

# Discrimination on the basis of homelessness

## Position paper of the PILCH Homeless Persons' Legal Clinic



homeless persons'  
legal clinic

1800 606 313

hplc@pilch.org.au  
www.pilch.org.au/hplc

### Introduction

In Victoria, it is currently permissible to discriminate against a person on the basis of their homelessness. Law reform to include homelessness as an attribute under the *Equal Opportunity Act (Vic) (EO Act)* is necessary to protect some of the most vulnerable members of our community from unfair and unjust treatment.

The experience of discrimination is destructive for individuals experiencing homelessness and for society more generally. Discrimination can lead to and further entrench homelessness in cases where it prevents individuals from securing accommodation and accessing services. Discrimination can also lead to negative health consequences for individuals who feel anxious, depressed and a sense of loss of control as a result of being discriminated against.

This position paper demonstrates the types of discrimination faced by homeless people and the reasons why they are frequently discriminated against. It examines the serious effects of discrimination – both on an individual and societal level. Anti-discrimination legislation must be reformed to protect individuals from discrimination on the basis of homelessness and the protections that this equal opportunity legislation would afford to the homeless.

### Discrimination on the basis of homelessness

People experiencing homelessness suffer direct and indirect discrimination on a regular basis. St Vincent de Paul Society reports that:

*Our extensive experience in the [homelessness] sector leads us to believe that there is a significant issue in relation to discrimination against this particular group in the community who have very complex needs and are very vulnerable.<sup>1</sup>*

In 2006, the Homeless Persons' Legal Clinic (HPLC) conducted a series of detailed consultations with over 180 homeless Victorians about their experience of discrimination to collect qualitative and quantitative data regarding the nature and extent of social status discrimination in Victoria (Discrimination Consultations). The results of these consultations demonstrate that discrimination is a common experience for homeless people in a number of areas of their life.

Direct discrimination is based on unfair and inaccurate assumptions about a homeless person's lifestyle, character and ability to pay for goods and services. Discrimination also occurs indirectly when requirements are imposed to access goods

and services, which homeless people are unable to meet.

Discrimination on the basis of homelessness can occur for a number of reasons. Homeless people find they are discriminated against because of factors such as:

- ▶ their appearance;
- ▶ their source of income (such as Centrelink benefits);
- ▶ association with or assistance by a welfare agency; or
- ▶ being unable to meet certain requirements – such as having a fixed address.

Poor presentation was a common trigger for discrimination. Respondents to the Discrimination Consultations noted that being homeless and poor made it difficult to always present well:

*The hospital thought I was in casualty because I wanted drugs, although I had an injury that was clearly visible (broken hand). Turned away by security (I never even got to see the Triage nurse). Police are constantly pulling me over as a result of my appearance (Homeground)<sup>2</sup>*

Discrimination also often occurs when despite an ability to pay for accommodation or services, an individual's only income is from Centrelink benefits. As one homeless woman explained:

*Although I can't prove it, I applied for more than 40 flats in 4 weeks and didn't get one. Some places (share accomm) also said "no" once I said I was on a benefit. (Credo Cafe)<sup>3</sup>*

Many welfare agencies and community organisations report that the mere association of a person with certain support services can be a ground of discriminatory treatment. For example, Lindsay Stow from the Salvation Army Social Housing Service in Warrnambool reported that:

*A middle aged man approached a local backpacker accommodation facility in Warrnambool and enquired whether they had any vacancies. He was told yes, so he went to the Salvation Army Social Housing Service for financial assistance. He went back to the backpackers and handed over a Salvation Army cheque for his accommodation. When the proprietor saw the cheque he said to the man, 'Sorry. We've just had a busload arrive and no longer have any vacancies.'<sup>4</sup>*

Homeless people are often unable to meet requirements imposed to access goods and services which results in indirect discrimination. For example, service providers often require a permanent address or landline telephone number.

