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**SUBMISSION TO THE INQUIRY OF THE LEGISLATIVE
COUNCIL OF THE PARLIAMENT OF VICTORIA INTO
HOMELESSNESS**

**ENSURING HUMAN RIGHTS BY ENDING
HOMELESSNESS: A FRAMEWORK FOR
UNDERSTANDING THE HUMAN RIGHTS IMPLICATIONS
OF HOMELESSNESS**

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PART I: BACKGROUND

1.1 Introduction

In June 2019, the Victorian Legislative Council agreed to a motion that required the Legal and Social Issues Committee 'to inquire into, consider and report within 12 months on the state of homelessness in Victoria'.¹ The Legislative Council directed the Committee to investigate the following broad terms of reference:

1. An **independent analysis** of the **changing scale and nature** of homelessness across Victoria;
2. Investigate the many **social, economic and policy factors** that impact on homelessness; and
3. Identify the **policies and practices** from all levels of government that have bearing on delivering services to the homeless.²

1.2 Overview of Homelessness in Victoria

Homelessness is defined by the United Nations as 'a condition where a person or household lacks habitable space with security of tenure, rights and ability to enjoy social relations, including safety'.³ It manifests in different ways, from 'sleeping rough', that is to say 'eating, sleeping, and staying in public spaces'; to living in precarious and unstable housing conditions, such as temporary shelters, boarding houses and 'couch surfing'; and to living in inappropriate housing that is overcrowded or lacking in basic facilities.⁴

Homelessness has been described by the UN as 'one of the crudest manifestations of poverty, inequality and housing affordability challenges', and an issue that affects people of all ages, genders and backgrounds.⁵ The UN Economic and Social Council in 2020 has made clear that homelessness is a gross violation of the fundamental rights to adequate housing, to security of a person, to health, and to the protection of home and family.⁶ Nevertheless, homelessness persists and has even worsened during the COVID-19 pandemic.

In Australia, the issue of homelessness is pervasive. In 2006, then Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, visited Australia to examine the status of the realisation of the right to adequate housing and associated rights. He encountered a 'serious national housing crisis', with an estimated 100,000 people homeless around the country on census night.⁷ Some groups were

¹Victorian Legislative Council, 'Inquiry into Homelessness in Victoria', *Parliament of Victoria* (Web Page, 16 June 2020) <<https://www.parliament.vic.gov.au/lpic-lc/inquiry/976>>.

²Ibid.

³United Nations Economic and Social Council, Commission for Social Development, *Affordable Housing and Social Protection Systems for all to Address Homelessness: Report of the Secretary-General*, UN ESCOR, 58th sess, Agenda Item 3(a) of the provisional agenda, UN Doc E/CN.5/2020/3 (10-19 February 2020) 2.

⁴United Nations Economic and Social Council, Commission for Social Development, *Homelessness: A Prominent Sign of Social Inequalities*, 58th sess (10-19 February 2020) 1; Kristy Muir et al, *Amplify Insights: Housing Affordability & Homelessness*. Centre for Social Impact (2018) 12.

⁵United Nations Economic and Social Council, Commission for Social Development, *Affordable Housing and Social Protection Systems for all to Address Homelessness: Report of the Secretary-General*, UN ESCOR, 58th sess, Agenda Item 3(a) of the provisional agenda, UN Doc E/CN.5/2020/3 (10-19 February 2020) 3.

⁶Ibid.

⁷Miloon Kothari, Special Rapporteur, *Preliminary Report: Mission to Australia 31 July – 15 August 2006*, Office of the High Commissioner for Human Rights (Report, 15 August 2006) 5; Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living: Mission to Australia*, UN GAOR, 4th sess, Agenda Item 2, UN Doc A/HRC/4/18/Add.2 (11 May

particularly vulnerable to homelessness, including low-income individuals and families, women, children and young people, Indigenous persons, refugees and asylum seekers, persons with disability and mental illness and recent prisoners and persons released from detention.⁸ The Special Rapporteur found Australia to be in violation of its obligations under international law, and urged governments around Australia to address the issue of homelessness as a priority.⁹

The [latest national data](#), collected ten years later in 2016, revealed that on census night over 116,000 Australians were experiencing homelessness.¹⁰ Of this number, approximately 8,200 persons were 'sleeping rough' in improvised dwellings, tents or on the street. Young people, older people, women, persons with disability, recent migrants and refugees, as well as Aboriginal and Torres Strait Islanders continue to be recognised as particularly vulnerable to homelessness.¹¹

In Victoria, the Government [has recognised](#) over the last decade that homelessness is a 'significant and growing problem', with an estimated [25,000 people](#) sleeping rough or living in emergency or unsafe accommodation in 2020.¹² Young people are particularly vulnerable to homelessness, and the number of older people impacted by the issue is also on the rise.¹³ Indigenous Victorians have also continued to be overrepresented in the homeless population in the State.¹⁴

The emergence of the COVID-19 pandemic has complicated the issue of homelessness. The UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha [has urged](#) states to take measures to protect those experiencing homelessness, living in informal settlements, and living in emergency shelters during the pandemic, for their safety, and for that of the general public.¹⁵

The vulnerability of homeless persons during the COVID-19 pandemic [stems in large part from](#) the barriers many people face to accessing clean water and sanitation, difficulty of practising social distancing for persons in temporary shelters and those who sleep rough, reduced capacity of social support services, obstacles to accessing healthcare and economic strain arising from loss of employment.¹⁶ The Australian Housing and Urban Research Institute [has further raised](#) concerns that persons experiencing homeless during COVID-19 also face reduced access to food and medication, an inability to secure their possessions on the streets and in temporary accommodations, and an inability to rely on help from friends and family through 'couch surfing' as restrictions and lockdowns limit

2007) 13.

⁸Ibid 13-14, 26, 30-31.

⁹Ibid 33.

¹⁰Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness, 2016* (Catalogue No. 2049.0, 14 March 2018).

¹¹Miloon Kothari, Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Australia*, 4th sess, Item 2, UN Doc A/HRC/4/18/Add.2 (11 May 2007).

¹²Victorian Department of Health and Human Services, *Victorian Homelessness 2020 Strategy* (2010) 1-2; Victorian Department of Health and Human Services, 'Housing and Homelessness', *Victorian State Government* (Web page, 2020) <<https://www.dhhs.vic.gov.au/housing-and-homelessness>>.

¹³Victorian Department of Health and Human Services, *Victorian Homelessness 2020 Strategy* (Document, September 2010) 1-2.

¹⁴Ibid.

¹⁵Leilani Farha, Special Rapporteur, "'Housing, the Frontline Defence Against the COVID-19 Outbreak" says UN Expert', *United Nations Office of the High Commissioner for Human Rights* (Web page, 18 March 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>>.

¹⁶Leilani Farha, Special Rapporteur, 'COVID Guidance Note: Protecting Those Living in Homelessness', *Office of the High Commissioner for Human Rights* (Document, 28 April 2020) <https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf>.

movement and close contact with others.¹⁷

Potentially the pandemic has, however, [proven to be a catalyst](#) for much needed action and attention when it comes to homelessness in Victoria.¹⁸ Before the pandemic, action was delayed as the issue seemed too complex to resolve. The outbreak of COVID-19 however saw the Victorian Government adopt unprecedented measures, including a [\\$6 million 'Homelessness and Public Housing Support Package'](#) to support frontline community organisations and workers, [\\$8.8 million on pop-up accommodation and support](#) for more than 200 rough sleepers, and various initiatives to [assist with rent](#) and temporarily [ban rental evictions](#). The Victorian Government should seize the opportunity to [build back better from COVID-19 by ending homelessness](#), including by carrying out research with the homeless themselves which temporary housing under COVID-19 permits.

