal is the family ties with the kinship system' (Shelter WA, 1996) a cultural obligation to house wider family members exists. The Department of Communities would therefore benefit from heavy consultation with Indigenous people and peak bodies of the sector to ensure that systemic racism is not enabled through such legislative provisions. Additionally, early intervention strategies should be adopted as to improve the efficiency of the Department by seeking to ameliorate the problem before it reaches the point of eviction.

5. Dismantling Departmental Silos

In the same way that the Community Services amalgamation offers the opportunity for change, it may simultaneously hinder the potential for developments to be actualised. If a common discourse of shifting away from managing homelessness to reducing homelessness and maintaining people in sustainable housing is adopted from the inception, the government may be able to dismantle silo mentalities. The very success of the implementation of a substantive equality framework rests on the positive cross-collaboration between departments.

For example, if the Department of Communities were to ensure kinetic collaboration between the Department for Children Protection and Family Support and the Housing Authority, they could co-design a shared assessment framework that would provide more targeted support for those Indigenous clients and clients with complex compounded needs. This would help to address the lack of communication currently subsisting between departments whereby the Housing Authority may evict someone, only to have the Department of Child Protection and Family Services place them into crisis accommodation.

Mental Health Portfolio Recommendation

In seeking to maximise efficiency and prioritise substantive equality, it is also worth noting that the Mental Health sector as part of the Department of Health has not been signed into the merger of Community Services. One of the most important prerequisites for an individual with impaired capacity to achieve effective treatment is having a home to go to (Ridgway & Zipple, 1990). The co-morbidity homelessness and mental health issues suggests that the amalgamation of services would inherently benefit from including Mental Health into the portfolio. Early intervention through the recognition dimension of substantive equality is crucial to provide targeted support that redistributes resources in a manner that has the potential to stabilise tenancy. As the amalgamation of Community Services comes into effect 1 July 2017, it seems unlikely that Mental Health will be merged at this point. However, if the principles of substantive equality are successfully implemented from the top of the Department, this will

have a positive impact on intergovernmental proceedings, including with the Department of Health, and potentially effectuate change into all streams of service delivery.

6. Results and Discussion

The following recommendations made in this body of work are based on the principles of substantive equality as a response to Western Australia's unique opportunity to bring an end to homelessness in a manner that eliminates systemic discrimination and delivers services that recognise the different cultural and social needs of their clients.

Firstly, in order to achieve such goals social policy needs to be framed in terms of goals and obligations so to identify the issues and respond with positive steps to actualise the goals. Secondly, individuals who form different ethnic, racial and sexual minorities and those with gender differences and complex needs should receive formal recognition of the systemic inequality they face and subsequently be given the opportunity of meaningful participation in order to encourage a high level of self determination. Furthermore, the removal of barriers facing these recognised groups will allow for the redistribution of resources in a substantive manner as to ensure that wealth can be used as a tool to break the cycle of disadvantage. Lastly, policy, procedure and services should be delivered with the intention of fulfilling the aforementioned dimensions so as to actualise the transformation of Western Australia's social system by eliminating systemic inequality.

7. Conclusions and Future Work

The work completed to date on this topic has depicted the timely need for the implementation of substantive equality into all streams of government. The changes in machinery of government will merely be a subsidiary of the inequality already perpetuated within public sector service delivery if no positive commitment to change the philosophy is adopted. Specifically, strong leadership will be required from the Cabinet down to successfully implement reform and enshrine a substantive equality framework into the policy and practice of the Department of Community Services.

It is anticipated that this theoretical research will lead to further scholarship and development of a formal substantive equality policy that embodies the dimensions of substantive equality identified in this project.

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