

# ***Promoting and Protecting the Human Rights of People Experiencing Homelessness in Australia***

National Human Rights Consultation  
Submission setting out the views and comments of  
people experiencing homelessness about human  
rights in Australia

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Caroline Adler and Amy Barry-Macaulay  
Manager/Principal Lawyer and Lawyer  
PILCH Homeless Persons' Legal Clinic  
Level 17, 461 Bourke Street  
Melbourne Vic 3000  
Tel: (03) 8636 4408  
Fax: (03) 8636 4455  
Email: [hplc@pilch.org.au](mailto:hplc@pilch.org.au)

## Table of Contents

1. Introduction and Executive Summary.....	3
1.1 Introduction.....	3
1.2 Executive Summary .....	4
2. Background.....	6
2.1 The PILCH Homeless Persons' Legal Clinic.....	6
2.2 Homelessness and Human Rights in Australia .....	7
2.3 The Right to Participate.....	8
3. Homelessness and Human Rights Workshop.....	10
3.1 Why and how the workshops were conducted.....	10
3.2 Results of the workshop questionnaire .....	12
3.3 Recording of general comments and ideas from participants.....	21
4. Which human rights and responsibilities should be protected and promoted? .....	23
4.1 International Human Rights Law .....	23
4.2 Importance of Social, Economic and Cultural Rights and Civil and Political Rights .....	24
5. Are these human rights currently sufficiently protected and promoted? .....	31
6. How could Australia better protect and promote human rights? .....	32
6.1 Introduce a Federal Human Rights Act.....	32
6.2 Education and awareness raising about human rights .....	33
6.3 Independent human rights complaints body .....	33
7. Conclusion .....	35

## Acknowledgments

The PILCH Homeless Persons' Legal Clinic wishes to extend its sincere thanks to the many people who participated in the eighteen workshops it conducted between March and May 2009. The results of the questionnaires conducted at those workshops, and the comments and ideas put forward by participants, make up the entirety of this submission. Thank you for your time and expertise and for openly and courageously sharing your stories with us.

The PILCH Homeless Persons' Legal Clinic also wishes to extend its very grateful thanks to all members of its Consumer Advisory Group who assisted with the planning, preparation and conduct of the workshops.

Finally, the PILCH Homeless Persons' Legal Clinic thanks its many volunteer lawyers who assisted with the conduct of the workshops.

## 1. Introduction and Executive Summary

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### 1.1 Introduction

This submission is made by the PILCH Homeless Persons' Legal Clinic (**HPLC**) in response to the National Human Rights Consultation (**the Consultation**). This submission is the first of two submissions by the HPLC.

This submission contains the views and comments of people experiencing homelessness about human rights in Australia. In particular, it sets out the response of homeless people to the three questions asked by the Consultation Committee namely:

- Which human rights and responsibilities should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

The views and comments of people experiencing homelessness in response to the Consultation were sought by the HPLC through a number of workshops held between March and May 2009. The purpose of conducting these workshops was to promote active, informed and inclusive participation in the Consultation by people experiencing homelessness; people who are often excluded from engaging in such community debates. The workshops gave people an opportunity to learn more about human rights and have their say, based on their own personal experiences about the current condition of human rights in Australia. The results of the questionnaires conducted at those workshops, and the comments and ideas put forward by participants, make up the entirety of this submission.

Part two of this submission describes the work of the HPLC and the process of and reason for conducting its workshops. Part three highlights the key findings and results of the workshop questionnaires, which were completed by all workshop participants. Part four considers the Consultation Committee's first question regarding what rights should be protected and promoted, in light of the comments made by participants at the workshops and based on the results of the workshop questionnaires. Part five discusses the inadequate protection of human rights for homeless people, drawing on examples and comments provided by workshop participants. Part six sets out the ideas of people experiencing homelessness about how Australia could better protect and promote all people's human rights.

## 1.2 Executive Summary

### ***(a) Key findings and results of workshop questionnaire***

- 35% of participants are experiencing chronic homelessness (i.e. they have experienced homelessness for more than 5 years).
- Over 85% of participants said that accommodation and housing services in Australia are either inadequate or very inadequate.
- 73% of participants indicated that they had a current health need and of those participants over 70% said that their health issues worsened as a result of experiencing homelessness.
- The primary source of income for almost 50% of participants is the Disability Support Pension.
- Over 80% of participants stated that the amount of social security that they receive is inadequate to meet their most basic needs.
- 80% of participants reported having been treated in a cruel and degrading way while experiencing homelessness.
- 99% of participants said the law must change to better protect their human rights.
- 99% of participants said that Australia should have a Human Rights Act that adequately protects their human rights.
- 99% of participants said that in addition to an Australian Human Rights Act, there needs to be education and awareness raising within the community so that people know about human rights.

### ***(b) Which human rights should be protected and promoted?***

Economic, social and cultural rights and civil and political rights contained in international human rights law must be protected and promoted in Australia.

### ***(c) Are these human rights currently sufficiently protected and promoted?***

People experiencing homelessness endure violations of their human rights on a daily basis. These violations provide clear evidence that human rights are not currently sufficiently protected and promoted in Australia.

