

STREET RIGHTS



newsletter of the pilch homeless
persons' legal clinic

issue 64 | august 2010

The human rights-based response to homelessness

Developments since the release of the White Paper

In December 2008, the Federal Government released its White Paper on homelessness, which established an agenda for halving homelessness by 2020. The White Paper committed the Government to guaranteeing that people experiencing homelessness are treated with dignity and respect. Unfortunately the White Paper failed to explicitly recognise that homelessness is a human rights issue.

Since the release of the White Paper there have been a number of important developments relating to homelessness and human rights.

Why should we adopt a human rights-based response?

People experiencing homelessness face violations of a wide range of human rights, including the rights to:

- dignity and respect
- participation
- liberty and security
- freedom from cruel, inhuman or degrading treatment
- freedom from discrimination
- privacy
- social security
- the highest attainable standard of health

The Federal Government has made commitments to human rights and social inclusion. In order to achieve its 'social inclusion' agenda and effectively address homelessness, the Government needs to protect, fulfill and realise the human rights of all Australians, particularly the most marginalised and disadvantaged members of our society. The human rights framework and the Federal Government's social inclusion agenda (particularly as they relate to homelessness) are interconnected - one cannot be achieved without the other.

Development 1 – A new Homelessness Act

In November 2009, the Federal Parliament's Standing Committee on Family, Community, Housing and Youth released a report based on its inquiry into homelessness legislation.

Whilst the Government has yet to act on the report and introduce a new Homelessness Act, the Committee recommended that human rights should underpin the new legislative regime and that the new homelessness legislation must include a right to adequate housing.

Development 2 – The National Human Rights Consultation

The recommendations of the Australian Government's National Human Rights Consultation Committee (NHRCC) were

released in September 2009.

Importantly, the NHRCC noted that although the right to adequate housing is not protected in Australia, the majority of people agree that it is a fundamental human right. The main social and economic concerns raised by the NHRCC related to the realisation of the rights to education, housing and the highest attainable standard of health. In May the HPLC consulted with almost 150 people who were homeless, and we presented this information to the NHRCC.

The Government expressly rejected the NHRCC recommendation to introduce new human rights legislation. Instead, it adopted a Human Rights Framework. This framework demonstrates an increased commitment to human rights in Australia that will build community awareness of the interrelated and multiple human rights violations of people who are homeless.

Development 3 – the Charter of Human Rights

A 2008 report into the operation of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) by the Victorian Equal Opportunity and Human Rights Commission noted that the introduction of the Charter in Victoria had resulted in 'new ways of thinking' within government.

HPLC's first Charter matter related to a pregnant single mother who had two children and was living in community housing. The mother was given a 'no cause' eviction notice, which didn't provide any reasons as to why she was required to vacate the property and did not allow her to address the landlord's concerns.

The HPLC used the Charter to negotiate with her landlord to prevent an eviction into homelessness. An alternative arrangement was reached. It was argued that the use of 'no cause' eviction notices was inconsistent with the client's right not to have her privacy, family and home arbitrarily and unlawfully interfered with, and was therefore unlawful under the Charter. Following this matter, the HPLC ran training and education for other lawyers about the use of 'no cause' eviction notices.

The HPLC continues to use the Charter to fight for our clients in disputes with Government agencies, but also to work with Government to ensure policies, programs and services respect people's human rights.

Conclusion

Although the White Paper failed to recognise homelessness as a human rights issue, recent developments show the importance of a human rights-based response to homelessness. Whilst these developments are positive, there is still much more that the Federal and State Governments need to do to protect the human rights of people experiencing homelessness.

What are my rights? Residential Tenancies Act

What are my duties as a tenant?

The *Residential Tenancies Act* contains certain duties that tenants owe to their landlords. These duties describe how you should behave in your rental premises and what condition the property should be kept in. A tenant's duties include:

- Not causing nuisance or interference
- Avoiding causing damage to the property you are renting or to common areas
- Keeping the property you are renting clean

What are the landlord's duties?

Landlords also have certain duties under the *Residential Tenancies Act* towards their tenants. These duties include:

- Ensuring that tenants are able to have 'quiet enjoyment' of the premises
- Maintaining the premises

What happens if tenants don't comply with their duties?

If a tenant breaches their duties it can lead to eviction. There are two main ways in which breaching your duties can give a landlord grounds to evict you.

First, you could be evicted for committing multiple breaches of the same duty. When you commit a breach the landlord must issue you with a breach of duty notice.

The notice should include certain details, such as how you have breached the

duty and what damage that breach has caused. The notice should also state that a breach must not reoccur and explain what the landlord requires to compensate them for the breach. The notice should also describe what may happen if the notice is not complied with.

If you commit a breach of the same duty two more times, and are given breach notices each time, then the landlord may give you a Notice to Vacate.

Breaching a duty can also lead to eviction if you fail to follow a compliance order. There is a three stage process which the landlord must follow if they wish to evict you for this type of breach.

