

STREET RIGHTS



newsletter of the pilch homeless
persons' legal clinic

issue 72 | july - august 2011

Making discrimination of homelessness illegal

Many people who have been homeless tell us that they face discrimination at homeless services, in pubs and restaurants, on public transport and in housing and employment.

One of our HPLC lawyers, Phil, saw this first hand when he met a client at a café:

I recently arranged to meet some colleagues and an elderly homeless client at an inner-city café in Melbourne. When I arrived with the client, I was told that we were unable to be seated as we didn't have a reservation. There were numerous vacant tables in the café. My colleagues encountered no such problems when I waited around the corner with the client while they tried to get a table about five minutes later.

This type of treatment is unacceptable; we believe that people should always be treated with dignity and respect.

Since the HPLC started in 2001, we've consistently called for new laws to make it illegal to discriminate against people because they're homeless, they get Centrelink payments, they're unemployed, or they have an irrelevant criminal record.

Hopefully, the Federal Government is moving to address this unfair situation, to make this discrimination illegal.

In April 2010, the Federal Government announced it would combine the four Federal laws governing discrimination in Australia into one single piece of legislation. The anti-discrimination laws aim, amongst other things, to govern and protect individuals in many aspects of public life.

Currently, a person is protected against discrimination because of:

- age;
- disability;
- race, colour, descent or national or ethnic origin;
- sex;
- marital status;
- pregnancy or potential pregnancy; and
- family responsibilities.

Nowhere in this list is protection from, or redress in relation to, discrimination on the ground of homelessness, as well as source of income (such as receipt of Centrelink assistance) and irrelevant criminal records. People with one or more of these attributes, along with other marginalised or disadvantaged groups in our community, are often victims of discrimination, particularly on these "lawful" grounds which are widespread.

On the basis of past research conducted by the HPLC and the stories of our clients and consumers, additional protection is clearly needed to protect some of the most marginalised and vulnerable members of our community from unfair, unjust or unfavourable treatment.

The evidence further suggests that discrimination against these groups is widespread, particularly in the areas of accommodation and the provision of goods and services. In addition to contributing to homelessness, discrimination can also diminish a person's wellbeing, cause ill health and exacerbate or maintain homelessness.

Discrimination on the basis of attributes such as homelessness, social status or an irrelevant criminal record does not have a rational basis, and the HPLC is calling for more sensible policies and laws.

Despite previous unanswered attempts to have further protection from discrimination enacted, the Consolidation Project provides a long-awaited opportunity to recognise and protect people who are homeless, to prevent exclusion from access to goods, services, the justice system, health care, housing and employment.

Not only would protection from discrimination on the grounds of homelessness, socio-economic status or irrelevant criminal records serve to enhance Australia's domestic and international reputation on human rights, it would improve the chances of disadvantaged people to break the cycles of homelessness, poverty and disadvantage, and make improvements to their overall wellbeing.

We hope the Government will introduce these changes, and we're encouraging them to recognise the value of giving people who are homeless 'a fair go'.

”

Discrimination on the basis of attributes such as homelessness, social status or an irrelevant criminal record does not have a rational basis, and the HPLC is calling for more sensible policies and laws

What are my rights?

What is the law relating to drugs and housing?



It is important that you understand your rights and responsibilities in relation to your rented premises. If you are involved in certain drug activity in rented premises, your landlord may apply to evict you.

What does the law say?

The law states that you may be evicted for drug activity in housing:

- Where you have used the rented premises for an illegal purpose, and
- Where you have been involved in certain drug acts in public housing.

Have you 'used the premises' for an 'illegal purpose'?

Your landlord can try to evict you for using the premises for an illegal purpose. To do this, your landlord must establish that you have:

- used the premises,
- for an illegal purpose

This means that simply doing something illegal in rented premises does not necessarily entitle your landlord to evict you.

Example

If you are using drugs in rented premises, while this is illegal, it does not involve use of the premises.

By contrast, if you are involved in

cultivating or distributing drugs from your rented premises, you may be found to have used the premises for an illegal purpose.

Have you committed a drug act in public housing?