***(d) How could Australia better protect and promote human rights?***

Australia must introduce a Human Rights Act that protects economic, social and cultural rights and civil and political rights. In addition to adopting a Federal Human Rights Act, there needs to be education and awareness raising within the community so that people know about human rights, are empowered to assert their rights and can uphold the rights of others. It is also necessary to introduce regulatory mechanisms to hold the government accountable and ensure that there are avenues available for individuals to make complaints to an independent body, with powers of investigation and enforcement, if their human rights have been violated.

## 2. Background

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### 2.1 The PILCH Homeless Persons' Legal Clinic

The HPLC is a project of the Public Interest Law Clearing House (**PILCH**) and was established in 2001 in response to the great unmet need for targeted legal services for people experiencing homelessness.<sup>1</sup> The HPLC is funded on a recurrent basis by the Victorian Department of Justice through the Community Legal Sector Project Fund, administered by Victoria Legal Aid. This funding is supplemented by fundraising and donations. While the HPLC recently received confirmation of a one-off funding boost from the Federal Government, it does not currently receive recurrent funding from the Federal Government.

The HPLC 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; and
- to use the law to construct viable and sustainable pathways out of homelessness.

Free legal services are offered by the HPLC on a weekly basis at 14 outreach locations that are accessed already by homeless people for basic needs (such as soup kitchens, crisis accommodation facilities and social and family services).<sup>2</sup> Since its establishment in 2001, the HPLC has assisted over 4000 people at risk of, or experiencing, homelessness in Victoria.

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<sup>1</sup> See <http://www.pilch.org.au>.

<sup>2</sup> Host agencies include Melbourne Citymission, The Big Issue, the Salvation Army, Anglicare, St Peters Eastern Hill, Ozanam House, Flagstaff Crisis Accommodation, Salvation Army Life Centre, Hanover, VACRO, Koonung Mental Health Centre, St Kilda Crisis Centre, St Luke's (Bendigo), Loddon Mallee Housing Service (Bendigo) and Homeground Housing Service. Legal services are provided at our host agencies by volunteer lawyers from law firms: Allens Arthur Robinson, Baker & McKenzie, Blake Dawson, Clayton Utz, Mallesons Stephen Jaques, Minter Ellison, DLA Phillips Fox, Corrs Chambers Westgarth, Freehills, Stella Stuthridge and Associates, Arnold Dallas McPherson and the legal departments of Goldman Sachs JBWere and the National Australia Bank.

The HPLC 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 HPLC 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.

The HPLC operates and provides its services within a human rights framework. Central to the human rights framework is the right to participate, including individual and community participation and consultation, which creates an empowering environment for individuals to assert their rights and contribute to the democratic process. The HPLC recognises the right to participate by working and consulting directly with a range of key stakeholders, the most important of which is the Consumer Advisory Group (**CAG**).

The CAG was established by the HPLC in 2006 and is comprised of people who have experienced homelessness or who are currently homeless. The role of the CAG is to provide guidance and advice, and make recommendations to the HPLC with a view to enhancing and improving the quality of the HPLC's service delivery, policy, advocacy, law reform and community development activities. The CAG not only provides feedback and guidance to the HPLC but also gives people who have experienced homelessness a voice to actively represent their interests and build the participation and engagement of the general community around the issue of homelessness. The CAG was instrumental in planning the HPLC's response to the Consultation, particularly the aspect of promoting consumer engagement and participation in the Consultation process through the homelessness and human rights workshops. One CAG member attended each workshop and assisted with its conduct including leading the general discussion about human rights and homelessness in Australia.

## 2.2 Homelessness and Human Rights in Australia

On any given night in Australia approximately 105,000 people are experiencing homelessness.<sup>3</sup> Between 2001 and 2006 there was an increase in homelessness of almost 5 per cent.<sup>4</sup> That five-year period also saw an increase in the number of people sleeping rough, the number of homeless family households and the extent of homelessness in the indigenous population.<sup>5</sup> Between 2004 and 2008 the number of people accessing homelessness specific services, under the Supported Accommodation Assistance Program (**SAAP**), increased by

<sup>3</sup> Australian Bureau of Statistics (ABS), *Counting the Homeless 2006* (2008).

<sup>4</sup> Compare ABS 2001 data (99,900) with ABS 2006 data (104,676) and shows an increase of approximately 4.78% in the homeless population in Australia.

<sup>5</sup> Australian Bureau of Statistics, *Counting the Homeless 2006* (2008), viii - xii; see also Australian Bureau of Statistics, *Counting the Homeless 2001* (2003).



almost 30 per cent.<sup>6</sup> Approximately 202,500 people are now accessing such services each year.<sup>7</sup> The growing rate of homelessness has placed significant strain on social services, resulting in 57 per cent of people requiring new accommodation being turned away.<sup>8</sup> In other words, more than one in two people experiencing homelessness who seek accommodation from relevant services are turned away *every day*, due to lack of beds.<sup>9</sup> The continuing disproportionate impact of homelessness and its growth in recent years requires urgent action to ensure an adequate standard of living for all Australians.<sup>10</sup>

It is widely acknowledged that people experiencing homelessness endure multiple and intersectional violations of their human rights on a daily basis. However, as the Human Rights Law Resource Centre states in its submission to the Consultation Committee, Australian law and policy does not provide comprehensive and consistent protection of human rights and many basic rights remain unprotected.<sup>11</sup> Notwithstanding the lack of domestic protection of human rights, the Australian government has definite obligations under international human rights law to protect human rights and remedy any violations.