The challenge now is to build on the momentum brought about by the pandemic to ['build back better'](#) and ensure the protection and promotion of the rights of persons experiencing homelessness into the future.

1.3 This Framework

All human rights are understood under international law to be 'interdependent, indivisible and interrelated'.¹⁹ An issue such as homelessness therefore impacts upon a myriad of human rights. This framework focuses on some of the most salient rights that are presently at risk due to the state of homelessness in Victoria. It first examines the economic, social and cultural rights to adequate housing and to health; it then discusses the civil and political rights to life, liberty, security and privacy, before concluding by considering the cross-cutting rights to equality and non-discrimination. The aim of the framework is to explain the links between homelessness and human rights.

¹⁷ Australian Housing and Urban Research Institute, 'What is at stake for people experiencing homelessness during the coronavirus pandemic?', *Australian Housing and Urban Research Institute* (Web Page, 8 April 2020) <<https://www.ahuri.edu.au/policy/ahuri-briefs/what-is-at-stake-for-people-experiencing-homelessness-during-the-coronavirus-pandemic>>.

¹⁸ Jewel Topsfield, 'How the shock of COVID-19 could end street homelessness in Victoria', *The Age* (online, 13 June 2020) <<https://www.theage.com.au/national/victoria/how-the-shock-of-covid-19-could-end-street-homelessness-in-victoria-20200612-p551vk.html>>.

¹⁹ *Vienna Declaration and Programme of Action*, UN GAOR, UN Doc A/CONF.157/23 (12 July 1993) 3 [5].

PART II: MAIN POINTS

- Homelessness has been recognised by the United Nations as directly linked to the violation of fundamental rights.
- Australia has previously been condemned by consecutive UN Special Rapporteurs on the Right to Adequate House for its failure to address the issue of homelessness.
- The State of Victoria has been heavily criticised for its approach to managing the increased numbers of homeless persons in both metropolitan and regional areas, and for its failure to protect vulnerable persons experiencing homelessness, including women, children and young people, Indigenous persons, persons with disability and mental illness, and others.
- Violations of economic, social and cultural rights include the violation of the right to adequate housing and the right to health. Examples include:
 - **Right to Adequate Housing** - lack of housing affordability and continued forced evictions without reason lead already vulnerable persons into homelessness. Further, the inadequate availability of services, materials, and facilities for people experiencing homelessness (including public housing) undermines the right to adequate housing.
 - **Right to Health** - homelessness impacts on both the availability and accessibility of the right to health, including through the absence of general conditions conducive to good health, and the barriers to accessing healthcare.
- Violations of civil and political rights include the rights to life, liberty and security and the right to privacy.
 - **Right to Life, Liberty and Security** - the living conditions and ongoing threats to safety and security experienced by homeless persons (particularly rough sleepers), as well as the criminalisation of low-level offences that disproportionately impact homeless persons undermine the right to life, liberty and security.
 - **Right to Privacy** - the practice of blacklisting and existence of residential tenancies databases that can impact on the ability to obtain adequate housing, the inability of homeless persons to carry out personal activities in private, and the extensive surveillance of streets impact upon the right to privacy
- Violations of cross-cutting rights to equality and non-discrimination are also violated by homelessness.
 - **Equality and Non-Discrimination** - forced evictions leading to discrimination in obtaining adequate housing, discrimination in access to services, the prevalence of gender-based violence leading to homelessness and the lack of protections against direct and indirect discrimination on the basis of homelessness or low-income status amount to violations of the rights to equality and non-discrimination.
- Victoria should seize the opportunity the build back better from COVID-19 and end homelessness

PART III: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

This Part illustrates the connection between homelessness and the violation of economic, social and cultural rights, specifically the right to adequate housing and the right to health. It is acknowledged that homelessness interferes with, and violates, many other economic, social and cultural rights, such as the rights to social security, education and work.

3.1 Right to Adequate Housing

a) International Law

The right to adequate housing has been recognised as an integral part of the right to an adequate standard of living, enshrined in both the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).²⁰

The right requires States to ‘recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’.²¹ It applies to all persons without discrimination, and extends to ‘all parts of federal states without limitations or exceptions’.²²

The UN Committee on Economic, Social and Cultural Rights (CESCR) has maintained that the right to adequate housing should be broadly interpreted.²³ To this point, the CESCR [has elaborated](#) that the right to ‘adequate housing’ refers to more than just shelter, or ‘the right to four walls and a roof’.²⁴ Instead it ‘should be seen as the right to live somewhere in security, peace and dignity’.²⁵ It therefore overlaps with other fundamental rights, such as the rights to life, liberty, security, health, privacy and non-discrimination will be explored in further detail throughout this report.

The protections afforded by this right turn on the meaning of ‘adequacy’ in this context. The CESCR has acknowledged that adequacy is ‘determined in part by social, economic, cultural, climatic, ecological and other factors’, but has nevertheless emphasised that adequate housing requires the following *at a minimum*:

- **Security of tenure:** occupants are guaranteed legal protection against forced evictions, harassment and other threats.
- **Availability of services, materials, facilities, infrastructure:** must have safe drinking water, adequate sanitation, energy, heating, lighting, food storage and waste disposal.

²⁰*Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948) art 25.1; *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, UNTS 3 (entered into force 3 January 1976) (‘ICESCR’) art 11.1; Alan Morris, ‘The lack of a right to housing and its implications in Australia’ (2010) 65 *Journal of Australian Political Economy* 28, 28-57.

²¹ICESCR art 11.1.

²²Ibid arts 2 and 28.

²³UN Committee on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 6th sess, UN Doc E/1992/23 (13 December 1991) (‘CESCR General Comment No. 4’) 2.

²⁴Ibid; Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No. 21, The Right to Adequate Housing* (2009) (‘Fact Sheet No. 21’) 1-3.

²⁵CESCR General Comment No. 4 2.

- **Affordability:** cost must not compromise tenant’s enjoyment of other human rights. States must take steps to ensure that housing-related costs are commensurate with income levels.²⁶
- **Habitability:** must guarantee physical safety, adequate space and protection from the elements.
- **Accessibility:** must account for the specific needs of marginalised groups.
- **Location:** must not be cut-off from employment opportunities, healthcare services, schools, childcare centres, social facilities etc.
- **Cultural adequacy:** must account for the expression of cultural identity.²⁷

b) State Obligations

The obligations of States with regard to economic, social and cultural rights are clarified in the [Maastricht Guidelines](#).²⁸ States have a legal obligation to ‘respect, protect and fulfil’ the rights contained in the ICESCR.²⁹ The obligation to *respect* provides that States must refrain from ‘interfering with the enjoyment’ of these rights. The obligation to *protect* requires States to prevent violations of rights by third parties. Finally, the obligation to *fulfil* requires States to ‘take appropriate legislative, administrative, budgetary, judicial and other measures toward the realisation of such rights’.³⁰ Failure to perform any one component of these obligations is tantamount to a violation.³¹

As part of these obligations, States must act in a way that is ‘reasonably calculated to bring about enjoyment of a particular right’ and achieve specific targets to satisfy these targets.³² Economic, social and cultural rights can be ‘achieved progressively’, and States are accorded a ‘margin of discretion’ in determining the means by which they do so.³³

States parties to ICESCR (such as Australia) [are, however, bound](#) to ‘take steps....to the maximum of [their] available resources, with a view to achieving progressively the full realisation of rights [contained therein]....by all appropriate means’.³⁴ [This means](#) taking ‘concrete, targeted, expeditious and effective steps’ to achieve this right.³⁵ This may be by way of ‘legislative measures, administrative, judicial, economic, social and educational’ steps.³⁶ States must also ‘give *due priority* to those social

²⁶Ibid.