## Discrimination in accommodation

Seventy per cent of people surveyed in the

HPLC's Discrimination Consultations reported that they had experienced discrimination on the basis of homelessness or social status at the hands of accommodation providers. Respondents had experienced discrimination in private rental, boarding houses, transitional or crisis accommodation, hotels and public housing.<sup>5</sup>

Discrimination in the provision of accommodation often occurs when accommodation providers refuse to accept full or even partial payment of bonds and rent from welfare agencies or the Office of Housing. Applicants on Centrelink benefits often face tougher conditions than other people. Jan Kenny of Hamilton Accommodation Program reports:

*Real estate agents demand higher bonds from social security recipients. No real estate agents accept a full Office of Housing bond – tenants must put in at least one week's cash themselves.*<sup>6</sup>

A case worker from the Emergency Accommodation Support Enterprise reported that women fleeing domestic violence often experience discrimination on the basis of their homelessness.

*It is this organisation's general experience that single women with children – whether they be victims of domestic violence or young homeless women who are pregnant or parenting – have great difficulty in obtaining private rental regardless of whether it is housing or caravan park accommodation. One particular central caravan park in Bendigo advised a client that they had accommodation available. As soon as the client mentioned that the Emergency Accommodation Support Enterprise were working with her, they realised that she was homeless and a victim of domestic violence and advised her that they had made an error and had no vacancies.*<sup>7</sup>

The HPLC assisted a client who received a Disability Support Pension in connection with his mental illness. After returning to Melbourne from his seasonal employment, he obtained accommodation at a rooming house in Fitzroy. St Vincent de Paul undertook to pay rental amounts to the rooming house proprietor, upon invoice, until he obtained stable accommodation. About a week later, the rooming house proprietor evicted him from the premises for 'failure to pay rent'. St Vincent de Paul had never been invoiced. When the proprietor of the rooming house was contacted, the proprietor apologised for the 'mistake' but stated that, unfortunately, he could not return as there were no longer any vacancies. In the HPLC's experience, the practice of evicting 'undesirable boarders' (that is, homeless persons referred by a welfare agency) when a rooming house is full, remains widespread.<sup>8</sup>

## Discrimination in the provision of goods and services

A similar picture of discrimination emerged from the HPLC's research in relation to goods and services providers. Almost 60 per cent of respondents to the HPLC's Discrimination Consultations had been discriminated against by goods and services providers on the basis of their homelessness. Discrimination was most often experienced from restaurants, cafes or bars, followed by banks, retail shops, hospitals and telecommunications providers.

*Trams – target. Restaurants – look down on you. Bottle shop – won't serve people. Shops – get followed assume stealing. Phone – couldn't get extension, lost phone to cash converters. Hospitals – treated differently, 20 people come in after [me], get dealt with first, seem to serve everyone else first. Community Centre good – Oz House. (Homeground)*<sup>9</sup>

Discrimination often results in rude and unequal treatment. One man stated that 'after walking into a pub, I was asked if I had any money before they would serve me'.<sup>10</sup> Another commented that, 'in shops if you are not dressed neatly or in a suit they take longer to get to you then you get a bum steer, they just want to get rid of you'.<sup>11</sup>

Philip Lynch, a former coordinator of the HPLC, reported that he experienced overt discrimination in a restaurant on the basis of the appearance of his client:

*I recently arranged to meet some colleagues and an elderly homeless client at an inner-city cafe 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 cafe. 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.*<sup>12</sup>

## The effects of discrimination

### Individual consequences

Discrimination can have extremely negative consequences including:

- ▶ hindering access to accommodation, employment, goods and services;
- ▶ exacerbating social exclusion and stigmatisation;
- ▶ entrenching homelessness; and
- ▶ harmful mental and psychological effects.