## 2.3 The Right to Participate

The stated aim of the Consultation process was to provide all Australians with a once in a lifetime opportunity to have their say about human rights in our country. Giving people an opportunity to participate in public affairs and community debates is an essential element of our democracy and is an important human right.

The Consultation Committee held many public forums to enable people within the community to have their say about human rights. The Committee also created online forums and social media pages to promote discussion about its three questions. For people experiencing marginalisation and social exclusion, such as homeless people, it is extremely difficult to access these types of discussions. In addition, people experiencing homelessness may also have difficulty, or may not feel comfortable, voicing their opinions and views on human rights as they may not be aware that their experiences translate into human rights violations.

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<sup>6</sup> The 2004 – 2005 SAAP National Data Collection Annual Report indicated that 157,200 people had accessed SAAP services in that financial year. By 2007 – 2008 the number of people accessing SAAP services had risen to 202,500. These figures reveal an increase of 28.8% in the number of people accessing SAAP services since 2004 – 2005. Further information available at <http://www.aihw.gov.au/publications>.

<sup>7</sup> Australian Institute of Health and Welfare, *Women, children and teens, heavy users of SAAP*, Media Release (24 April 2009), available at <http://www.aihw.gov.au/mediacentre/2009/mr20090403.cfm>. See also Australian Institute of Health and Welfare, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2007 – 2008*, April 2009.

<sup>8</sup> Australian Institute of Health and Welfare, *Demand for SAAP Accommodation by homeless people 2006 – 2007: Summary*, Bulletin 64, October 2008, 2.

<sup>9</sup> Ibid.

<sup>10</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia* (22 May 2009) E/C.12/AUS/CO/4.

<sup>11</sup> Human Rights Law Resource Centre, *A Human Rights Act for All Australians* (May 2009), 8.



Early on, the HPLC recognised that many people experiencing homelessness would face barriers in accessing the Consultation process so felt it was necessary to directly engage with people experiencing homelessness about human rights in Australia. In particular, the HPLC decided that holding direct consultations (i.e. workshops) with people experiencing homelessness would ensure that the voices of the homeless community are heard in the debate about human rights. Data and comments from those direct consultations were collated and form the basis of this submission.

### 3. Homelessness and Human Rights Workshop

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#### 3.1 Why and how the workshops were conducted

To promote active, informed and inclusive participation in community debates people need to be familiar with the issues being discussed and given equal opportunity to contribute to such discussion. To achieve this participation in the debate about human rights in Australia, there must be education and community awareness raising about human rights and positive steps should be taken to include members of the community who experience discrimination and marginalisation in the debate process.

The active and informed participation of people who are homeless, formerly homeless or at risk of homelessness in the design, delivery and evaluation of policies and programs that affect them is important for three key reasons:

- the right of affected persons to participate in public affairs and decision-making processes is a fundamental human right;
- informed and active participation of affected persons is more likely to result in the development and implementation of policies and programs that are targeted, efficient, effective and meet people's needs; and
- the process of participation can be empowering and enhance personal development, self-esteem, capacity and independence.

As discussed above, there are many barriers that are prohibitive to people experiencing homelessness having their say in this Consultation process. It was therefore vital for the HPLC to directly engage with people experiencing homelessness to inform them about human rights and the Consultation process and give them an opportunity to participate in the debate.

Between March and May 2009, the HPLC ran 18 workshops focused on homelessness and human rights. The purpose of these workshops was to:

- Educate people who are homeless or at risk of homelessness about human rights and how their experiences translate into violations of their rights;
- Ensure that people who are homeless or at risk of homelessness are provided with targeted and accessible information about the Consultation so that they are equipped to engage in the debate;

- Talk directly to people who are homeless or at risk of homelessness about human rights in Australia and collate their views and comments to put forward to the Consultation Committee; and
- Assist participants to make a written submission to the Consultation Committee if they wished to do so.

The workshops were held at homelessness specific services, including venues at which HPLC legal clinics are currently located. Workshops were held at the following services:

- Melbourne CityMission, Footscray
- The Big Issue
- Ozanam House
- Victorian Association for the Care and Resettlement of Offenders (VACRO)
- Homeground
- Credo Café
- Loddon Mallee Housing Service, Bendigo
- St. Luke's Anglicare, Bendigo
- Salvation Army Life Centre
- PILCH Homeless Persons' Legal Clinic offices
- Flagstaff Crisis Accommodation
- St. Peter's Eastern Hill
- Hanover
- Koonung Community Mental Health Service
- Youthlaw/Frontyard
- 'Billabong BBQ' in Collingwood
- Women's Refuge

Each workshop ran for approximately one and a half hours and consisted of:

- 30 – 45 minutes of general discussion about homelessness and human rights in Australia and consideration of the three questions asked by the Consultation Committee; and
- 30 – 45 minutes for participants to complete a survey and write their own submission if they wished to do so.

The first half of the workshop provided participants with general information and an opportunity for interactive discussion about homelessness, human rights and the Consultation process. This aspect of the workshop gave participants an opportunity to openly express their views

and opinions about human rights in Australia. The second half of the workshop facilitated participants' active engagement in the Consultation process. During this part of the workshop, participants were assisted to complete a survey and tell their story. They were also encouraged and assisted to write a submission in response to the National Consultation. All together, the HPLC consulted 145 people who were experiencing homelessness, or who had formerly experienced homelessness, about human rights in Australia.

