

# STREET RIGHTS



newsletter of the pilch homeless  
persons' legal clinic

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# Victoria's Human Rights Charter - up for review

Victoria's Charter of Human Rights and Responsibilities (**the Charter**), plays an important role in Victoria's legal, political and social systems. The Charter was introduced in 2006 with the intention of promoting and protecting the human rights of all Victorians. The Charter places obligations on Victorian courts, Victorian Parliament and "public authorities" in Victoria. It aims to ensure transparency and accountability in government and to establish human rights as a priority in decision-making.

## Obligations under the Charter

The Charter impacts on government and public authorities in three key ways:

- **making laws** – all new legislation and amendments to legislation must be assessed for their consistency with the human rights contained in the Charter;
- **interpreting laws** – so far as possible, courts and tribunals must interpret and apply legislation in a way that is consistent with the human rights contained in the Charter; and
- **making decisions** – "public authorities" must act compatibly with human rights and give proper consideration to human rights in decision-making processes. "Public authorities" include local and State governments (and their staff), public hospitals and Victoria Police, as well as non-government or private entities that perform public functions on behalf of government (for example, transitional housing providers, prisons or non-government schools).

## The Charter and the Homeless Persons' Legal Clinic (HPLC)

The Charter is of significant importance to the HPLC and our clients, both in our case work and in our advocacy and law reform work.

Clients experiencing or at risk of homelessness may interact with a range of public authorities in their day-to-day lives and it is important that their human rights are recognised and respected in these dealings. The HPLC commonly refers to the Charter in our negotiations with public authorities to remind them of their obligation to consider the human rights impact of a decision (for example, the decision to evict a person from their home).

The Charter ensure that public authorities make their decisions in a way which is compatible with human rights, and it also enhances public awareness of human rights, which increases the likelihood that all Victorians will respect each other and consider human rights in everyday situations.

The Charter is vital for all Victorians, not just those experiencing hardship or disadvantage. For example, for a new law to successfully pass through parliament and become binding, a statement must be read by the relevant politician

setting out exactly how the new law complies with the human rights standards set out in the Charter. This obligation aims to make sure that only laws which are compatible with human rights are introduced in Victoria.

Furthermore, since its introduction, a great deal of work has gone into training government and public authorities and educating staff about human rights obligations under the Charter. This is bringing about a gradual change across all levels of government, so that human rights are built into day-to-day decision making and improving the provision of public services.

## Review of the Charter

The Charter's first four years of operation will be reviewed in 2011. As part of the review, government is required to consider whether additional human rights should be included in the Charter (including economic, social and cultural rights, such as a right to adequate housing, health or education). It also needs to consider whether people should be able to commence legal proceedings for a breach of human rights under the Charter (at the moment, legal proceedings must have already begun before a claim of non-compliance with the Charter can be considered).

The Attorney General must provide the report with responses to these questions (and others) by 1 October 2011. The HPLC and many other community organisations hope that this review will encourage the government to strengthen the Charter and to recognise the positive impact it has had on the lives of Victorians.

## How is the HPLC contributing to the Charter review?

The HPLC would like to demonstrate to the government how imperative this legislation is. We are lobbying for the Charter to be strengthened, including by:

- Building an evidence base – we're gathering people's stories or comments about the Charter and examples of where it has been used to bring about fair and just outcomes for people (please send us your stories!);
- Preparing a submission to the Parliamentary Committee conducting the Charter review (which will include the Charter case studies we gather);
- Supporting non-legal homelessness service providers to prepare submissions as part of the Charter review (or asking them to endorse the HPLC's submission); and
- Emphasising the importance of the Charter and the benefits it has brought about, and will continue to bring about in future.

We have a fact sheet with information about the Charter and the Charter review. Please let us know if you would like a copy or if you have any questions or stories about the Charter and the review process. You can also find out more about our work on the Charter at [www.pilch.org.au/charterreview](http://www.pilch.org.au/charterreview).

# What are my rights? community based orders

In court, people who commit minor offences may be put on a community-based order (CBO) as part of their sentence.

## What is a CBO?

A CBO is a court sentence that may be imposed for any offence that is punishable by imprisonment or a fine of up to \$500. A CBO contains certain conditions, which may require you to:

- perform unpaid community work;
- attend counselling; and/or
- be tested for drugs or alcohol.

CBOs can be in force for up to 24 months. There are four types of Community Based Orders:

- standard Community Based Orders
- Community Based Orders for Community Work only
- Community Work Permits
- Community Based Orders in Default of Payment of a Fine.

Standard CBOs can have different program conditions which may include a combination of unpaid community work, counseling or attending drug/alcohol testing depending on the offences and the direction of the courts.

