

## INTRODUCTION

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## 1. Introduction

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### 1.1 Purpose of this Manual

The purpose of the *Homelessness Law and Advocacy Resource Manual (the Manual)* is to provide a practical and accessible overview of the legal issues that most often affect homeless people. The Manual is designed primarily for legal practitioners such as volunteer lawyers at the Homeless Persons' Legal Clinic (**the Clinic**) and community lawyers. However, the Manual is also a valuable resource for service providers in the area of homelessness, including financial counsellors (who undertake a significant amount of quasi-legal work, particularly in the area of credit and debt and infringements) housing workers and drug and alcohol workers.

### 1.2 Using this Manual

The Manual is divided into 11 chapters that address the following areas:

#### 1. Introduction

The Introduction discusses the purpose of the Manual, and provides a definition of **homelessness**. This chapter also introduces the Clinic and its roles and activities.

#### 2. Homelessness and Discrimination

Discrimination is the unfair treatment of a person or group on the basis of prejudice. As with most marginalised and disadvantaged groups in the community, homeless people are often victims of unlawful discrimination. This chapter considers the bases upon which unlawful discrimination is exercised, and victims' rights of redress, in both the Commonwealth and Victorian contexts.

### **3. Homelessness and the Victorian Charter of Rights**

This chapter considers the implications of the Victorian Charter of Rights and Responsibilities (**the Charter**) for homeless people. It considers the types of rights protected by the Charter, focusing on rights that affect homeless people. The chapter also considers the responsibilities of public authorities to act in accordance with the Charter and how the Charter can be used to protect homeless people's rights.

### **4. Housing and Tenancy**

This chapter considers many of the issues faced by people experiencing homelessness and access to housing. Different types of accommodation, both public and private, are discussed as are the rights and responsibilities of both tenants and landlords.

### **5. Infringements**

Infringement notices and fines are issued for many minor public transport, public space, parking and traffic offences. Many people experiencing homelessness and other forms of disadvantage accrue significant unpaid infringement notices. This chapter addresses the legal framework within which fines are issued and also describes the options available to deal with and challenge fines.

### **6. Police Powers**

People experiencing homelessness are often vulnerable to the abuse caused by police acting beyond their powers. This chapter examines the role of police in keeping the peace and the processes and procedures for making complaints against police when they act beyond the scope of the powers awarded to them under statute.

### **7. Victims of Crime Compensation**

People experiencing homelessness are often the victims of violent crimes. This chapter considers the compensation available to victims of crime. The statutory compensation available from the Victims of Crime Assistance Tribunal is discussed in detail and other avenues are also considered.

### **8. Mental Health**

Many people experiencing homelessness will also experience mental health issues. This often results in difficulties in accessing key services such as those relating to health and housing. This chapter looks at some of the issues experienced by homeless people experiencing mental health issues such as involuntary treatment and dealing with the criminal justice system.

### **9. Guardianship and Administration**

This chapter examines the roles and responsibilities of both guardians and administrators under the *Guardianship and Administration Act 1986* (Vic) and the criteria used by the Victorian Civil and Administrative Tribunal (**VCAT**) in making determinations under the *Guardianship and Administration Act*. The process for making an application to VCAT and the procedures during and after the hearing are also examined.

### **10. Social Security**

The majority of people experiencing homelessness will be recipients of social security benefits. This chapter examines the Australian social security system by giving an

overview of common payments, benefits and allowances as well as guidance on the potential problems that clients may face in a social security context.

## **11. Credit and Debt**

This chapter addresses some of the common problems associated with credit and debt confronting homeless people. The chapter aims to assist pro bono lawyers in dealing with the more common client problems, complaints and disputes arising in a credit and debt context; and in advocating more effectively for financially and socially disadvantaged people in credit and debt matters to ensure that their rights are protected.

Each chapter includes an overview or summary, details of further useful resources and contacts and relevant precedents.

## **1.3 Disclaimer**

This Manual is intended to be used as a resource that introduces different areas of law and provides guidance on how an issue might be addressed. The Manual is not intended to be advice on any particular matter. Readers should not act on the basis of any material in the Manual without obtaining advice relevant to your own particular situations. The authors and publishers expressly disclaim any liability to any person in respect of any action taken or not taken in reliance on the contents of this Manual.

The law in this edition of the Manual is correct as at 30 June 2008.

## **1.4 Acknowledgements**

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The Clinic wishes to thank the following organisations and individuals for their assistance in preparing the Manual:

- Allens Arthur Robinson;
- Blake Dawson;
- Clayton Utz;
- Corrs Chambers Westgarth;
- DLA Phillips Fox;
- Mallesons Stephen Jaques;
- the Mental Health Legal Centre and their *Guide Written to Assist Advocates Representing People Appearing before the Guardianship List of the Victorian Civil and Administrative Tribunal*;
- Melinda Richards, Counsel;
- Minter Ellison; and
- Villamanta Disability Rights Legal Centre.