The views, comments and suggestions from the participants at the homelessness and human rights workshops form the entirety of this submission. The following parts of this submission convey what people experiencing homelessness think about human rights in Australia.

### 3.2 Results of the workshop questionnaire

Set out below are the aggregate statistics from the questionnaires completed by the 145 participants at the workshops. These statistics present a clear picture about the human rights violations experienced by homeless people on a regular basis. For example, the statistics show that Australia's social security payments, which are pegged below the Henderson Poverty Line, are insufficient to maintain an adequate standard of living. The statistics also highlight the inadequacy of public housing and housing services and, rather alarmingly, show that people experiencing homelessness are often treated in a cruel and degrading way. Participants expressed aspirations to have their human rights better protected in law, policies and programs, and through the services delivered by government agencies (such as the Office of Housing, Centrelink and the Police).

#### ***Do you identify as Aboriginal or Torres Strait Islander?***

Yes	21%
No	79%

#### ***Are you currently homeless?***

Yes	58%
No	42%

***Have you been homeless in the past?***

Yes	93%
No	7%

***Type of homelessness (past or present)***

Primary homelessness (i.e. sleeping rough)	65%
Secondary homelessness (i.e. transitional housing)	67%
Tertiary homelessness (i.e. living in rooming houses)	46.5%
Other	10%

***For how long were you, or have you been, homeless?***

Less than 1 month	4%
6 months or less	15%
Less than 12 months	2%
Between 1 – 2 years	21%
Between 2 – 5 years	22%
Between 5 – 10 years	11%
More than 10 years	24%

***I first became homeless because of: (multiple answers)***

Financial hardship and lack of access to adequate income support	46%
Drug use	39%
Unemployment	47%
Alcohol use	32%

Mental health issues	34%
Lack of adequate support/assistance	46%
Lack of adequate access to health care/treatment	17%
Incarceration	21%
Problem gambling	12%
Lack of affordable housing	39%
Discrimination	19%
Physical illness	22%
Domestic and family violence	39%
Eviction	29%
Relationship breakdown	45%
Grief, loss or trauma	30%
Lack of education	15%

***What is your view of the quantity, quality, affordability, safety and cultural appropriateness of accommodation and housing services in Australia? Do you think they are:***

Excellent	3%
Adequate	10%
Inadequate	45%
Very Inadequate	42%

***Are you on the waiting list for public housing?***

Yes	44%
No	45%
Don't know	11%

***How long have you been on the waiting list?***

Less than 1 month	7%
6 months or less	15%
Less than 12 months	3%
Between 1 – 2 years	14%
Between 2 – 5 years	23%
Between 5 – 10 years	14%
More than 10 years	7%

***Have you ever been evicted from public/community housing?***

Yes	28%
No	72%

***What is your view of the quantity, quality, affordability, safety and cultural appropriateness of public housing in Australia? Do you think it is:***

Excellent	2%
Adequate	17%
Inadequate	47%
Very Inadequate	34%



***Do you have a current health need?***

Yes	73%
No	27%

***If yes, did the need:*** (multiple answer)

Occur before your experience of homelessness	41%
Occur as a result of homelessness	26%
Worsen as a result of your experience of homelessness	70%

***Have you ever experienced any of the following barriers to obtaining adequate health care?*** (multiple answer)

Lack of contact details which presents difficulties in maintaining contact and getting test results	34%
Competing needs – basic living needs such as food and housing take precedence over health care	47%
Lack of transportation to medical facilities	43%
Lack of money to pay for services	61%
Lack of documentation including a Medicare card	22%
Discrimination, stigma and prejudice	29%
Complexity of the health service system	33%
Shortage of culturally appropriate services	14%
Lack of referral	30%
Lack of health care providers	34%
Lack of information	41%

***What have been the consequences of not receiving adequate health care?*** (multiple answer)

Poor/deteriorating physical health	52%
Poor/deteriorating mental health	44%
Prolonged homelessness	37%
Inappropriate incarceration	14%
Committed a criminal offence	23%
Became a victim of crime	28%
Social isolation	32%

***What is your primary source of income?*** (multiple answer)

Age Pension	2%
Newstart Allowance	24%
Sickness Benefit	3%
Big Issue	3%
None	1%
Student/Austudy	3%
Disability Support Pension	47%
Youth Allowance	8%
Employment (FT/PT)	5
Parenting Payment Single	6%
Other	7%

***Do you believe that the level of social security you receive is adequate to meet your basic needs?***

Yes	16%
No	84%

***Have you ever been deemed ineligible for a Centrelink payment?***

Yes	50%
No	50%

***If yes, why?*** (multiple answer)

Newly arrived migrant	1%
Unable to provide adequate proof of identity	41%
Unable to satisfy mutual obligation requirements (i.e. you were breached)	31%
Don't meet Disability Support Pension requirements	25%
Discrimination	8%
Unfair Centrelink assessment	54%
Other	12%