As demonstrated above, discrimination can systematically exclude people from access to a range of goods and services. The consequences of such discrimination can be particularly serious for homeless people – who rely on these services to

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a greater extent than people with secure housing. Discrimination can exacerbate social exclusion and stigmatisation of such individuals. An inability to access services, or the experience of unequal treatment when attempting to access services further marginalises the homeless and creates barriers to reintegrating into the community. One respondent to the Discrimination Consultation reported feeling:

*'pissed off, persecuted, sad, distressful, resentful, outraged, "small", humiliated, confused, stressed out and lost' (Anonymous).<sup>13</sup>*

Discrimination can entrench homelessness. For example, discrimination in the private rental market can prevent a person from breaking a cycle of homelessness. An inability to secure private rental increases the need to rely on transitional and crisis housing, which makes it more difficult to secure private rental accommodation in the future. Not having secure or permanent housing can impact upon an individual's ability to access other goods and services, or to gain employment, which will also make escaping homelessness harder. Almost half of those surveyed during the Clinic's Discrimination Consultations reported that discrimination on the grounds of homelessness or social status had prolonged their homelessness and had made it difficult to find a sustainable pathway out of homelessness.

Experiencing discrimination can also have health consequences. Recent research undertaken by VicHealth<sup>14</sup> clearly illustrates that people who suffer from discrimination are also more likely to develop problems such as depression and anxiety. The report notes that there is a strong link between poor mental health and poor physical health, so the impact of mental distress from discrimination is a double burden of ill-health. The report discusses a range of responses that people can have to discrimination including suffering from depression, anxiety and anger, or engaging in self-destructive behaviour such as smoking, drinking, substance abuse or violence.

*Discrimination, especially in the areas of private housing, room and caravan rental, and also in health, is both widespread and can result in significant psychological deterioration as well as material deprivation of the recipient. Indeed, consistent discrimination of this nature results in deepening of identification with the marginalised condition so as to make negotiation through their issues more difficult.<sup>15</sup>*

### Social consequences

As well as posing serious consequences for an individual, discrimination has a broader social effect.

The economic implications of discrimination are significant. By entrenching homelessness, unemployment and recidivism, discrimination can also put strain on public spending. For example, a recent City of Sydney study showed that the public cost of someone remaining homeless is as much as \$34,000 per person every year.<sup>16</sup>

Discrimination also exacerbates social inequality by further disadvantaging those who are already disadvantaged. The links between equality and social cohesion are well documented. Violence, conflict, insecurity and political instability are all more likely to occur in more unequal societies. In the poorest areas of unequal societies, the quality of social relations and the social fabric are stretched to breaking point. A recent UK report, Fairness and Freedom: The Final Report of the Equalities Review notes:

*There are substantial benefits to be gained from living in a more equal society. Gaps in educational attainment, employment rates or other opportunities impoverish us all. Research shows that not only does absolute poverty in itself reduce our productivity; so does the size of the gap between those at the top of society and those at the bottom. On several measures, that gap creates a drag on economic performance. This does not mean that the answer is to hold back those at the top or to sacrifice prosperity; but it does require focused effort on those who seem rooted at the bottom of the pile.<sup>17</sup>*

### The inadequacy of current protections and the need for reform

Despite the pervasiveness of discrimination on the basis of homelessness, and the serious consequences of discrimination, there is currently no legislation in Victoria or in Australia that provides equality and protection from discrimination to people who are homeless, despite the Government committing to considering protections for this vulnerable group.<sup>18</sup>

The EO Act defines and prohibits discrimination, victimisation and sexual harassment. The EO Act specifies particular attributes on the basis of which discrimination is prohibited, such as age, sex and marital status. The EO Act prohibits discrimination on the basis of these attributes in certain areas, such as in employment, education, and the provision of services and accommodation. It also contains exceptions and exemptions, which allow discrimination in certain circumstances. Homelessness is not a protected attribute under the EO Act.

In August 2007, the Attorney-General appointed former Victorian Public Advocate, Julian Gardner, to conduct a review of the EO Act. The final report

from the review recommended that priority should be given to including homelessness as an attribute in the EO Act.