The law says that tenants involved in certain drug acts may be evicted. This law only applies to public housing tenants.

You may be evicted if you are involved in the following drug activity:

- Trafficking or attempting to traffic drugs;
- Supplying drugs to a person under 18;
- Possessing a 'preparatory item' in order to traffic drugs (see below);
- Possessing a tablet press or drug chemicals;
- Growing or attempting to grow marijuana/drugs.

When can you be evicted for possessing a preparatory item?

The law provides a broad definition of 'preparatory item' to include a substance, material, equipment or document containing instructions for the preparation, cultivation or manufacture of drugs.

It is not possible to provide a complete list of all objects that may be regarded as preparatory items, but scales, small

plastic bags, balloons and instruction manuals may all be regarded as preparatory items.

If you possess these items and live in public housing, the Director of Housing may apply to evict you.

What else does the law say?

If you are frequently using drugs or alcohol there is a possibility that you may be at risk of eviction for a number of reasons which include:

- Not paying your rent.
- Behaviour that endangers other tenants or their visitors
- Interfering with the reasonable peace, comfort or privacy of your neighbours
- Damaging the rented premises or common areas.

What should you do?

If your landlord gives you any documentation or says you need to leave the rented premises, you should immediately contact Homeless Persons Legal Clinic on 1800 606 313.

The clinic can provide legal advice and representation, if needed.

Can the HPLC assist with non-legal issues?

Yes. The Homeless Persons Legal Clinic also employs a social worker who can assist with support services if required.

Good news story

Financial assistance awarded to a victim of crime

On 11 July 2011 VCAT awarded a significant amount of financial assistance to one of our HPLC clients, Sarah, to help her recover from injuries that she sustained during a brutal assault in 1999.

In 1999 Sarah suffered horrendous injuries and permanent disfigurement to her face after being assaulted by an ex-boyfriend. Sarah developed depression, anxiety, and post traumatic stress disorder as a result of her injuries. She started drinking heavily and her life took a dramatic turn for the worse.

In April 2000 Sarah was awarded a small amount of money for medical assistance from the Victims of Crime Assistance Tribunal (VoCAT), but this award was not enough to cover all of her medical expenses.

In 2006 Sarah applied for a variation to the initial award to help fund plastic surgery procedures to repair facial scarring, gym membership, medical treatment, and an education course to assist with her recovery. VoCAT awarded financial assistance for one plastic surgery procedure, but rejected the other claims.

In 2009 Sarah approached HPLC seeking help with appealing VoCAT's decision to VCAT. The plastic surgery procedure had not repaired all of her facial scarring, and she continued to suffer from depression, anxiety, and post traumatic stress.

Taking into account Sarah's recurring homelessness and poverty, serious physical and mental health issues (due to the assault), and lack of legal representation during the delay period, VCAT decided to waive the usual time limitation period for appeals on the grounds that it was 'fair and equitable' to do so.

VCAT awarded financial assistance for plastic surgery and alternative medical treatment. VCAT also accepted that 'exceptional circumstances' existed, and awarded financial assistance for gym membership and an education course to assist in Sarah's recovery.

For Sarah, this is an excellent result and she looks forward to taking the next steps towards recovery.

*Names have been changed

Q&A

Marcus King

Allens Arthur Robinson



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

I'm inspired by the opportunity to help people who find themselves in extremely difficult situations with nowhere else to turn for legal assistance. As HPLC lawyers, we can help people overcome legal issues that arise from their disadvantage - and I find it extremely rewarding to see the difference our work makes to their lives. I'm also motivated by the difference HPLC work makes to my life. It's an opportunity for me to meet some amazing people, and for me to advise a client one-on-one - something that isn't always possible as a junior commercial lawyer.

What do you do when you're not being a lawyer?

I love travelling and keeping fit through running, cycling, tennis and golf. I also spend a lot of time catching up with friends and family. I find this is a great way to relax, and these people help me keep perspective and reinforce what is important in life.

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)

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

PILCH

Level 17, 461 Bourke Street

Melbourne, VIC 3000

(03) 8636 4408 or 1800 606 313

www.pilch.org.au

Subscribe

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