The landlord should first issue you with a breach of duty notice. If you then commit a further breach or fail to provide the compensation that the landlord has requested in the breach notice an application can be made to the Victorian Civil and Administrative Tribunal for a compliance order. A compliance order will direct you not to commit a similar breach again and may require you to compensate the landlord for any damage caused by breaches you have already committed.

If you do not comply with the order of the Tribunal the landlord may be able to issue you with a Notice to Vacate.

More information

For more information please contact the HPLC on 1800 606 313.

Q&A

Kezia Adams
Clayton Utz



What inspires you to volunteer at the Homeless Persons' Legal Clinic?

Everyone deserves access to justice, whether it's having your day in court or being able to challenge a fine. Even something as simple as a strongly worded letter from a lawyer can have a real impact on someone's life. Being able to make a small difference to people inspires me. HPLC provides an amazing service, and I am very happy to be a part of it.

When you are not being a graduate lawyer, what do you do in your spare time?

Like most of Australia, I'm very food obsessed at the moment and since Masterchef finished I've been making up my own invention tests at home. My first real test is the Clayton Utz Jeans for Genes day bakeoff (I'm thinking individual lemon curd tartlets). Other than that I love having fun with family and friends, travelling and finding Melbourne's tastiest dumpling restaurant.

Transport Disadvantage Video Project

The Department of Transport (DOT) invited the HPLC's Consumer Advisory Group (CAG) members to participate in DOT's Transport Disadvantage Video Project.

The Social Inclusion Unit at DOT are developing a video to create awareness, empathy and understanding of people who are homeless or at risk of homelessness and how this affects their use of the Victorian public transport system. CAG members were asked about their personal experiences and challenges faced using the transport system. CAG members also offered DOT suggestions about how transport could better support their daily lives, and what changes could be made to improve future transport policies.

Public transport disadvantage is an ongoing problem for people who are homeless or at risk of homelessness due to the limited alternative modes of transport available to them. Problems accessing public transport and its cost are ongoing issues. The HPLC hopes that DOT's video will remind the Government about the marginalisation experienced by HPLC clients as a result of transport disadvantage, and that suggestions of the CAG can be used to inform and improve future transport policies. We will keep you posted!

Good news story

Hank* approached HPLC seeking assistance with eight infringement notices that had reached warrant stage, as well as debts totalling more than \$10,000. At the time these infringement notices and debts came about, Hank was homeless and had been swinging back and forth between couch-surfing at friends' houses and staying in crisis accommodation for many months.

HPLC lawyers assisted Hank to apply for revocation of the enforcement warrants and negotiate repayment of his debts. HPLC lawyers appeared on Hank's behalf at the hearing of his special circumstances application to have the warrants revoked. The lawyers were successful and all eight warrants against Hank were successfully revoked on the basis of his homelessness, as well as many of Hank's debts.

With his financial concerns now resolved, Hank, with the help of his caseworker, can focus on finding secure housing and getting on with life.

* Names have been changed.

Subscribe

Please contact 1800 606 313 or hplc@pilch.org.au to subscribe, or to have your say.

The HPLC provides free legal advice at these locations and times:

Melbourne Citymission
214 Nicholson Street
Footscray 3011
Mon: 10:30am - 1:00pm
Footscray train station - Tram 82 (Droop St)

Ozanam House
179 Flemington Rd
North Melbourne 3051
Tues: 10:00am - 12:00pm
Flemington Bridge train station
Trams 55, 59, 68 (Flemington Rd)

Urban Seed (Credo Café)
174 Collins St, Melbourne 3000
(Approach via Baptist Pl, off Little Collins)
Tues: 12:00pm - 1:00pm

St Kilda Crisis Contact Centre
(for women and their accompanying children)
29 Grey St
St Kilda 3182
Tuesdays 12pm - 2:00pm
Trams 79, 96, 112

Flagstaff Crisis Accommodation
9 Roden St,
West Melbourne 3003
Tues: 1:00pm - 2:30pm
North Melbourne train station - Tram 57
(Victoria Street)

Salvation Army Life Centre
69 Bourke Street
Melbourne 3000
Tues: 12:30pm - 2:00pm

Hanover Southbank
52 Haig St, Southbank 3205
Wed: 1:15pm - 3:00pm
Southern Cross train station - Tram 112
(Clarendon Street)

HomeGround Housing
1A/68 Oxford Street
Collingwood 3066
Thurs: 12:00pm - 2:00pm
Collingwood train station - Tram 86 (Smith Street)

VACRO
116 Hardware Street
Melbourne 3000
Thurs: 1.00 - 3.00pm
Melbourne central station
- Tram 19, 57 and 59 (Elizabeth Street)

Northside Geelong
92 Cox Rd, Corio
Thurs: 12:00pm - 2:00pm

The Big Issue
148 Lonsdale Street
Melbourne 3000
Fri: 2pm - 3pm

St Luke's Anglicare
175 Hargreaves Street, Bendigo
Every Friday, 10am - 12pm

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