***Has your Centrelink payment ever been withheld?***

Yes	63%
No	37%

***Have you ever been treated in a cruel or degrading way  
while experiencing homelessness?***

Yes	80%
No	20%

***Do support services/agencies treat you with dignity/respect  
and recognise your rights?***

Always	20%
Often	14%
Sometimes	58%
Never	7%

***The current overall protection of my human rights is:***

Excellent	4%
Adequate	27%
Not adequate	50%
Very Inadequate	20%

***The law should be changed to better protect my human  
rights:***

Yes	99%
No	1%

***Australia should have a Human Rights Act***

Yes	99%
No	1%

***An Australian Human Rights Act should protect civil and political rights (i.e. right to privacy, freedom from cruel and inhuman treatment, right to a fair hearing etc).***

Yes 100%

No 0

***An Australian Human Rights Act should protect economic, social and cultural rights (i.e. right to adequate housing, right to social security, right to enjoy the highest attainable standard of health, etc).***

Yes 99%

No 1%

***An Australian Human Rights Act should:***

(multiple answers)

Promote human dignity and respect 81%

Impose responsibilities on government to respect, protect and fulfil my human rights 73%

Protect me from human rights violations by government and its agencies (such as Centrelink, Office of Housing, the Police etc) 84%

Ensure that government is held responsible for human rights breaches 71%

Protect the human rights of all people in Australia, particularly the most vulnerable members of society 74%

Create a human rights respecting culture 73%

Educate people about human rights (for example, conduct training and education of Centrelink staff) 77%

Ensure effective remedies are available for breaches of human 74%

rights (for example, ensure that people can take action and receive compensation where their rights have been breached)

***An Australian Human Rights Act should provide the following avenues of complaint if a person's human rights are breached:*** (multiple answers)

Complaint to the court	68%
Complaint to the Human Rights Commission	69%
Complaint to the relevant government department, agency or public authority	61%
Complaint to a specialist Human Rights Unit within government	64%
Complaint to a Human Rights Ombudsman or Commissioner	64%

***In addition to an Australian Human Rights Act, there needs to be education and awareness raising within the community so that people know about human rights.***

Yes	99%
No	1%

***Do you feel that you have been given the opportunity to have your say about government policies in relation to homelessness, housing and human rights?***

Yes	30%
No	70%

### 3.3 Recording of general comments and ideas from participants

In addition to the data and information collected through the questionnaires (aggregate results of which are set out above), the general discussion in the first half of each workshop was recorded through written notes. Note-takers attended each workshop and took down the personal stories and common views expressed by participants. In addition, participants were

asked to provide general comments about human rights and their individual stories highlighting their personal experience of their human rights being violated, if they wished to record them, in extra questions in the workshop questionnaires. The general views, comments and suggestions provided by participants at the workshops and within participants' individual questionnaires were collated and, in conjunction with the above statistics, form the basis of the answers to the three key questions asked by the Consultation Committee (set out in Sections 4, 5 and 6 of this submission).



## **4. Which human rights and responsibilities should be protected and promoted?**

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### **4.1 International Human Rights Law**

Participants at various workshops pointed to the United Nations and the European Court of Human Rights as good examples of how to enshrine and protect human rights. At one workshop, participants discussed that human rights are derived from the United Nations. At another workshop, a participant suggested that Australia should look to the European Convention on Fundamental Freedoms and the European Court of Human Rights for direction when determining what human rights are important and require protection. That participant noted that Europe was quite progressive when it came to human rights and Australia should follow its example.

There were a number of human rights that were highlighted on a recurring basis throughout the various homelessness and human rights workshops, they were:

- Equality, equal recognition before the law, equal enjoyment of rights and the right not to be discriminated against;
- Freedom of speech and the right to speak up;
- Right to adequate housing;
- Right to education;
- Right to social security;
- Right to an adequate standard of living;
- Right to access appropriate health services;
- Right to be treated with dignity and respect;
- Rights of women to feel safe and be free from violence;
- Right to participate;
- Right to a fair hearing;
- Right to be protected from cruel and degrading treatment; and

- Right to be presumed innocent until proven guilty.

#### **4.2 Importance of Social, Economic and Cultural Rights and Civil and Political Rights**

The list of human rights that were considered most important to people experiencing homelessness contains civil and political and economic, social and cultural rights. However, the general discussions at the workshops revealed that when many people talked about the human rights violations they had experienced, they were talking about economic, social and cultural rights violations; they were talking about their rights to adequate housing, social security, education and access to health care being denied. Many participants considered that these rights (which entitle them to access basic necessities such as food, shelter and clothing) are most important. Participants also recognised that enjoyment of economic, social and cultural rights would also facilitate enjoyment of civil and political rights. As one participant stated “you can’t have one right without the others.” Some of the rights considered most important to people experiencing homelessness are set out below.

##### **(a) The right to adequate housing**

Over 85 per cent of participants indicated that accommodation and housing services in Australia is either inadequate or very inadequate. Numerous participants highlighted long waiting periods, substandard living conditions and inappropriate housing as some of the many problems associated with public and community housing in Australia. As one participant said; “public housing is extremely ineffective, with an unacceptably long waiting list, even for those in dire need of housing.”

Forty-four per cent of participants indicated that they were currently on a waiting list for public housing. Of the people on the waiting list, 46 per cent of participants have been on the waiting list for more than two years and a staggering 7 per cent have been on the waiting list for more than ten years. One participant highlighted the unrealistic waiting period for public housing in Australia when he stated that being on “the waiting list means it’s 15 to 20 years before you get public housing. I’ll be dead and buried by then...” Another participant said that when he applied for public housing he was informed that he would have to wait 9 years before being housed.

