

4 June 2015

Michael Brett Young  
Charter Review Secretariat  
Level 24, 121 Exhibition Street  
Melbourne VIC 3000

By email: [charter.review@justice.vic.gov.au](mailto:charter.review@justice.vic.gov.au)

Dear Mr Young

**Re: Review of the *Charter of Human Rights and Responsibilities Act 2006* (Vic)**

The Footscray Community Legal Centre ('FCLC') tenancy program makes this short submission from our experience in the context of tenancy law.

### **About FCLC**

FCLC runs a tenancy service with a focus on clients from a refugee background. We employ 3 tenancy lawyers to provide tenancy advice, casework and representation to underprivileged clients who live in Melbourne's west, including suburbs from Footscray to Werribee. We also run a duty lawyer service one morning per week at the Victorian Civil and Administrative Tribunal ('VCAT') in Werribee. We primarily work with tenants in private rentals, but also do some work with tenants in public and community housing.

### **Our experience using the Charter**

It is unfortunate that in our practice assisting vulnerable tenants, that the Charter has had minimal impact on our work. Our ability to utilise the charter is limited in the following ways:

- Most of our work concerns private tenancies, which do not come within the ambit of the Charter;
- There is no specific right in relation to housing;
- There is uncertainty of whether community housing and affordable housing providers come within the definition of 'public authorities'. This is a barrier to potential Charter litigation involving these groups and also hinders our ability to effectively use the Charter in negotiations;
- For our clients who do live in public housing, the costs of litigating in the Supreme Court are prohibitive to the enforcing a client's rights through the judicial system.

In light of the reducing levels of affordable rentals<sup>1</sup> and the rising levels of homelessness<sup>2</sup>, it is our view that there are sound policy reasons to strengthen the extent to which the Charter can be used to protect the housing rights of vulnerable Victorians.

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<sup>1</sup> *Affordable lettings by LGA December 2014*, Department of Human Services, Victoria Government, <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/rental-reports-2014>.

## **Suggested changes to the Charter**

### 1. Inclusion of a right to housing

At present, there is no specific right in relation to housing. It is our view, that in light of the fundamental importance of housing to the wellbeing of Victorians, that the Charter should be amended to include a specific right that relates to housing.

### 2. Greater access to remedies

It is our view that there should be greater access to decision-making and remedies under the Charter. In the context of tenancy law, the costs involved with pursuing litigation in the Supreme Court are prohibitive for most clients.

It is our view that giving VCAT the jurisdiction to hear and determine charter arguments would open access to the charter to a large number of Victorians for whom it is currently inaccessible.

### 3. Clarification of 'public authorities'

At present, there is no clarity on whether social housing providers, including community housing organisations and affordable housing organisations who provide housing under the National Rental Affordability Scheme (NRAS), are public authorities for the purposes of the Charter. If these organisations were deemed to be public authorities it would ensure that they could be held to account under the Charter. It is therefore our submission that there should be clarification of whether such organisations are public authorities.

Thank you for your consideration of this submission. If you require any further information, please do not hesitate to contact us on **9689 8444**.

Yours sincerely,



**Gemma Cafarella**  
**Tenancy Lawyer**  
Footscray Community Legal Centre

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<sup>2</sup>According to the 2011 census there were over 22,000 Victorians who are classified as being homeless on Census night. This represented a rise of over 20% from the 2006 census statistics (Australian Bureau of Statistics 2012, *Census of Population and Housing: Estimating Homelessness*, 2011, Australian Government, Canberra).