²⁷Ibid.

²⁸International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (22 - 26 January 1997) (*‘Maastricht Guidelines’*).

²⁹*Fact Sheet No. 21; CESCR General Comment No. 4 2.*

³⁰Ibid.

³¹*Maastricht Guidelines* [6].

³²Ibid [7].

³³Ibid [8].

³⁴ICESCR art 2.

³⁵Ibid; UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant*, 5th sess, UN Doc E/1991/23 (14 December 1990) 1; *Fact Sheet No. 21*; Australian Human Rights Commission, ‘Homelessness is a Human Rights Issue (2008), *Australian Human Rights Commission* (Web Page, 2008) <<https://humanrights.gov.au/our-work/homelessness-human-rights-issue-2008#fnB29>>.

³⁶*Fact Sheet No. 21.*

groups living in unfavourable conditions by giving them particular consideration' (emphasis added).³⁷ Comparatively, [in a country such as Australia](#), the ability to do so is 'not impeded by lack of resources'.³⁸

While the right to adequate housing is not absolute, limitations on this right must be determined by law, and be 'compatible with the nature of these rights and solely for the purpose of promoting general welfare in a democratic society'.³⁹

Violations of human rights under ICESCR occur where states fail to satisfy the 'minimum core obligations' (minimum essential levels) of each right.⁴⁰ Violations can occur through both acts and omissions.⁴¹ With specific reference to the right to adequate housing, the CESCR has called on states to adopt a national housing strategy and coordinate national and local authorities to reconcile policies in order to ensure adherence to its obligations under ICESCR.⁴²

c) Human Rights Violations

Violations of the right to adequate housing can both lead to homelessness and result from the experience of homelessness.

Violations leading to Homelessness

1. Affordability - violated by lack of affordable housing, compromises tenant's ability to exercise other rights

Firstly, the persistent lack of affordable housing has the potential to push individuals and families into homelessness in Victoria, violating the right to housing. In 2017, a [study](#) was undertaken by the Australian National University, enquiring into the gap between housing supply and demand in Australia.⁴³ The results of this study indicated a *surplus* in housing of over 160,000 homes across the country, with a surplus of approximately 40,000 homes in Victoria alone.⁴⁴ The issue therefore lies in the *affordability* of adequate housing, rather than the availability of it. 'Affordable housing' is considered to be that which does not consume more than 30% of household income.⁴⁵ As of 2017, the Victorian Parliament [recognised](#) that only 2.8% of rental properties in the State were considered to be 'affordable' to low-income individuals and families and those dependent on income support. In 2020,

³⁷ CESCR General Comment No. 4 2.

³⁸ The Hon. Kevin Bell, 'Protecting public housing tenants in Australia from forced eviction: the fundamental importance of the human right to adequate housing and home' (Speech, Monash University Costello Lecture, 18 September 2012) 9.

³⁹ ICESCR art 4.

⁴⁰ Maastricht Guidelines [9].

⁴¹ *Ibid* [14] - [15].

⁴² Fact Sheet No. 21.

⁴³ B. Phillips and C. Joseph, *Regional housing supply and demand in Australia* (Working Paper No. 1/2017, Australian National University, November 2017) 1.

⁴⁴ *Ibid* 12.

⁴⁵ Australian Institute for Health and Welfare, 'Housing Affordability', *Australian Institute for Health and Welfare* (Web Page, 11 September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>>.

affordability is estimated to be even lower, only 2%.⁴⁶

Further, the UN has expressly stated that ‘personal or household costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised’.⁴⁷ Nevertheless, ‘lower-income households’ (those with the lowest 40% of income) have been recognised as particularly challenged by housing affordability.⁴⁸ Where housing costs (rent, mortgages etc.) consume more than 30% of income, these lower-income households are understood to be under ‘housing stress’.⁴⁹ Housing stress has been found to negatively impact the wellbeing of households by reducing their ability to afford other basic living costs such as food, clothing, transport and utilities.⁵⁰ In Victoria, [almost 50% of low-income](#) individuals and families experience housing stress.⁵¹

Housing affordability and housing stress stand to be further exacerbated by the COVID-19 pandemic, which has already resulted in considerable loss of income for many Victorians and is predicted to generate unprecedented unemployment rates by September 2020.⁵² The Victorian Government must therefore take clear steps to address these concerns in order to comply with their obligations under international human rights law.

2. Security of Tenure - violated by forced evictions

Secondly, notwithstanding the fact that ‘security of tenure and freedom from forced eviction’ are well-established elements of the right to adequate housing, forced evictions are still permissible under law in Victoria. The *Residential Tenancies Act 1997* allows for landlords to evict tenants provided certain pre-conditions are met, and adequate notice is given.⁵³ There are some protections in place for tenants facing eviction, such as the prohibition of ‘self-help evictions’ (evictions without due process), the imposition of mandatory notice periods, the prohibition of forced eviction in retaliation, and ability to apply to VCAT or the court for remedy. Importantly, however, there are still critical deficiencies in the legislation that violate human rights and have the potential to force individuals and families into homelessness.

The most significant of these is the right of landlords to evict *without reason* at the conclusion of a fixed-term tenancy or the end of the specified period in a periodic-tenancy.⁵⁴ While arguably the inclusion of a 120-day minimum notice period for no-reason evictions is an important

⁴⁶ Anglicare Victoria, *Rental Affordability Snapshot 2020: Victorian Rental Market* (2020) 15.

⁴⁷ *Fact Sheet No. 21*.

⁴⁸ Australian Institute for Health and Welfare, ‘Housing Affordability’, *Australian Institute for Health and Welfare* (Web Page, 11 September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>>.

⁴⁹ *Ibid*.

⁵⁰ Australian Institute for Health and Welfare, ‘Australia’s Children: Housing Affordability’, *Australian Institute for Health and Welfare* (Web Page, 3 April 2020) <<https://www.aihw.gov.au/reports/children-youth/australias-children/contents/housing/housing-stress>>.

⁵¹ Australian Institute for Health and Welfare, ‘Housing Affordability’, *Australian Institute for Health and Welfare* (Web Page, 11 September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>>.

⁵² Benjamin Price and Samantha Hutchinson, ‘Unprecedented in our lifetimes’: Victoria issues grim economic warning’, *The Age* (online, 21 April 2020) <<https://www.theage.com.au/national/victoria/unprecedented-in-our-lifetimes-victoria-issues-grim-economic-warning-20200421-p54lwf.html>>.

⁵³ *Residential Tenancies Act 1997* (Vic) ss 246, 248, 250A, 250B, 261; See also The Hon. Kevin Bell, ‘Protecting public housing tenants in Australia from forced eviction: the fundamental importance of the human right to adequate housing and home’ (Speech, Monash University Costello Lecture, 18 September 2012) 9.

