26 June 2015

Mr Michael Brett Young
Independent Reviewer
Victorian Charter of Human Rights

Dear Mr Brett Young

REVIEW OF THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 (VIC) (Charter)

Thank you for providing the Mornington Peninsula Human Rights Group (our Group) with the opportunity to make a submission to your review. Our key recommendation is for the inclusion of a more explicit right to shelter in the Charter.

Our Group is a voluntary group of concerned citizens established in 2006, whose Constitution lists as its sole purpose to “promote understanding and respect for human rights and responsibilities in our municipality and beyond through programs of community education”, and to be “unaligned with any political party or movement.” The Group made a number of submissions to the Victorian Government at the time when the creation of the Charter was first being considered.

The Group has long had an involvement in promoting local awareness within the Mornington Peninsula area about homelessness. Our starting point is Article 25 of the Universal Declaration of Human Rights (1948) which states that:

*Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care.*

Our key recommendation, as detailed below, stems from two core considerations. First, that integrity of the Charter as a human rights instrument as seen in the context of the international human rights regime requires that the Charter more accurately reflect the core human rights to which Australia has made commitments. Secondly, that as a matter of a reflection of Australian domestic values and practical needs, it is a right that it is included as a Charter right, and would otherwise be arbitrary and inappropriate to exclude.

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*Drafting styles have changed since 1948, and if a similar right is included in the Charter, we believe it should adopt gender neutral language in the formulation of the right, consistently with other international obligations of Australia to promote gender equality.*
International Human Rights and the Right to Shelter

A distinction has been drawn traditionally between civil and political rights, as protected in the International Covenant on Civil and Political Rights ('ICCPR') and economic, social and cultural rights contained in the International Covenant on Economic Social and Cultural Rights ('ICESCR'). This distinction has been subject to criticism, largely on the grounds that there is not a clear or tangible differentiation in the qualities of each set of rights to justify such a grouping. Indeed they are complementary, as they function to reinforce the content and scope of each other.

The Victorian Charter of Human Rights ('Charter') contains only rights derived from the ICCPR. The right to adequate housing is not explicitly addressed by the ICCPR or in the Charter. Other rights in the Charter are potentially engaged in the context of homeless persons, for example the right to liberty and security of person (The Charter, section 21), right to life (The Charter, section 9) and recognition and equality before the law (The Charter, section 8). These civil and political rights cannot operate in a vacuum without considering the economic and the social. Specifically in the context of homelessness, these civil and political rights cannot be realised without addressing the economic and social dynamics of homelessness and the special position of vulnerability of homeless persons. However, as it stands the Charter does not enumerate this right to shelter, despite it being a determining factor for the prospects for many Victorians to realise their civil and political rights.

It is our recommendation therefore, that an explicit right to shelter should be added to the Charter. It is a right contained in the ICESCR, one of the core sources of international human rights, and a Covenant to which Australia is a signatory. While there has been a trend in treating political and civil rights as separate and distinct from economic and social rights, it is our submission that such a distinction is illusory and further hampers the proper realisation of the already recognised political and civil rights, which should be seen as similar and complementary.

The Charter as an appropriate mechanism for addressing homelessness

Homelessness is an intersectional and complex phenomenon. Its causes, consequences and optimum solutions are questions that do not and cannot be solved simply or quickly.

The dialogue model of the Charter is therefore an especially well suited model for addressing this issue. Homelessness is unfortunately an endemic feature of our society, and therefore requires a long term, cross-disciplinary approach. Including an explicit right to shelter would ensure that a longer term, proactive commitment would be taken to address this issue. It would ensure greater awareness of, and attention to, this right during the process of legislating, as legislators would be required to turn their mind to the effect of the new law on the right to shelter. This would encourage a comprehensive, multidisciplinary approach to addressing homelessness.

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2 Australia is a signatory to both of these covenants.
Including a right to shelter within the Charter would further benefit the dialogue fostered by the Charter between parliament and the community. Victoria currently has the second highest homeless population in the country, with 22 000 homeless persons.\(^6\) Nationally, one person in every 200 is homeless. Homelessness is a social problem that touches and affects individuals as well as communities. Including a right to shelter will therefore bring this right, and specifically homelessness, into the already developing human rights dialogue between the community and parliament. Such a model would function to promote a sense of shared accountability.

Further, by bringing into the paradigm of human rights the right to shelter, public misconceptions and harmful, inaccurate stereotypes of those without shelter would be challenged through the crucible of public discussion, and reoriented to a consideration of such circumstances as a being human rights issue, rather than a negative reflection of the characteristics, values or whatever other characteristics of those suffering from homelessness. Sadly, on the Mornington Peninsula members of our group are aware of numerous examples of women and children threatened with homelessness as a result of domestic violence. These individuals may depend on external intervention by welfare agencies, council services and the State government.

**What including a right to shelter could look like in Victoria**

South Africa demonstrates that including a right to shelter can provide real solutions to aggrieved individuals, within the context of the available resources of a state.

In *South Africa v Grootboom* (2001) (1) SA 46, a number of people rendered homeless by their forcible eviction from land earmarked for low-cost housing sought an order under section 26 of the Constitution, which provided for a right to adequate housing. The Constitutional Court of South Africa found that while the provision could not be read as to entitle the evictees to shelter on demand, it did function to create an obligation on the behalf of the government to undertake reasonable measures to provide for emergency housing for the evictees. The proposed low-cost housing project would not have been carried into effect for some time. While the Court acknowledged the achievement of creating a nationwide housing program, it was not reasonable, and thereby not consistent with section 26 obligations, to ignore the short-term housing needs for the sake of longer-term objectives.

This submission does not seek to explore comprehensively this decision, nor the relevant differences between the South African and Victorian model of bills of rights. However, this decision is relevant to the extent that it illustrates how the inclusion of the right to shelter does not inevitably put the executive and judicial arms of government in opposition to one another.\(^7\) In this instance, the Court was particular in not wanting to place unrealistic goals on the government, and it was cognisant of the limited nature of available resources. Its finding only resulted in a redistribution of resources within the one program.


\(^7\) Sackville, above n 2, 10.
While in the Victorian Charter there would not be the same scope for judicial direction as to a similar situation (if it occurred in Victoria), we consider that an inclusion of the right to shelter would allow for the exact same type of dialogue, albeit be in the context of parliamentary debate and community engagement.

**Concluding remarks**

We would be happy to elaborate on any aspect of the views expressed above, if you would like us to do so.

Finally, we wish to acknowledge with gratitude the assistance we received from staff and interns at the Law School of the University of New South Wales in preparing this submission.

Yours faithfully

[Signature]

Tony Coburn
Chairman

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8 In particular, we had help in writing the submission from members of Professor Rosalind Dixon’s research team: Genevieve Wilks, Sam Abraham and Emily Clarke.