The other three orders only have one condition – you will have to perform unpaid community work. If you are issued with one of these orders you will be required to undertake the unpaid community work hours imposed by the court (which could be up to 500 hours, in extreme cases). You will have to report to a Community Corrections Officer if you don't or can't attend.

## How can a CBO be made?

To be eligible for a CBO, you must first agree that an order can be made, then Corrections Victoria will assess you to see if you are suitable for a CBO. If they think you're suitable, the Court will make the order as part of sentencing.

However, Courts may order a CBO without Corrections Victoria's pre-sentence report if the only CBO condition is that you serve up to 250 hours of unpaid community work.

After the order is made, Corrections Victoria will work with you to find some unpaid community work, or other ways to help you meet the conditions of the CBO.

## How can you breach a CBO?

There are two forms of breaches:

- **Offending during the CBO**, where you commit another crime during the period that the CBO is in force.
- **Non-compliance**, when you don't comply with the conditions of the CBO (e.g. you did not attend your scheduled counselling sessions)

## What happens if you breach a CBO?

If you breach your CBO, you will probably be brought back before the Court at some stage. When this happens, you should try to speak to a lawyer to get legal advice.

If you breach your CBO, the Court may issue a 'contravention summons' or warrant to arrest to bring you before the Court. You will be arrested and brought before the court that imposed the original sentence (eg if you were sentenced by the Magistrates' Court at Ringwood, you'll probably be taken back there).

You may be resentenced on the breach and may not receive the benefit of a community based option again, so it's likely that you'll get a harsher sentence, like a fine or possibly even prison.

If you have breached a CBO and you're arrested, you should call Victoria Legal Aid on (03) 9269 0120 or the HPLC on 1800 606 313.

## Q&A

Helen Arblaster

Corrs Chambers Westgarth



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

I was first involved with the Clinic as a volunteer law student, and worked as the Clinic's Administrator for several years prior to starting with Corrs. It has been great to be involved with the Clinic in so many different capacities, and throughout that time I have met so many clients whose circumstances are beyond comprehension. I am not only inspired by the strength and resilience of the clients of the Clinic, but also by the staff at PILCH and in the community sector more broadly who spend every day working to improve the lives of others.

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

I'm involved with the board of a not-for-profit organisation known as Cara Inc that provides specialist accommodation, care and support for vulnerable children and young women who are unable to live at home or with their family and who are clients of the Victorian child protection system. I also train for and compete in triathlons, try to be near the beach whenever I can, and enjoy spending time with the people I love.

# Good news story

## Young man given a second chance at housing

Ben had lived in public housing with his mother for 18 years. After she passed away in 2005, when he was 29, things went off track and he was evicted for rental arrears.

As a result of undiagnosed depression stemming from the grief of losing his mother and his home, Ben's business as a tradesman fell behind.

He entered a period of ongoing homelessness, during which he stayed for a time in a caravan park and did various stints in private rental which he could not afford.

He lived with his partner on and off from 2005 until her sudden death in mid-2010. He had lived with her permanently since mid-2009 but was not listed as a resident. The Office of Housing (OOH) told him he would have to move out or they would apply for possession. Ben applied for the tenancy to be transferred into his name.

This application was rejected and the HPLC appealed to the Housing Appeals Office. The Charter was used to highlight Ben's hardship and the need to properly consider his circumstances before evicting him. The appeal highlighted the OOH's obligations under section 38 of the Charter and queried whether Ben's rights to freedom from "unlawful or arbitrary" interference with his home had been considered in making the decision to reject his application for transfer.

While the appeal was on foot, as a result of the stress and grief, Ben had a breakdown and was hospitalised. Fortunately, he recovered from this and was discharged under a Mental Health Care Plan.

This matter was resolved without going to VCAT. After being prompted by the Housing Appeals Office, the relevant housing office indicated that they did not want to evict Ben into homelessness, but could not leave him in the three bedroom property he was in because he was just a single guy. Ben accepted this, saying "I'm not greedy; I just don't want to be on the streets," and willingly relocated to a one bedroom unit.

The HPLC wrote to the relevant housing workers thanking them for being so receptive to their Charter-based obligations and so co-operative in negotiating an outcome that met both their needs and Ben's.

\*Names have been changed

## Subscribe

Please contact 1800 606 313 or [hplc@pilch.org.au](mailto: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

First Friday of the month, 10am - 12pm

PILCH

Level 17, 461 Bourke Street

Melbourne, VIC 3000

(03) 8636 4408 or 1800 606 313

[www.pilch.org.au](http://www.pilch.org.au)