⁵⁴ *Residential Tenancies Act 1997* (Vic) s 263.

acknowledgement of the tenant's rights, the reality, particularly for low-income tenants, is that this notice period is insufficient.⁵⁵ There may be numerous reasons for this, and combinations thereof. Many individuals and families encounter barriers to finding alternative rental properties in Victoria, only 2.8% of rental properties considered affordable to households on income support in 2017, and even lower depending on the type of household (i.e. single, couple, family) as of 2020.⁵⁶ Where affordable housing is found, vulnerable and disadvantaged tenants may be at risk of [discrimination](#) from real estate agents and landlords, further limiting their ability to secure adequate housing in the face of forced eviction.⁵⁷ Ultimately, the lack of transparency surrounding no-reason forced evictions leaves these powers open to misuse by landlords, and decreases the effectiveness of avenues for accountability for tenants seeking remedy.⁵⁸

It is clear, however, that the power to evict without reason is neither compliant with human rights nor necessary in housing law. Indeed, numerous jurisdictions both in Australia and overseas operate *without* such powers. Protections *against* eviction without reason exist in Tasmania, the state of Ontario in Canada and in France.⁵⁹ Legislative approaches to this effect range from the non-inclusion of provisions enabling no-reason evictions, to requiring landlords to provide 'serious and legitimate reasons' for evicting tenants from housing.⁶⁰

Changing such regulations is both possible and necessary in order to ensure compliance with Victoria's human rights obligations. The political and legislative will to do so has been showcased recently during the outbreak of the COVID-19 pandemic, which has seen the declaration of a state of emergency in Victoria, and has resulted in the [adoption of bans on rental increases and most forced evictions](#) until 29 September 2020.⁶¹ These measures are essential in order to protect the fundamental rights of individuals and families, and to prevent them from being forced into homelessness. Importantly, however, the *temporary* nature of these protections ultimately undermines their very utility, particularly given that COVID-19 is likely to have considerable longer term impacts.

The re-evaluation and modification of legislation on forced evictions in Victoria is therefore a critical step towards ensuring the State complies with its obligations under international human rights law.

Violations experienced during homelessness

3. Availability of services, materials, facilities, infrastructure

Thirdly, right to housing necessitates the availability of adequate services, materials, facilities and

⁵⁵Justice Connect, Submission to Victorian Parliament, *There's No Place Like Home: Submission on the Security of Tenure Issues Paper* (December 2015) ('*Submission on the Security of Tenure Issues Paper*').

⁵⁶Kate Raynor, Igor Dosen and Caley Otter, *Housing Affordability in Victoria* (Research Paper, Victorian Parliamentary Library and Research Service, 6 December 2017) 11 ('*Housing Affordability in Victoria*'); Victorian Department of Health and Human Services, *Rental Report March Quarter 2020* (2020) 19.

⁵⁷Australian Government Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Research Paper, Australian Government Productivity Commission, September 2019) 23, 34, 87.

⁵⁸Justice Connect, *Submission on the Security of Tenure Issues Paper* 22.

⁵⁹Justice Connect, *Submission on the Security of Tenure Issues Paper* 22; *Residential Tenancies Act 1997* (Tas) s 42; *1989 Tenancy Act 8541* (France) arts 10, 15; *Residential Tenancies Act 2006* (Canada).

⁶⁰*Ibid.*

⁶¹*COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic) s 544; Premier Daniel Andrews, 'Supporting Tenants And Landlords Through Coronavirus', *Victorian State Government Department of Premier and Cabinet* (Media Release, 15 April 2020) <<https://www.premier.vic.gov.au/supporting-tenants-and-landlords-through-coronavirus/>>.

infrastructure. This right is however being undermined by the shortage of public housing in Victoria. According to a 2019 report from the Australian Productivity Commission on Government Services, Victoria has less public housing available than it did ten years ago.⁶² It has transferred more public housing to the private sector than any other state, and is one of the only states not to have increased funding on public housing since 2014.⁶³ This has resulted in long waiting lists for low-income individuals and families, with an 100,000 persons estimated to be on public housing waiting lists in the State as of 2020.⁶⁴

Further, the right to adequate housing requires 'sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation, washing facilities, food storage facilities, waste disposal, site drainage and emergency services'.⁶⁵ Individuals and families experiencing homelessness typically have limited access to all of the above, particularly those who are 'sleeping rough' and are forced to live in public spaces. Barriers to accessing these critical facilities can be further exacerbated by stigma and discrimination. For example, homeless persons are often refused access to bathroom facilities within establishments on the assumption that they will take drugs or engage in other illegal activity.⁶⁶

The COVID-19 pandemic has served to place further strain on homeless persons seeking access to basic supplies and services.⁶⁷ While the Victorian Government has sought to temporarily house many homeless persons in motels to prevent the spread of coronavirus, homeless support organisations have reported that low-income individuals are being required to contribute to the costs of temporary housing.⁶⁸ Such contributions are estimated to consume more than 25% of income for persons on social support, although there is no official data to support these claims.⁶⁹ Individuals and families housed in such rooms do not typically have access to cooking or laundry facilities, and are dependent on support organisations to provide basic meals.

In addition, the 'hoarding' of supermarket produce and essentials in response to the virus, which has occurred on multiple occasions in Victoria, has often left little supplies for low-income individuals and families and those sleeping rough.⁷⁰ Hoarding has also impacted charities and organisations seeking to support the homeless, who have encountered empty shelves.⁷¹ These organisations have also been operating at a reduced capacity in order to adhere to social distancing restrictions and protect

⁶²Australian Productivity Commission, 'Report on Government Services 2019: Housing and Homelessness', *Australian Productivity Commission* (Web Page, 27 June 2019) <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/housing-and-homelessness>>; See also David Kelly, Libby Porter and Kate Shaw, 'Shh! Don't Mention the Public Housing Shortage. But No Serious Action on Homelessness Can Ignore it', *The Conversation* (online, 10 October 2019) <<https://theconversation.com/shh-dont-mention-the-public-housing-shortage-but-no-serious-action-on-homelessness-can-ignore-it-124875>>.

⁶³Ibid.

⁶⁴Victorian Public Tenants Association, '100,000 Victorians Waiting for a Home in 2020', *Victorian Public Tenants Association* (Web Page, 12 November 2019) <<https://vpta.org.au/100000-waiting-for-a-home-in-2020/>>.

⁶⁵*Fact Sheet No. 21*.

⁶⁶Johanna Nicholson, 'Homelessness in summer and the struggle to find shade and water', *ABC News* (online 9 January 2018) <<https://www.abc.net.au/news/2018-01-09/homeless-in-summer-and-the-struggle-to-find-shade-and-water/9214070>>.

⁶⁷Rhiannon Tuffield, 'COVID-19 putting food charities and the homeless under extreme pressure', *ABC News* (online, 21 March 2020) <<https://www.abc.net.au/news/2020-03-21/homelessness-charities-hard-hit-by-covid-19-pandemic/12071758>>.

⁶⁸Matilda Bosely and Luke Henriques-Gomes, 'It sucks': Homeless Victorians Asked to Help Pay for Lockdown Hotels', *The Guardian* (online, 28 May 2020) <<https://www.theguardian.com/australia-news/2020/may/28/it-sucks-homeless-victorians-asked-to-help-pay-for-lockdown-hotels>>.

⁶⁹Ibid.

⁷⁰Ibid.

⁷¹Ibid.

volunteers who may be vulnerable to contracting the virus.⁷²

⁷² Ibid.