Participants expressed considerable concern about the quality, quantity, affordability, safety and cultural appropriateness of public housing in Australia. 80 per cent of participants stated that public housing in Australia is either inadequate or very inadequate.

A number of participants discussed the substandard conditions of rooming and boarding houses throughout Victoria. One participant described rooming houses as “a blight on humanity. The hell that these places represent and the suffering and misery that they engender and profit from is a disgrace.” Another participant stated that “rooming houses in Melbourne are unclean, unhygienic, unsafe, usually run by corrupt staff... and have inadequate facilities for use.” People felt that they were safer on the streets than in rooming houses and one participant stated that living in rooming houses is worse than being in prison. There was general consensus among workshop participants that there needs to be better regulation of rooming houses and that tenancy laws require reform to ensure greater protection of the rights of residents particularly in relation to security of tenure and safety.

The majority of participants expressed significant concern regarding the extent of inadequate housing in Australia (i.e. housing that is unsafe, insecure, unaffordable, culturally inappropriate, inaccessible and unavailable). Participants called for more funding to be allocated to building new housing and the need to ensure that such housing is adequate (e.g. located to services, affordable and culturally appropriate etc). This housing also needs to coincide with an increase in support services to create long-term solutions for people. As one participant said, the government “needs to be more holistic in its approach: house, job, community, value!”

**Case study**

Dave, an Indigenous Australian, was living in public housing in Victoria. Often he had friends and family, who were themselves homeless, staying on his couch or his floor. Indigenous culture recognises extended family as immediate kin, and people will often move around and stay with relatives.

Dave was evicted from public housing because he allowed his family and friends to stay with him. Dave has been back on the waiting list for public housing in Victoria for two and a half years. In Dave’s experience, the quantity, quality, affordability, safety and cultural appropriateness of public housing is very inadequate.<sup>12</sup>

<sup>12</sup> Comment expressed by a participant at the workshop held at Harmsworth Hall, Collingwood, Tuesday 21 April 2009.

**(b) The right to equality, equal treatment and freedom from discrimination**

In the Victorian context, homeless people often experience discrimination at the hands of accommodation and goods and service providers.<sup>13</sup> For example, a real estate agent or a caravan park owner can refuse accommodation to someone who may be homeless or precariously housed because they want to pay either with a cheque from a welfare agency, or from their social security benefits.<sup>14</sup> A participant described experiencing this discrimination when looking for accommodation: “a couple of places have not accepted us because we were paying the bond with HEF (housing establishment fund) cheques. One caravan park organised a van, then rang back and said it wasn’t vacant after they found out how we were paying.”

Many participants also highlighted the stigmatization and stereotyping of homelessness in society, which contributes to and causes entrenched and systemic discrimination. Participants described the stigma of homelessness as creating a feeling that society is looking down on you because you are homeless. As one participant said “the services, i.e. housing, health, social security have always looked down at you because of the way you look.” Another participant felt that they had been “treated unfairly because of [their] appearance due to homelessness.” Participants also provided many examples of experiencing discrimination at the hands of Police, Public Transport Ticket Inspectors and homelessness service providers.

**(c) The right to social security**

The absence of a guaranteed minimum income, together with the fact that social security payments are generally pegged and paid below the Henderson Poverty Line, is a significant contributor to people either living in or being at risk of poverty and homelessness.<sup>15</sup> As one participant stated; “once you’re below the poverty line, you’re below the human rights line. Human rights violations happen to poor uneducated people.”

Over 83 per cent of participants at the workshops stated that the amount of social security that they receive is inadequate to meet their most basic needs. This is particularly alarming considering that the primary source of income for over 90 per cent of participants is social security payments. One participant stated that “social security isn’t

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<sup>13</sup> PILCH Homeless Persons Legal Clinic, *Submission to the Victorian Attorney-General’s Independent Review of the Equal Opportunity Act 1995 (Vic)* (2008).

<sup>14</sup> *Ibid.*

enough, I run out of food for lunches and it's hard to afford medication and treatment for my son." Another participant stated that if they could enjoy the right to social security, by accessing a reasonable and liveable income, they would be able to live with dignity and enjoy a better standard of living.

The inadequacy of Centrelink payments was highlighted by the current living situation of one participant receiving the Newstart allowance, who is living in a rooming house and is currently on the methadone program. This situation was found to be a common experience for many other participants. People receiving the Newstart allowance (or in some instances the Disability Support Pension) expressed their frustration at not having any income after paying their fortnightly rent (of anywhere between \$140 and \$240 per week) and methadone costs (approximately \$70 a fortnight). People on Newstart allowance would receive approximately \$450 per fortnight without rent assistance, or \$560 per fortnight with the highest amount of rent assistance. A person receiving Newstart and some rent assistance (i.e. \$500 per fortnight) whose expenses include the average amount of weekly rent as a resident of a rooming house (i.e. \$190 per week), and their fortnightly methadone dose (i.e. \$70 per fortnight), will have only \$25 per week left over to pay for food, clothing, utilities, toiletries and other basic expenses. This is clearly insufficient income for someone to enjoy an adequate standard of living. For many participants attainment and realisation of the right to social security would lead to their enjoyment of other important human rights.

Participants also illustrated a number of barriers that make it difficult to access social security payments, for example, being unable to satisfy reporting requirements or being unable to provide the required identification documents.

