



Submission to the eight-year review of the Victorian Charter of Human Rights and Responsibilities Act (2006)

Introduction

Established in 1972, the Council to Homeless Persons (CHP) is the peak Victorian body representing organisations and individuals with an interest in and commitment to ending homelessness.

CHP welcomes the Victorian Government's eight-year review of the Charter of Human Rights and Responsibilities Act (2006) (the Charter). CHP contributed to the four-year review, and we refer once again to the recommendations we made in our 2011 submission. This included case studies, which highlighted successful use of the Charter to resolve housing and homelessness issues without the need for legal action.

Homelessness and the Charter

On Census night in 2011, almost 23,000 people were recorded as being homeless in Victoria. While this includes people living on the streets, most people experiencing homelessness are moving between inappropriate and unsustainable forms of short-term and crisis accommodation, staying temporarily with friends and relatives, or in rooming houses, caravan parks or cars.

The key drivers of homelessness are varied, complex and often interrelated. They include systemic causes such as discrimination, persistent poverty and lack of affordable housing; as well personal triggers like family violence, unemployment, physical and mental health issues as well as the experience of exiting the criminal justice or the child protection system.

It is well documented that the longer people remain homeless the harder it is to exit. The experience itself often exacerbates and leads to an increase in a range of health and wellbeing issues that compound existing barriers for people in getting the support and housing they need.

People experiencing homelessness are not a homogenous group. They include people with disabilities, young people and families who have escaped family violence. Homelessness services are also reporting a growing number of families with children and older people presenting for assistance after being evicted from private rental.

One thing that people who are homeless often *do* have in common is that they are bearing the brunt of entrenched social exclusion. They are extremely vulnerable to being denied the universal services that we all need and to which we have a right, and are necessary to remaining in a safe and stable home. This includes access to employment, adequate health services, education and affordable housing.





Groups who experience the most disadvantage often need the law to ensure they are not denied full community participation. In many cases this is the only way to break the cycle of exclusion and allow this group to enjoy the rights to which we are all entitled.

Unfortunately, people who are homeless are not always protected by anti-discrimination law. The Human Rights and Equal Opportunity Act 1986 does not expressly prohibit discrimination on the basis of social status, such as homelessness.

The Charter is a critical piece of legislation for people experiencing disadvantage.

The inclusion of Social and Economic rights

As outlined in our 2011 submission, CHP believes it is important to include social and economic rights in the Charter, particularly the rights to housing, education and health care.

In 2003, Scotland introduced legislation specific to homelessness and housing. Scotland's The Homeless etc Act (2003) has been described as some of the most progressive homelessness legislation in Western Europe. The Act guaranteed the right to permanent housing for all unintentionally homeless households by the end of 2012. People who are unintentionally homeless were defined as those didn't knowingly - through their actions - contribute to a situation that forced them to leave accommodation of a reasonable standard in which they could otherwise have stayed.

The Act gradually phased out priority testing for those presenting at services. In 2012, the Scottish government introduced the Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012, which eradicated priority testing. This meant that everyone experiencing homelessness was required to be offered assistance.

In England, the Homelessness Act 2002 (UK), and which is applicable in England and Wales, placed responsibility on local authorities to provide local solutions to homelessness. Under the Act local authorities were required to ensure long-term accommodation for the unintentionally homeless in priority need. Groups in priority need are defined as those leaving care, people 16-17 years of age, considered at risk or vulnerable, pregnant women and people with children in their care. In addition, local authorities were required to prepare regional strategies for allocating social housing and tackling homelessness, which are reviewed every five years.

In both countries, homelessness has not been abolished. It has however changed how service users interact with the service system. As stated in our previous submission, the inclusion of these rights would not impose blanket constraints on government, or mandate fiscal obligations. They would however encourage governments to take reasonable steps to progressively ensure the realisation of those rights.



CHP's Homelessness Advocacy Service and the Charter

The Homelessness Advocacy Service (HAS) was established in 2005. It aims to secure and protect the rights of people experiencing homelessness by providing state-wide advocacy to people who have a complaint in relation to any housing and accommodation-related services offered by or overseen by the Department of Health and Human Services (Victoria). Advocacy involves individual support to people seeking to make complaints regarding service provision.