*The Charter on Human Rights and Responsibilities Act (2006)* (Charter) has enshrined certain civil and political rights in Victorian domestic legislation. Section 8 of the Charter deals with recognition and equality before the law, and provides that:

- ▶ Every person has the right to recognition as a person before the law;
- ▶ Every person has the right to enjoy his or her human rights without discrimination; and
- ▶ Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

However, 'discrimination' for the purposes of section 8 of the Charter is limited to the attributes set out in the EO Act, which currently does not include homelessness. This compares unfavourably with other parts of the world, which do protect people from discrimination on the basis of homelessness.

Adequate and effective protection from discrimination in these areas would enable homeless people to access employment, accommodation and other goods and services on an equal footing with the rest of the community. Social inclusion and participation in civil, political, social, cultural and economic life can reduce and resolve marginalisation, disadvantage and poverty, all of which are causal factors and risk indicators of homelessness, unemployment and criminal activity.

Including homelessness as an attribute would have concrete benefits for homeless people. It would:

- ▶ establish a norm of non-discrimination against homeless people;
- ▶ create public awareness that homeless people should not be treated less favourably;
- ▶ give homeless people an avenue to complain and seek redress when they have experienced discrimination;
- ▶ impose an obligation upon the Victorian Government to respect the right to non-discrimination on the basis of homelessness and abstain itself from discriminating against homeless people; and
- ▶ encourage the Victorian Government to take positive steps to address the special

needs of people who are homeless.

The cost of not addressing discrimination on the ground of homelessness for society, from both an economic and a human rights perspective, as well as for the individuals themselves, is more than can be afforded.

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1 Letter of support from St Vincent de Paul Society to PILCH Homeless Persons' Legal Clinic dated 12 August 2002.

2 PILCH Homeless Persons' Legal Clinic, *Submission to the Victorian Attorney-General's Independent Review of the Equal Opportunity Act 1995 (Vic)*, January 2008, 18.

3 Ibid, 16.

4 Ibid, 17.

5 PILCH Homeless Persons' Legal Clinic, *Report to the Department of Justice, Discrimination on the Grounds of Homelessness or Social Status*, 2007, 12-13. Private rental or real estate agents (41% or 75 respondents), boarding houses (24% or 44 respondents), transitional or crisis accommodation (20% or 36 respondents), hotels and public housing (each 19% or 35 respondents) and caravan and backpackers (each 17% or 32 respondents).

6 PILCH Homeless Persons' Legal Clinic, *Promoting Equality: Homeless Persons and Discrimination*, 2002, 13.

7 PILCH Homeless Persons' Legal Clinic, *Submission to the Victorian Attorney-General's Independent Review of the Equal Opportunity Act 1995 (Vic)*, January 2008, 17.

8 Ibid.

9 Ibid, 18.

10 Ibid.

11 Ibid.

12 Ibid, 19.

13 PILCH Homeless Persons' Legal Clinic, *Submission to the Victorian Attorney-General's Independent Review of the Equal Opportunity Act 1995 (Vic)*, January 2008, 22.

14 VicHealth, *More than Tolerance: Embracing Diversity for Health*, September 2007. Although the VicHealth research focuses on discrimination on the basis of race and cultural heritage, it is important to note that these negative effects extend to all forms of discrimination.

15 Jesuit Social Services.

16 Available online at <http://www.mhcc.org.au/images/uploaded/CitySydney-HelpHomeless.ppt#257,2,Overview>.

17 Available online at [http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/equality\\_review.pdf](http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf), 19.

18 See Department of Planning and Community Development, A *Fairer Victoria: Standing together through tough times*, May 2009, 66; Department of Justice, Attorney-General's Justice Statement 2, October 2008, 22.

19 Julian Gardner, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report*, June 2008, [5.86].

20 See S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases Commentary and Materials* (2nd ed, 2004), 689; *Pottinger v City of Miami*, 810 F Supp 1551, 1578 (SD Fla 1992).