

# Human Rights Framework

## PILCH Victorian Election Priorities 2010



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Victoria has been a leader in the protection and promotion of human rights in Australia. However, significant gaps and weaknesses in the human rights framework remain. This has meant that only some Victorians have been able to live lives based on freedom, respect, equality and dignity.

### Homeless need better rights protections

Homelessness is more than just a housing issue. A person who is homeless can, for example, also face violations of his or her right to the highest attainable standard of physical and mental health. Health problems might cause a person to become homeless, including in cases where mental health issues impede a person's ability to find and sustain employment. Health problems might arise from, or be exacerbated by, a person's experiences of being homeless.

Of the people surveyed by the HPLC, 73% indicated that they had an unmet health need, whilst 70% considered that their condition had worsened as a result of being homeless. A common explanation for the compromised health of people experiencing homelessness is inadequate access to health services. This is often due to financial hardship, prioritisation of basic needs (eg, food and shelter) over health and, for example, inability to obtain a Medicare card.

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### Gaps and weakness in rights protections

Examples of gaps and weakness in the protection of rights include:

- ▶ the failure to protect economic, social and cultural rights in the *Charter of Human Rights and Responsibilities Act 2006 (Vic) (Victorian Charter)*, such as the right to health and adequate housing, which has further marginalised some of Victoria's most vulnerable individuals;
- ▶ the inability to obtain remedies for violations of Charter rights, which has rendered many of the rights protections in that instrument illusory;
- ▶ the absence of an independent cause of action in the Victorian Charter, which has prevented several PILCH clients from receiving justice for unfair and undignified treatment;
- ▶ the failure to prohibit discrimination on the grounds of 'homelessness' and 'irrelevant criminal record', which has resulted in ongoing discrimination against already marginalised people;
- ▶ inadequate safeguards against misuse of powers of attorney, which has compromised the rights of people with diminished capacity; and
- ▶ the inability of individuals with diminished capacity to secure litigation guardians, which impedes their access to the courts.

## Call to action

Whilst Victoria is rightly proud of its efforts to protect human rights, the Victorian Government must continue to strengthen the human rights framework to ensure that all Victorians live a life based on freedom, respect, equality and dignity.

The four-year review of the Victorian Charter is an important opportunity to strengthen rights protections and cement this state's leadership on human rights issues.

However, efforts to improve the protection of human rights must not be limited to the Charter review. The Victorian Government must ensure that a human-rights based approach is applied broadly by all branches and levels of Government.

### Strengthen the Victorian Charter

Strengthen the Victorian Charter, including through:

- ▶ incorporation of economic, social and cultural rights (eg, the rights to an adequate standard of living, education, and health) and the right to self-determination;
- ▶ improved access to remedies for Charter violations; and
- ▶ the establishment of an independent cause of action.

### Expand protections against discrimination

Prohibit 'irrelevant criminal record' and 'homelessness' discrimination in the *Equal Opportunity Act 2010* (Vic).

### Strengthen the protection of rights of people with diminished capacity

Strengthen the protection of rights of people with diminished capacity, including by:

- ▶ simplifying laws relating to powers of attorney and improving safeguards against misuse of those laws;
- ▶ empowering Victorian courts to make orders protecting litigation guardians from adverse cost awards in appropriate cases; and
- ▶ ensuring institutional litigation guardians are adequately funded.

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#### Background resources

1. PILCH, *Strengthening the Protection and Promotion of Human Rights: A Human Rights Act for Australia* (2009), available at: <http://www.pilch.org.au/Assets/Files/NHRC%20PILCH%20Submission.pdf>.
2. PILCH, *Submission to the Scrutiny of Acts and Regulations Committee on its Review of the Equal Opportunity Bill 2010* (Vic) (2010), available at: [http://www.pilch.org.au/Assets/Files/PILCH%20and%20HPLC%20Submission%20to%20SARC%20re%20EO%20Bill%202010%20\\_Final%20-%2018%203%2010\\_.pdf](http://www.pilch.org.au/Assets/Files/PILCH%20and%20HPLC%20Submission%20to%20SARC%20re%20EO%20Bill%202010%20_Final%20-%2018%203%2010_.pdf)
3. Seniors Rights Victoria, *Inquiry into Powers of Attorney: Submission to the Victorian Law Reform Committee* (2009), available at: <http://www.pilch.org.au/Assets/Files/SRV%20Submission%20-%20Inquiry%20into%20POAs%20FINAL.pdf>