3.2 The Right to Health

a) International Law

The right to health is protected under international law by the [UDHR](#) and [ICESCR](#).⁷³ Article 12 of the ICESCR provides that ‘States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.⁷⁴ The right is also reflected in the [International Convention on the Elimination of All Forms of Racial Discrimination](#), the [Convention on the Elimination of All Forms of Discrimination against Women](#), the [Convention on the Rights of the Child](#) and the [Convention of the Rights of Persons with Disability](#).⁷⁵

This right to health is of paramount importance because health is [considered](#) to be ‘indispensable’ to the enjoyment of other fundamental human rights, including the right to life, housing, equality, and privacy, among others.⁷⁶ The right is comprised of various *freedoms*, including ‘sexual and reproductive freedom, and the right to be free from interference, torture, non-consensual medical treatment and experimentation’.⁷⁷ It also contains *entitlements* such as the right to equal opportunity to enjoy the highest attainable standard of health.⁷⁸

The CESCR has interpreted the right broadly to encompass both the right to healthcare, and the right to conditions necessary for good health, including adequate food and nutrition, housing, and access to water and sanitation.⁷⁹ The essential elements of the right to health are:

- **Availability** - including adequate public health and care facilities, goods and services, in sufficient quantity, safe and adequate access to water and sanitation and medications.
- **Accessibility** - including physical and economic access to health facilities, goods and services without discrimination, with particular accessibility for the most vulnerable, marginalised and disadvantaged groups within the population, as well as accessible health information.
- **Acceptability** - including facilities, goods and services that are medically, scientifically and culturally appropriate.
- **Quality** - good quality facilities, goods and services, including safe hospital equipment, good quality medication, and safe and adequate water and sanitation.⁸⁰

⁷³UDHR art 25; ICESCR art 12.

⁷⁴ICESCR art 12.

⁷⁵*International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 5(3)(iv); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 11(1)(f); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 24; *Convention on the Rights of Persons with Disability*, 61st sess, Item No. 67(b), UN Doc A/RES/61/106 (24 January 2007).

⁷⁶UN Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd sess, UN Doc E/C.12/2000/4 (11 August 2000) 1[1].

⁷⁷Ibid 2[8].

⁷⁸Ibid.

⁷⁹Ibid 2[4].

⁸⁰Ibid 3-5[12].

b) State obligations

The general State obligations with regard to economic, social and cultural rights were discussed in detail under the section on the right to adequate housing above. As noted there, States must take steps to the maximum of available resources to progressively realise economic, social and cultural rights. Full realisation includes the realisation of each and every element of the right.

Nevertheless, a 'minimum core' of economic, social and cultural rights must still be fulfilled.

With specific reference to the right to health, the ESCR Committee has called on states to adopt a rights-based national health strategy, with indicators to monitor the implementation of the strategy and realisation of the right to health in the country.⁸¹

c) Human Rights Violations

Homelessness results in '[persistent violations](#)' of the fundamental right to health by way of barriers to availability and accessibility.

Violations experienced during homelessness

1. Availability - violated by conditions of homelessness

Homeless persons often experience a violation of their right to health '[by nature of their circumstances](#)'.⁸² This is firstly because lack of adequate shelter and housing have the potential exacerbate pre-existing health concerns and illnesses. [Pre-existing chronic and mental illness](#), as well as high rates of alcohol and substance abuse, when left untreated can become life threatening.⁸³

In addition, the living conditions faced by people experiencing homelessness often give rise to *new* health concerns and illnesses. Insufficient food and water, inadequate sanitation, and barriers to accessing healthcare all contribute to poor nutrition, poor oral health, untreated injuries and infections, and poor mental health.⁸⁴ The [Council to Homeless Persons](#) has, for example, recently highlighted that 'many people's first episode of mental illness develops as a consequence of the stress and dislocation of homelessness'.⁸⁵

⁸¹Office of the High Commissioner for Health and the World Health Organisation, *Fact Sheet No. 31: The Right to Health* (June 2008) 24 <<https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>>.

⁸²Australian Human Rights Commission, 'Homelessness is a Human Rights Issue', *Australian Human Rights Commission* (Web Page, 1 January 2008) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/homelessness-human-rights-issue>>; Phillip Lynch and Jaqueline Cole, 'Homelessness and Human Rights: Regarding and Responding to Homelessness as a Human Rights Violation' (2003) 4 *Melbourne Journal of International Law* 1, 26 ('*Homelessness and Human Rights*').

⁸³Andrew Davies and Lisa J. Wood, 'Homeless Health Care: Meeting the Challenges of Providing Primary Care' (2018) *Medical Journal of Australia* 230, 230-233 ('*Homeless Health Care*').

⁸⁴Paul Flatau et al, *The State of Homelessness in Australia's Cities: a Health and Social Cost Too High* (2018) ('*State of Homelessness Report*'); Street Smart Australia, 'Why Homelessness Means a Shorter Life and What Night Nurses are Doing to Help', *Street Smart Australia* (Web Page, 1 June 2018) <<https://streetsmartaustralia.org/why-homelessness-means-a-shorter-life-and-what-night-nurses-are-doing-to-help/>> ('*Why Homelessness Means a Shorter Life*').

⁸⁵Council to Homeless Persons, '5 Reasons the Mental Health Royal Commission Must Examine Housing and Homelessness', *Council to Homeless Persons* (Web Page, 22 January 2019) <<https://chp.org.au/five-reasons-why-victorias-mental-health-royal-commission-must-examine-the-role-of-housing-and-homelessness/>>; Carly Findlay, 'What it's like to be homeless and have a mental illness', *SBS News* (online, 22 June 2017) <<https://www.sbs.com.au/topics/voices/health/article/2017/06/22/what-its-be-homeless-and-have-mental-illness>>.

Further, the conditions of homelessness, including lack of access to clean water and sanitation, and the close contact with others in overcrowded housing [gives rise to increased exposure to infectious diseases](#) such as tuberculosis, hepatitis C, HIV infection and now COVID-19.⁸⁶

Finally, homeless persons experience higher rates of violence through injuries, assaults and self-harm. This will be explored in further detail below under the violations of the right to life.

2. Accessibility - violated by inadequate access to healthcare

Homeless persons face considerable [personal and practical barriers](#) to accessing adequate healthcare.⁸⁷ Internal barriers are unique to each individual, and include competing priorities, and existing physical and mental illness. External barriers include poverty, which impacts on the ability of homeless persons to physically attend appointments and receive highly specialised care, and a lack of fixed address, which impacts on communication with medical professionals and continuity of care.

‘Competing priorities’ refers to the tendency for homeless persons to be preoccupied with addressing their primary needs, such as finding shelter, food and water, that assistance with other health concerns is not sought until an emergency arises.⁸⁸ Further, it is well established that chronic illness, mental health concerns and homelessness are closely interrelated.⁸⁹ These health conditions can impact on both the physical ability and mental willingness of homeless persons to access critical healthcare.⁹⁰ Medical professionals have recognised that particularly those with depressive or psychotic conditions lack the motivation to attend appointments, and find the experience of accessing healthcare extremely anxiety provoking.⁹¹ This is compounded by practical barriers which will be discussed below.

Persons experiencing homelessness also face practical barriers to accessing healthcare.⁹² Many are [reliant on public transport](#) to attend appointments; however, lack of income can impact on their ability to afford tickets to travel.⁹³ Reluctance to travel is also [compounded](#) by the potential for heavy fines which are often beyond the means of homeless persons to pay, and the risk of legal action resulting from non-payment of such fines.⁹⁴ While the Victorian Government introduced an initiative to provide ‘[emergency relief](#)’ tickets to vulnerable persons experiencing homelessness, this trial program only ran for 12 months, and [does not appear](#) to have been continued after October 2019.⁹⁵

⁸⁶Andrew Davies and Lisa J. Wood, *Homeless Healthcare* 230-233; Lisa Wood, Andrew Davies and Zana Khan, ‘COVID-19 precautions – easier said than done when patients are homeless’ (2020) 212 (8) *Medical Journal of Australia* 384, 384.

⁸⁷Andrew Davies and Lisa J. Wood, *Homeless Healthcare* 230-233.