Many participants mentioned having difficulties meeting the mutual obligation requirements to receive Centrelink payments. A significant number of participants stated that their Centrelink payments were stopped because they had failed to meet these reporting requirements. As a result, many people had to go without any form of income for days, weeks or many months. One participant stated that the difficulties accessing Centrelink payments then impacts on other rights, such as the right to adequate housing, as without an income they may not be able to maintain their house/accommodation.

A number of participants also said that they experienced considerable difficulty obtaining the correct Centrelink payment. For example, many people said that it took them a long

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<sup>15</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, *Mission to Australia* (11 May 2007) A/HRC/4/18/Add.2.

time to access the disability support pension when they were clearly unwell and not in a position to work.

#### **Case study**

Andy has Scoliosis (curvature of the spine) and is in constant pain and cannot work. As an interim measure Andy was put on the Disability Support Pension but he was told by Centrelink staff that if he can walk into Centrelink, he can work.

Andy was taken off the Disability Support Pension and is now receiving Newstart Allowance. He was taken off the Disability Support Pension as he was told that he did not meet the eligibility requirements. However he cannot work because of his medical condition.

Lack of proof of identity documentation was a major issue for many participants. Participants described the difficulties they experienced holding onto original documents, which cannot be kept in a safe and secure place when experiencing homelessness. Participants also noted how their transient and interrupted lifestyle meant that documents were often lost or in some cases stolen. Given the immediate priorities of food and shelter, replacing identification documents was not high on the list of things to do. Replacing identification documents also entailed a cost which was prohibitive to many people.

Sufficient identification was described as a significant issue for some young people. Two participants said that as young people leaving home, Centrelink required them to provide a letter from their parent/s to prove that they could not live at home. This is an unrealistic requirement, particularly when family violence is often the trigger for the person to have left home in the first place.

#### **(d) The right to the highest attainable standard of physical and mental health**

Many participants reported that they had experienced violations of the right to the highest attainable standard of physical and mental health. In fact, 73 per cent of participants indicated that they had a current health need and of those participants over 70 per cent indicated that health issues worsened as a result of experiencing homelessness. One participant stated that she had not received dental care in 15 years. As a result, she has no teeth and has trouble eating which has caused her to lose weight. The participant stated that "it is painful to eat and I have developed jaw problems / pain. I have also lost confidence and am unable to get a job or interview."



Participants also indicated that homelessness leads to bad health and bad eating habits but because of the length of the waiting periods people eventually give up before accessing the care that is required. As one participant stated “waiting so long for services [you] eventually give up.” Another participant said that they were “too depressed to even bother getting medical help.”

Participants highlighted the significant barriers to accessing appropriate health care, particularly mental health care. People stated that there is a lack of accessible information about available health services and there are sometimes long waiting lists to access medical assistance when the health issue is urgent (for example, having to wait weeks to get into a detox program after which time it might be too late).

#### **Case study**

Alice was a young woman living on the streets. She was a few months pregnant when she developed pneumonia and sought assistance from health services. Numerous health services refused to assist her. As a result her pneumonia worsened, she was hospitalized and she suffered a miscarriage.

#### **(e) Right to be treated with dignity and respect and protection from cruel and degrading treatment**

Many participants spoke of being treated unfairly and disrespectfully by services. People also talked about the lack of competence amongst staff of government agencies and welfare services. Participants described being on a constant ‘merry-go-round’ when it came to trying to access services; people said that they were always being referred on to the next service without receiving adequate assistance from the service that they originally accessed. As a result, participants expressed a sense of hopelessness because ‘service providers consistently failed to deliver what they promised.’

Participants also talked about the lack of understanding and compassion exhibited by welfare and social services; the people who were supposed to be assisting them. One participant noted how inflexible Centrelink is in relation to accommodating his mental health issues. He said that Centrelink do not understand how difficult it is for people with anxiety issues to wait in a queue for hours.

Alarmingly, many participants spoke of being treated unfairly and in a degrading way particularly by government agencies and officials (such as Police and Public Transport



Ticket Inspectors). In fact, 80 per cent of participants stated that they had been treated in a cruel and degrading way whilst experiencing homelessness. In their own words:

*"Police did not believe me when I called them to help me leave my abusive partner, and refused initially to take me to a refuge."*

*"Strip searched by the Police in a public street"*

*"I had a valid ticket (and a concession card) yet the ticket inspectors asked to see other identification as I had four concession cards. They thought that I had stolen the concession cards but I had just moved four times in two months and didn't throw them out."*

Some participants had also experienced unfair, discriminatory and degrading treatment by members of the public. This is what they had to say:

*"[I was] spat on, bashed..."*

*"I was set on fire and pissed on by some kids. I was sleeping in a cardboard box and some people took it from me. I was asleep in St Kilda and was woken by a flash, people were taking pictures of me sleeping"*

*"I was spat on, I was called numerous names. I was touched by older men. I was pregnant and I lost the baby because I was too ill [from living on the streets]"*

## 5. Are these human rights currently sufficiently protected and promoted?

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At all of the workshops, participants gave a unanimous and resounding “no” in response to this question.

Participants were shocked and disturbed that Australia is the only Western democracy without any constitutional or legislative protection of human rights. Participants expressed the strong desire to see Australia ‘step up’ and enshrine human rights protections in law. Many participants agreed that Australia is currently ‘backwards’ when it comes to protecting human rights.