The HAS assists people by providing information and advice regarding their rights, as well as about how to raise complaints and negotiate complaint mechanisms. The HAS also assists people to raise formal complaints by attending meetings, writing letters and accessing and keeping records in relation to complaints. The HAS can help clarify issues and present complaints in appropriate formats.

The HAS has found the Charter a particularly effective mechanism for advocating on behalf of homelessness service system users.

Case studies and data collected by the HAS have informed this submission. The two case studies below illustrate how the Charter has been used to prevent homelessness as a result of evictions, without the need for legal recourse.



Joan

Joan, aged 45, lives with her partner in a community-managed rooming house. She was given an immediate notice to vacate by the landlord for violence and drug dealing. Joan has an Acquired Brain Injury (ABI) and told the HAS advocate that at no time did the landlord approach her and discuss the validity of the contents of the notice to vacate. Instead, he took the information provided by other people and applied to VCAT.

The HAS advocate contacted both the landlord and the relevant housing worker advising them that they had not spoken to Joan in relation to the alleged offences, but had made an assumption that she was dealing drugs around the rooming house. The HAS advocate told the housing worker that in taking that approach Section 8 of the Charter— the right to recognition and equality before the law under the Victorian Charter of Human Rights had been breached. The housing worker called the HAS advocate within 48 hours and let her know the notice to vacate had been withdrawn due to the lack of evidence pertaining to the alleged offences.

Peter, 55, who has an ABI and a physical disability

Peter was living in a community-run rooming house and was issued with a NTV due to allegedly assaulting his neighbour. On behalf of the client, the HAS advocate contacted the housing worker and asked for further information about the alleged assault, particularly in light of Peter's physical disability.

The housing worker told the HAS advocate that the complainant reported that Peter had assaulted him due to a drug debt. The HAS advocate advised the housing worker that the information was unsubstantiated hearsay and that the service should investigate the matter further prior to attending VCAT. The HAS advocate notified the worker that until the investigation had been undertaken, and the allegations were substantiated the client's rights under Section 8 of the Charter— the right to recognition and equality before the law, were being breached. The notice to vacate was withdrawn.

While the Charter has contributed to an effective remedy for many consumers, HAS reports that consumers with mental health issues, substance misuse issues, intellectual disabilities and Acquired Brain Injuries (ABI) often have difficulty recalling dates or specific instances when breaches have occurred. This poses a barrier to these individuals attempting to uphold their rights.

Public authorities

CHP strongly agrees with the requirement for public authorities to act in a way that is compatible with human rights. However while many organisations assume and act in a way that is compatible with the Charter, there is little clarity as to which organisations and programs are subject to the Charter. CHP recommends that the



review clarify coverage by clearly identifying what is included in the term “public authorities” rather than leaving this to be tested by the courts, at great cost to both the organisations and individuals involved.

Promoting a culture of human rights

A culture of human rights promotion and protection must be cultivated throughout the community. This culture can be enhanced through ongoing education campaigns and training opportunities. Education campaigns should be targeted to the general public, and specifically to consumers being provided services or support by government and public authorities. Specific training is needed to support people working for public authorities about ways in which the Charter applies to their work, and how to ensure rights are upheld within their organisations.

Government has a distinct leadership role in promoting a human rights culture. An ongoing commitment to strengthening and implementing the Charter forms part of this leadership role.

Free-standing cause of action

In CHP’s consultation with people who have experienced homelessness, they expressed strong support for people to seek recourse for breaches of their human rights independent of other legislation.

CHP acknowledges previous concerns that a free-standing cause of action would result in what the HRLC described as “opening the litigation floodgates”. However, this has not been seen in other jurisdictions that allow a free-standing cause of action, such as the ACT.

Legal jurisdictions for breaches of human rights

The majority of actions dealt with under the Charter in relation to housing and homelessness concern tenancy matters and evictions. At the moment, VCAT cannot hear Charter matters concurrently with other tenancy issues. This means tenants wishing to exercise their rights under the Charter have very limited recourse.

VCAT should be given power to consider breaches of human rights in tenancy matters. This would allow both tenants and public authorities to have human rights issues considered in a cost effective and easily accessible forum.

The need for ongoing review

When the 2011 review was being undertaken, there was significant cause for concern that the entire Charter may be repealed. CHP believes that the Victorian Government should commit to reviewing the Charter in another four years.