⁸⁸*Ibid* 232.

⁸⁹Phillip Lynch and Lisa J. Wood, *Homelessness and Human Rights*; Australian Housing and Urban Research Institute, *Housing, Homelessness and Mental Health: Towards Systems Change* (November 2018) 9; Mental Health Council of Australia, *Home Truths: Mental Health, Housing and Homelessness in Australia* (March 2009) 5, 14.

⁹⁰Andrew Davies and Lisa J. Wood, *Homeless Healthcare* 232.

⁹¹*Ibid*.

⁹²*Ibid*.

⁹³*Ibid*; Justice Connect, Submission to Victorian Parliament, *Fair’s Fare: Improving Access to Public Transport for Victorians Experiencing Homelessness* (March 2016).

⁹⁴Victorian Ombudsman, *Investigation into Public Transport Fare Evasion Enforcement* (March 2016) 3.

⁹⁵Minister for Housing, ‘Cheaper, Fairer Public Transport For Vulnerable Victorians’, *Victorian Government Department of Premier and Cabinet* (Media Release, 26 October 2018) <<https://www.premier.vic.gov.au/cheaper-fairer-public-transport-for-vulnerable-victorians/>>; Public Transport Victoria, *Victorian Fares and Ticketing Conditions* (2020).

Other logistical barriers can also impact on the ability of homeless persons to access adequate healthcare. Lack of income can also impact on the ability of homeless persons to cover out-of-pocket expenses for healthcare and medications, particularly for highly specialised healthcare.⁹⁶ Lack of a fixed address and communication devices often mean that homeless persons are not able to make appointments, maintain contact with healthcare providers, or receive continued care.⁹⁷ The inability to safely and securely store medications further leaves the homeless vulnerable to having their possessions stolen or confiscated by police.⁹⁸

The failure of the government to provide adequate support so that individuals and families can address their primary needs, manage existing health conditions, and overcome practical barriers to accessing healthcare are further examples of the link between homelessness and human rights violations.

⁹⁶Andrew Davies and Lisa J. Wood, *Homeless Healthcare* 232.

⁹⁷*Ibid.*

⁹⁸*Ibid.*

PART IV: CIVIL AND POLITICAL RIGHTS

This Part demonstrates the link between homelessness and violations of civil and political rights. It looks specifically at the rights to life, liberty and security of person, as well as the right to privacy. Homelessness also interferes with, and may violate, many other civil and political rights, such as the right to vote.

4.1 The Rights to Life, Liberty and Security of Person

a) International Law

The fundamental rights to life, liberty and security are also protected under international law, reflected in both the [UDHR](#) and the [International Covenant on Civil and Political Rights](#) (ICCPR).⁹⁹

The [right to life](#) is inherent to all human beings, applies without distinction of any kind.¹⁰⁰ It encompasses the freedom to ‘enjoy life with dignity’, as well as protection from the ‘arbitrary deprivation of life’.¹⁰¹ Such deprivation is [understood](#) by the Human Rights Committee (HRC) to be life-terminating harm or injury, caused by acts or omissions that are intentional, foreseeable and preventable.¹⁰² Deprivation of life that is inconsistent with international or domestic law is, as a rule, considered to be arbitrary.¹⁰³

The HRC has made clear that the right to life should be interpreted broadly, and is a *supreme* right from which *no derogation is permitted*, even in public emergencies.¹⁰⁴ The right to life assumes such a paramount status because it is an essential ‘prerequisite for the enjoyment of all other human rights’ and can in turn be ‘informed and infused’ by the various other rights protected under international law.¹⁰⁵

The CESCR [has clearly linked](#) the rights to housing and the right to life, stating that the right to housing encompasses ‘the right to live somewhere in security, peace and dignity’.¹⁰⁶ Similarly, the Special Rapporteur on the Right to Adequate Housing, Leilani Farha, [has emphasised](#) that ‘the right to life cannot be separated from the right to a secure place to live... which only has meaning in the context of a right to live in dignity and security, free of violence’.¹⁰⁷ Indeed the very conditions of homelessness including inadequate housing, including overcrowding, limited access to water, electricity or sanitation, lack of shelter and protection from inclement weather, discrimination and stigmatisation

⁹⁹UDHR art 3; *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 6 and 9 (‘ICCPR’).

¹⁰⁰*ibid*; UN Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)*, 16th sess (30 April 1982) 1[5] (‘HRC General Comment No. 6’).

¹⁰¹ICCPR art 6; UN Human Rights Committee, *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, UN Doc CCPR/C/GC/36 (3 September 2019) 1[2]-[3] (‘HRC General Comment No. 36’).

¹⁰²HRC General Comment No. 36 2[6].

¹⁰³*ibid* 2 [11]-[12].

¹⁰⁴HRC General Comment No. 6 1[1].

¹⁰⁵HRC General Comment No. 36 2[6].

¹⁰⁶CESCR General Comment No. 4 3[7].

¹⁰⁷Leilani Farha, Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, UN GAOR, 71st sess, Agenda Item 69(b), UN Doc A/71/310 (8 August 2016) 11 [27] (‘Adequate Housing as a Component of the Right to Adequate Standard of Living’).

clearly impact on the ability of individuals' and families' inherent right to life, and enjoyment of this right in dignity.¹⁰⁸

The UDHR and ICCPR further provide that 'everyone has the right to liberty and security of person'.¹⁰⁹ 'Liberty' [is understood](#) to mean freedom from confinement of the body, and includes protection from arbitrary arrest and detention.¹¹⁰ 'Security' in the context of this right refers to freedom 'from injury to the body and the mind, or bodily and mental integrity'.¹¹¹ This right is intended to protect individuals from the intentional infliction of harm by State actors and others.¹¹² Importantly the right to liberty and security may be subject to some derogation (within limits).¹¹³ These limits require derogation to be *strictly necessary* in response to a specific situation (such as in a public health emergency) and to remain in line with other human rights obligations.¹¹⁴

b) State Obligations

States [have a duty](#) to protect against arbitrary deprivations of the right to life by both agents of the State, and others whose conduct is not attributable to the State.¹¹⁵ They must do so by establishing a legal framework and adopting appropriate measures to ensure the full enjoyment of the right to life by all individuals.¹¹⁶ These protections must apply equally to all, and must provide 'effective guarantees against all forms of discrimination'.¹¹⁷ Failure to apply protections equally is considered in and of itself 'arbitrary'.¹¹⁸

The HRC has emphasised that the duty to protect life requires protection against acts and omissions that result in the arbitrary deprivation of life, but also implies that States 'should take appropriate measures to address the *general conditions* in society that may give rise to direct threats to life, or prevent individuals from enjoying their right to life with dignity (emphasis added).¹¹⁹ The Committee has specifically recognised homelessness as an example of such a condition.¹²⁰ Further, they have in various periodic reviews emphasised the obligation of states to take 'positive measures to address homelessness and poverty'.¹²¹

As for the obligations around the rights to liberty, States have an obligation to generally protect individuals from arbitrary arrest or detention.¹²² Importantly, the HRC has clarified that even arrest

¹⁰⁸Ibid 5 [6]-[8], 6[12].

¹⁰⁹ICCPR art 9.

¹¹⁰UN Human Rights Committee, *General comment No. 35 Article 9 (Liberty and Security of Person)*, UN Doc CCPR/C/G/35 (16 December 2014) 1[3] ('HRC General Comment No. 35').

¹¹¹Ibid.

¹¹²Ibid 2 [9].

¹¹³Ibid 19[65].

¹¹⁴Ibid.