Participants spoke about the human rights violations they experienced on a regular basis and how the system has failed them. In their words:

*“Our human rights don’t exist. We are homeless and it (is) looked upon as our fault. Sometimes it is other times not, but if someone keeps falling should we pick them up or walk straight over them, which is what’s being going on too much.”<sup>16</sup>*

*“Human rights in Australia are inadequate – not there. As I said before, they (the government and support services) keep you on a merry-go-round – won’t do any thing permanent for you, no follow-up, and no outreach.”*

*“When I became homeless a few years ago, I tried to get help on countless occasions. I tried and failed to get help. I was unemployed, had my slip. Breakdown, it was a breakdown. I needed support and I got none”*

*“If my rights are not protected there is no ground for my life to improve. If agencies and organisations don’t observe our human rights, we can’t survive. Our rights to have a life like anyone else’s [shouldn’t] be taken away.”*

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<sup>16</sup> PILCH Homeless Persons’ Legal Clinic, Participant Comments, Consumer Forum in response to the Homelessness Green Paper, June 2008.

## 6. How could Australia better protect and promote human rights?

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### 6.1 Introduce a Federal Human Rights Act

At all workshops, the consensus reached amongst participants was that Australia must enshrine human rights protections in law. As mentioned above, many participants were shocked that Australia is the only Western democracy without any constitutional or legislative protection of human rights. Participants agreed that Australia should immediately introduce a Federal Human Rights Act that protects both economic, social and cultural rights and civil and political rights. These views are backed by the statistics gathered through the workshop questionnaires, which show that:

- 99 per cent of participants said that Australia must introduce a Human Rights Act.
- 99 per cent of participants said that an Australian Human Rights Act must protect economic, social and cultural rights; and
- 100 per cent of participants said that an Australian Human Rights Act must protect civil and political rights.

In their own words, participants said that Australia needs:

*“Laws passed that cover our human rights.”*

*“For our rights to be legitimate and legalized.”*

*“We definitely need to introduce a bill of rights for Australia.”*

*“We need to make sure that we are protected. To know we are the only developed country in the world without this [human rights] protection; it's not good enough.”*

*“A Human Rights Act enshrined in law.”*

*“Human rights for everyone.”*

*“A Human Rights Act needs to be created.”*

*“I look forward to the day when the Federal Government enacts a Charter of Human Rights for all Australians.”*

*"The law should be changed to better protect my human rights."*

## **6.2 Education and awareness raising about human rights**

In addition to the introduction of an Australian Human Rights Act, participants said that there needs to be education and awareness raising within the community so that people know about human rights. Again, this general view is backed by the results of the workshop questionnaire which show that 99 per cent of participants called for greater community education about human rights, in addition to human rights protections being enshrined in law.

Participants made the following comments about the need for human rights education within the community:

*"More education so people learn more about rights."*

*"Education from [an] early age. Schools should have a rights class (human rights at home; human rights at school, human rights in the workplace, and human rights in the community)."*

*"Human rights should be part of [the] school education system."*

*"More information out in the community and radio and TV to let people know how to get help without guessing and not knowing where to go."*

*"I think that they should start educating about human rights at a much earlier age."*

*"Make people aware of what human rights are... so that they know how to uphold them."*

*"Education is the key to success."*

*"People need more information available and need to be better educated."*

In summary, participants called for human rights education for the whole community so that the disadvantaged could be empowered to assert their human rights and so that the powerful could be made accountable for upholding human rights.

## **6.3 Independent human rights complaints body**

Participants also said that, together with an Australian Human Rights Act and improved community education, there needs to be mechanisms available for holding the government

accountable and making complaints if an individual's human rights are violated. Participants discussed the idea of there being an independent body, Ombudsman or Commissioner with which individuals could lodge complaints if their human rights had been violated. Such a body should have investigative and enforcement powers.

In this regard, participants provided the following suggestions:

*"Greater information available to anyone and a relevant place to go if someone feels their rights have been violated."*

*"A central policing agency, in relation to Human Rights"*

*"More transparency and accountability within government bodies"*

*"Far more awareness amongst all people regardless of social standing. More punishment for people who breach our human rights."*

*"Accountability by service providers."*

*"The various States should have bodies that can give better, timely responses to violations of human rights..."*

*"There should be human rights officers in each State and Territory."*

*"The government needs to start looking deeper into the services, accommodation and help that is available. Investigate how they treat us on a whole. It would serve as a good wake up call, I think, as well as hopefully they would work to make the changes that so obviously [are] necessary."*

*"Consumer watchdog – made up of residents of rooming houses and more vulnerable people to ensure government's accountability is followed up."*

## 7. Conclusion

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The above statistics, views and comments from participants at the HPLC's workshops, very clearly articulate the concerns of people experiencing homelessness regarding the insufficient or complete lack of human rights protections in Australia.

People experiencing homelessness endure daily violations of their human rights. This is clear from their stories and lived experiences. For them, human rights do not exist because they do not currently enjoy them.

These voices and concerns must be heard in the debate about human rights in Australia. People experiencing homelessness, disadvantage, poverty and social exclusion must be listened to and responded to because they know about human rights and rights violations.

It is the lived experiences of these people that demonstrate very clearly that Australia needs a Human Rights Act.