## 2. What is homelessness?

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### 2.1 Definition of Homelessness

There are many definitions of homelessness that respond to the different elements and forms it may take. At its most elementary, homelessness is living without an adequate home that is safe, secure and not dangerous to one's health. Many recognise that a home is more than a physical structure but is also a place for families, warmth, security, trust and privacy. This understanding of the home differentiates a house or physical shelter from a home.<sup>1</sup> Some of the requisite elements arising from this broad conception include: security of tenure; security against internal and external threats; affordability; ability to have visitors; privacy; autonomy; accessibility; compatibility with the neighbourhood; and appropriate for the needs of the household. In this way, it can be seen that homelessness is more than *houselessness*. Rather, homelessness is the lack of a 'safe and nurturing home environment; a place where people feel comfortable and settled; and a place that is private and where they feel they belong.'<sup>2</sup>

Accordingly, the Clinic supports and advocates for consistent recognition throughout Australian law and policy of the following definition of 'homeless', which is taken from the *Supported Accommodation Assistance and Act 1994* (Cth):

A person is taken to be 'homeless' if he or she has inadequate access to safe and secure housing.

A person is taken to have inadequate access to safe and secure housing if the only housing to which a person has access:

- (a) damages, or is likely to damage, the person's health; or
- (b) threatens the person's safety; or
- (c) marginalises the person through failing to provide access to:
  - (i) adequate personal amenities; or
  - (ii) the economic or social supports that a home normally affords; or
- (d) places the person in circumstances which threaten or adversely affect the adequacy, safety, security and affordability of that housing.

This definition is consistent with the international law definition of 'homelessness' developed by the United Nations Committee on Economic, Social and Cultural Rights which provides, in effect, that a person is homeless unless he or she has adequate housing that affords the right to live in security, peace and dignity.<sup>3</sup>

Nevertheless, for the purpose of identifying the extent of homelessness and assisting governments to appropriately develop and deliver services, the Australian Bureau of

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<sup>1</sup> Farrin J et al., 'Homeless youth in the country: exploring options for change' (2005) 24(3) *Youth Studies Australia*.

<sup>2</sup> Healey J (ed.) (2002), *The Homeless*, The Spinney Press, Rozelle, NSW, 4.

<sup>3</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No 4 in Relation to the Right to Adequate Housing*, UN Doc E/CN4/1991/4 (12 December 1991).

Statistics has adopted the definition of homelessness proposed by Chris Chamberlain and David MacKenzie.<sup>4</sup> Chamberlain and MacKenzie argue that homelessness is best defined in relation to common community standards regarding the minimum accommodation necessary to live according to the 'conventions of community life'.<sup>5</sup> This allows some recognition of the elements described above in relation to the home. In Australia the accepted minimum community standard is said to be a small, rented flat with basic amenities such as a bedroom, bathroom and kitchen.<sup>6</sup> Having regard to this standard, Chamberlain and MacKenzie identify three categories of homelessness, discussed below.

**Primary homelessness** refers to people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.

**Secondary homelessness** refers to people who move frequently from one form of temporary shelter to another. Secondary homelessness covers people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families and those using boarding houses on an occasional or intermittent basis.

**Tertiary homelessness** refers to people who live in boarding houses on a medium to long-term basis. Residents of boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; they do not have security of tenure provided by a lease.<sup>7</sup>

Using the definition proposed by Chamberlain and McKenzie, the Australian Bureau of Statistics enumerated that, on census night in 2001, there were almost 100,000 people experiencing homelessness across Australia.<sup>8</sup> This figure includes over 14,000 people sleeping rough or in squats, over 14,000 in crisis accommodation or refuges, approximately 23,000 in boarding houses and 23,000 people living temporarily in caravan parks.<sup>9</sup>

## 2.2 Causes of Homelessness

The causes of homelessness in Australia are complex and varied. However, they are generally acknowledged to include:

- domestic and family violence;

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<sup>4</sup> Chris Chamberlain and David McKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274; Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (1999).

<sup>5</sup> Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (1999) 9-11, 49.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, 13, 49.

<sup>8</sup> Chris Chamberlain and David MacKenzie, *Counting the Homeless 2001* (2003).

<sup>9</sup> *Ibid.*, 2.

- poverty, severe financial hardship and lack of access to adequate income support;
- unemployment;
- lack of affordable housing;
- mental illness and lack of access to health care;
- drug and alcohol disorders and lack of access to drug treatment services;
- problem gambling;
- legal issues;
- discrimination;
- disability; and
- evictions.

In many cases of homelessness, these causes are intersectional and inter-related.

### 3. About the Clinic

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#### 3.1 Introduction

The Homeless Persons' Legal Clinic (**the Clinic**) is a project of the Public Interest Law Clearing House (Vic) Inc (**PILCH**). The Clinic was established in October 2001 in collaboration with the Council to Homeless Persons (**CHP**) to provide free legal assistance to and advocacy on behalf of people who are homeless or at risk of homelessness.