¹¹⁵HRC *General Comment No. 36* 2[7].

¹¹⁶Ibid 2 [18].

¹¹⁷Ibid 13 [61].

¹¹⁸Ibid.

¹¹⁹Ibid 6 [26].

¹²⁰Ibid.

¹²¹Ibid.

¹²²Ibid 2-3 [8].

and detention that is permitted under domestic law can still be considered arbitrary under international law.¹²³ 'Arbitrariness' is interpreted with reference to 'reasonableness, necessity and proportionality.'¹²⁴ States must also protect individuals against 'the intentional infliction of bodily or mental injury', and generally 'protect individuals from foreseeable threats to life or bodily integrity' from State actors or others.¹²⁵ This has been interpreted to encompass measures to prevent *future* injury.¹²⁶ The HRC has also emphasised that States have an obligation to respond to patterns of violence against specific vulnerable groups, including women and children.¹²⁷

c) Human Rights Violations

The rights to life, liberty and security are constantly under threat for homeless persons in the State of Victoria. These rights are violated by the conditions experienced in homelessness, the dangers encountered when living in unstable accommodation or 'sleeping rough' and by the arbitrary criminalisation of low-level offences that are inescapably linked to homelessness.

Violations experienced during homelessness

1. Threats Resulting from Conditions of Homelessness

The right of homeless persons to life is [threatened](#) by the very living conditions which are brought about by lack of adequate housing, particularly for those sleeping rough.¹²⁸ The Victorian Government [has recognised](#) that homelessness reduces life expectancy, as have medical professionals and numerous charities and organisations that specialise in supporting individuals and families experiencing homelessness.¹²⁹ As highlighted in the above analysis of the right to health, homeless persons commonly experience lack of access to shelter, food, water and sanitation, which in turn often lead to poor nutrition, poor mental and physical health, high incidence of untreated injuries, infections and chronic illnesses and high rates of alcohol and substance abuse.¹³⁰

The risk to life resulting from conditions of homelessness is [especially high](#) in the context of the COVID19 pandemic.¹³¹ Those without adequate housing are at greater risk of both contracting the virus, and of developing serious illness thereafter.¹³² This is because preventative methods such as social distancing, hand washing, and good sanitation are more difficult to practice for those

¹²³Ibid 3 [11]-[12].

¹²⁴Ibid.

¹²⁵HRC General Comment No. 35 2-3 [9].

¹²⁶Ibid.

¹²⁷Ibid.

¹²⁸Leilani Farha, *Adequate Housing as a Component of the Right to Adequate Standard of Living* 1[1], 6[12].

¹²⁹Victorian Government, *Victoria's Rough Sleeping and Homelessness Action Plan* (2018) 13; Andrew Davies and Lisa J. Wood, *Homeless Healthcare*; Paul Flatau et al, *The State of Homelessness Report*; Street Smart Australia, *Why Homelessness Means a Shorter Life*.

¹³⁰Andrew Davies and Lisa J. Wood, *Homeless Health Care* 230; Paul Flatau, *The State of Homelessness Report* 14; Street Smart Australia, *Why Homelessness Means a Shorter Life*; Melbourne City Mission, 'What is Youth Homelessness', *Melbourne City Mission* (Web Page, 2020) <<https://www.mcm.org.au/homelessness/frontyard/what-is-youth-homelessness>>; North and West Homelessness Networks, 'The Health Impacts of Homelessness', *North and West Homelessness Networks* (Web Page, 2020) <<http://www.nwhn.net.au/Health-Homelessness.aspx>>; Australian Institute for Health and Welfare, 'Alcohol, tobacco and other drugs in Australia: Homeless Persons', *Australian Institute for Health and Welfare* (Web Page, 26 June 2020) <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/homeless-people>>.

¹³¹Leilani Farha, 'Housing, the Front Line Defence Against the COVID-19 Outbreak,' says UN Expert', *Office of the High Commissioner for Human Rights* (Media Release, 18 March 2020) <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>>.

¹³²Ibid.

experiencing homelessness, particularly for those sleeping rough. Further, homeless persons have been found to have higher rates of chronic illness, making them more vulnerable to life-threatening illness if contracted.¹³³ [Access to resources essential to life](#), such as food and medication has also been limited by widespread lockdown restrictions, and the increased incidence of food hoarding.¹³⁴

2. Ongoing Threats to the Safety and Security of Homeless Persons

The right of homeless persons to life, liberty and security is [threatened](#) where that person is 'vulnerable to random acts of violence by reason lacking secure accommodation'.¹³⁵ Homeless persons are [significantly more likely](#) than the general population to be victims of crime and violent attacks.¹³⁶ This violence [may manifest](#) in the form of physical and sexual assault and abuse, racial and sexual discrimination, domestic and family violence as well as exploitation.¹³⁷ [Women](#) who are homeless face a particularly high risk of violence and sexual assault.¹³⁸ [Children](#) and young people are also especially vulnerable to attacks on their personal safety and security.¹³⁹ According to [reports](#) made in 2019 by young persons experiencing homelessness in Victoria, violence and harassment are a 'daily occurrence'.¹⁴⁰ The severity of the danger has been recently illustrated by the [violent attack and murder](#) of a 25 year-old homeless woman in Melbourne's north in 2019.¹⁴¹

Threats to security are not limited to persons sleeping rough, with many individuals in homeless shelters also reporting frequent theft of their food and belongings.¹⁴² In a 2015 study on homeless shelters, one participant stated that she and her family felt 'exposed' in these environments, needing to keep the door locked at all times to protect her children.¹⁴³ The threats to life and security have led to many homeless individuals rejecting emergency housing services in favour of other alternatives where possible.

3. The criminalisation of offences relating to homelessness

The right of homeless persons to liberty and security is directly further [threatened](#) by the criminalisation of low-level offences and an infringements system that 'disproportionately impacts

¹³³Australia Housing and Urban Development Institute, 'What is at stake for people experiencing homelessness during the coronavirus pandemic?', *Australian Housing and Urban Development Institute* (Web Page, 8 April 2020) <<https://www.ahuri.edu.au/policy/ahuri-briefs/what-is-at-stake-for-people-experiencing-homelessness-during-the-coronavirus-pandemic>>.

¹³⁴*Ibid.*

¹³⁵Ronald Sackville, 'Homelessness, Human Rights and the Law' (2004) 10 (1) *Australian Journal of Human Rights* 2, 2 ('*Homelessness, Human Rights and the Law*'); Phillip Lynch and Jaqueline Cole, 'Homelessness and Human Rights: Regarding and Responding to Homelessness as a Human Rights Violation' (2003) 4 *Melbourne Journal of International Law* 1, 8.

¹³⁶*State of Homelessness Report* 42; Australian Human Rights Commission, 'Violence, Harassment and Bullying and Homelessness', *Australian Human Rights Commission* (Web Page, 14 December 2012) <<https://humanrights.gov.au/our-work/commission-general/violence-harassment-and-bullying-and-homelessness#fnB10>>.

¹³⁷*Ibid.*

¹³⁸Australian Human Rights Commission, 'Homelessness is a Human Rights Issue', *Australian Human Rights Commission* (Web Page, 1 January 2008) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/homelessness-human-rights-issue>>.

¹³⁹*Ibid.*

¹⁴⁰Jesse Herde and Maria Pallotta-Chiaroli, 'Homelessness and Violence', (Blog Post, 30 May 2019) <<https://pursuit.unimelb.edu.au/articles/homelessness-and-violence>>.