The Clinic was initially funded by a non-recurrent 18-month grant from the Victorian Department of Human Services (Supported Accommodation Assistance Program Unit). It is now funded by the Victorian Department of Justice through the Victoria Legal Aid Community Legal Sector Program Fund. This funding is supplemented by fundraising and donations.

Free legal services are offered by the Clinic on a weekly basis at 11 outreach locations that are already accessed by homeless people for basic needs (such as soup kitchens and crisis accommodation facilities) and social and family services. Legal services are provided by the following private law firms and corporate legal departments: Allens Arthur Robinson, Baker & McKenzie, Blake Dawson, Clayton Utz, Corrs Chambers Westgarth, DLA Phillips Fox, Goldman Sachs JBWere, Mallesons Stephen Jaques and Minter Ellison.

Since its establishment in 2001, the Clinic has assisted over 3000 people at risk of, or experiencing, homelessness in Victoria. The commercial value of legal assistance provided by Clinic lawyers to clients amounts to more than \$3.5 million per year. In fact, the Clinic is the largest beneficiary of contractual pro bono assistance in Victoria.

The Clinic also undertakes significant community education, public policy advocacy and law reform work to promote and protect the right to housing and other fundamental human rights. In 2005, the Clinic received the prestigious national Human Rights Law Award conferred by the Human Rights and Equal Opportunity Commission in recognition of its contribution to social justice and human rights.

### **3.2 Aims and objectives of the Clinic**

The Clinic has the following aims and objectives:

- To provide free legal services to people who are homeless or at risk of homelessness in a professional, timely, respectful and accessible manner that has regard to their human rights and human dignity.
- To use the law to promote, protect and realise the human rights of people experiencing homelessness.
- To use the law to redress unfair and unjust treatment of people experiencing homelessness.
- To reduce the degree and extent to which homeless people are disadvantaged or marginalised by the law.
- To use the law to construct viable and sustainable pathways out of homelessness.

The Clinic undertakes the following activities to achieve its aims and objectives:

- It provides free legal assistance, advice, casework and advocacy in the areas of civil and administrative law.
- It identifies and seeks to redress gaps in the delivery of legal services to homeless people.
- It collaborates with homelessness service providers to ensure that homeless people can access legal services.
- In consultation with homeless people, it identifies and advocates in relation to relevant law and policy reform issues.
- It conducts community legal education in relation to homelessness, human rights and the law.

### **3.3 Areas of law**

The Clinic focuses on the provision of services in civil and administrative law matters. The principal areas of civil and administrative law in which the Clinic practises are housing and tenancy, social security (including Centrelink breaches and debt), guardianship and administration and issues with State Trustees, victim of crime compensation, discrimination and bankruptcy.

Despite this civil and administrative law focus, the Clinic also does some summary criminal law work, mainly in the area of fines and infringement notices in the Magistrates' Court of Victoria.

### 3.4 Location of clinics

At present, the Clinic is operating on a weekly basis at eleven locations:

**The Big Issue**

148 Lonsdale Street, Melbourne  
Monday from 10.00am – 11.00am

**Ozanam House**

179 Flemington Road, North Melbourne  
Monday from 10.00am – 12.00pm

**Flagstaff Crisis Accommodation**

9 Roden Street, West Melbourne  
Tuesday from 1.00pm – 2.30pm

**Hanover Southbank**

52 Haig Street, South Melbourne  
Wednesday from 1.15pm – 3.00pm

**Salvation Army Life Centre**

69 Bourke Street, Melbourne  
Thursday from 12pm-1pm

**Victorian Association for the Care and Resettlement of Offenders ('VACRO')**

Lvl 1, 116 Hardware Street, Melbourne  
Thursday from 1.00pm-3.00pm

**Melbourne Citymission Western**

214-216 Nicholson Street, Footscray  
Monday from 10.30am – 1.00pm

**Urban Seed**

174 Collins Street, Melbourne  
Tuesday from 12.00pm – 1.30pm

**St Peter's Eastern Hill**

15 Gisborne Street, Melbourne  
Mon & Wed from 7.30am – 9.00am

**Homeground Services**

1A/68 Oxford Street, Collingwood  
Thursday from 12.00pm – 2.00pm

**Koonung Mental Health Centre**

Lvl 1, 43 Carrington Road, Box Hill  
Friday from 1.00pm-3.00pm

**Please call 1800 606 313 if you wish to make an appointment at one of the Clinic locations.**

### 3.5 Contacting the Clinic

The Clinic's contact details are:

Homeless Persons' Legal Clinic  
PO Box 13121  
Law Courts  
Melbourne VIC 3000

Tel: (03) 9225 6684/1800 606 313  
Fax: (03) 9225 6686  
Email: [hplc@pilch.org.au](mailto:hplc@pilch.org.au)  
Website: <http://www.pilch.org.au>

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