¹⁴¹Anne Davies, 'Courtney Herron: woman murdered in Melbourne park died from 'horrendous bashing'', *The Guardian* (online, 26 May 2019) <<https://www.theguardian.com/australia-news/2019/may/26/parkville-melbourne-reacts-with-horror-as-police-hunt-killer>>.

¹⁴²*Ibid.* 731; Amy Donley and James Wright, 'Safer Outside: A Qualitative Exploration of Homeless People's Resistance to Homeless Shelters' (2012) 12(4) *Journal of Forensic Psychology Practice* 288, 297.

¹⁴³*Ibid.* 73.

upon people experiencing homelessness' and poverty.¹⁴⁴ Such [offences](#) include: begging or gathering alms; obstruction of a footpath; directions to move on; use of obscene, indecent, threatening language and behaviour in public; disorderly conduct; and drunkenness in public spaces.¹⁴⁵ These offences carry fines and sometimes even imprisonment, [notwithstanding that](#) many of the above behaviours are permissible within homes for those who have them, and others are often a necessary last resort for the most vulnerable and disenfranchised in society (such as begging).¹⁴⁶ The criminalisation of these behaviours therefore [serves to](#) 'perpetuate, rather than alleviate, marginalisation and disadvantage' experienced by homeless persons.¹⁴⁷ The threat to the right to liberty and security is further exacerbated where persons have no fixed address or are unable to securely store their possessions.¹⁴⁸ This may lead to persons being unaware, or losing infringement notices, with fines compounding upon extended delay.¹⁴⁹

¹⁴⁴Federation of Community Legal Centres, Submission to Victorian Parliament, *Victorian Parliament Inquiry into Homelessness in Victoria* (March 2020) 24; Ronald Sackville, *Homelessness, Human Rights and the Law* 10 (1); Julian R Murphy, 'Homelessness and Public Space Offences in Australia: A Human Rights Case for Narrow Interpretation' (2019) 7(1) *Griffith Journal of Law and Human Dignity* 103, 107-108.

¹⁴⁵*Summary Offences Act 1966* (Vic) ss 5, 6, 13, 14, 15, 16, 17, 17A, 49A.

¹⁴⁶Phillip Lynch, 'Understanding and Responding to Begging' (2005) 29(2) *Melbourne University Law Review* 518.

¹⁴⁷Justice Connect, *We want change! Calling for the Abolition of the Criminal Offence of Begging* (November 2010).

¹⁴⁸Federation of Community Legal Centre, *Submission to Victorian Parliament* 28.

¹⁴⁹*Ibid.*

4.2 Right to Privacy

a) International Law

The right to privacy is enshrined in both the [UDHR](#) and the [ICCPR](#), as well as in various other international human rights instruments.¹⁵⁰ The HRC [has clarified](#) the multifaceted nature of the right to privacy, which covers protection against invasion of personal data, surveillance and physical interference.¹⁵¹ The right to privacy is also [strongly connected](#) to human dignity, providing individuals with the freedom to determine their own identity.¹⁵² As such, the right to privacy is a ‘precondition’ to the enjoyment of various other rights.¹⁵³

The right to privacy protects against interferences which are ‘unlawful’ or ‘arbitrary’.¹⁵⁴ It applies to all persons without discrimination.¹⁵⁵ The HRC [has defined](#) ‘unlawful’ as requiring any interference to be envisaged in legislation.¹⁵⁶ If an interference is envisaged by law, it may still violate the right to privacy if it is ‘arbitrary’.¹⁵⁷ This requires that the interference be reasonable and in accordance with the articles, aims and objectives of the ICCPR.¹⁵⁸

The right to privacy links to the right to adequate housing protected under the ICESCR. As explained previously, the CESCR has noted that the right to adequate housing means more than a mere shelter, but rather, ‘should be seen as the right to live somewhere in security, peace and dignity’.¹⁵⁹ Living somewhere in peace and dignity stands in contrast with a life where one’s private life is exposed by living in overcrowded shelters, or on the street where one has to carry out one’s basic needs in public.

b) State obligations

To protect the right to privacy, States are obligated to enact legislation which balances lawful interference ‘essential to the interests of society’ with the personal right to privacy.¹⁶⁰ States must also guard against legislative interference with the right to privacy, such as surveillance and searches of property and persons, that amounts to an arbitrary interference.¹⁶¹ Interferences with the right to privacy must be strictly regulated, with legislation only allowing for particular circumstances when interference may be permitted.¹⁶² Furthermore, States should collect information on the extent to

¹⁵⁰UDHR; ICCPR; *Convention of Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 16; *International Convention on Protection of the Rights of All Migrant Workers and Members of their Families*, open for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 14; *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 22.

¹⁵¹ Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 33rd sess, UN Doc HRI/GEN/1/Rev.9 (8 April 1988) (‘HRC General Comment No 16’).

¹⁵² Joseph Cannataci, Special Rapporteur, *Report of the Special Rapporteur on the Right to Privacy*, UN Doc A/HRC/40/63 (27 February 2019) [52-53].

¹⁵³Ibid.

¹⁵⁴ICCPR art 17.

¹⁵⁵Ibid art 2.

¹⁵⁶HRC General Comment No. 16: Article 17 [3].

¹⁵⁷Ibid 4.

¹⁵⁸Ibid 7.

¹⁵⁹CESCR General Comment No. 4 2.

¹⁶⁰HRC General Comment No. 16 11.

¹⁶¹Ibid 8.

¹⁶²Ibid 8.

which actual practice conforms to the law.¹⁶³

c) Human Rights Violations

Violations leading to homelessness

1. Blacklisting and Residential Tenancy Databases

Residential Tenancy Databases (RTD's) are privately operated databases that collect information about violations of tenancy contracts.¹⁶⁴ Tenants may find themselves blacklisted on these databases by real estate agencies for up to three years. Reasons for blacklisting include a failure to pay money owed, or because of a Victorian Civil and Administrative Tribunal (VCAT) order.¹⁶⁵ In Victoria, all tenancy databases must comply with the Privacy Act¹⁶⁶, and real-estate agents are required to notify potential blacklisted tenants in order to give them an opportunity to challenge the information.¹⁶⁷ An application to VCAT can then be made to prevent, amend, or remove the information.¹⁶⁸

The RTD's present a number of issues in relation to the right to privacy. For example, many people do not know their information is being distributed in RTD's.¹⁶⁹ Accessing information from RTD's pose significant challenges, particularly for people experiencing homelessness, as most operators charge a fee for access, require adequate internet access, or force people to pay high call charges to speak to an operator.¹⁷⁰ Furthermore, as highlighted by the Special Rapporteur on the Right to Adequate Housing, there are systematic and widespread errors within databases that impact people experiencing homelessness due to family violence.¹⁷¹ For example, people who have separated from their abusive partners have been blacklisted because of damage done by their partner to the property, or because their name is attached to a leased property they have left due to family violence.¹⁷² These errors and issues relating to access highlight how arbitrary interference of a person's right to privacy can bar access to alternative housing for people experiencing homelessness in Victoria.

Violations during Homelessness

2. Carrying out personal activities in public

Some people experiencing homelessness may be forced to carry out their personal activities in public.

¹⁶³Ibid 6.

¹⁶⁴Tenants Victoria, 'Tenant databases or "blacklists"', *Tenants Victoria* (Web Page, May 2020) <<https://www.tenantsvic.org.au/advice/tenant-databases-blacklists/>>.

¹⁶⁵For example a failure to pay rent or malicious damage to property; *Residential Tenancies Act 1997* (Vic) s 439E.

¹⁶⁶*Privacy Act 1988* (Cth) s 6D(4)(c)-(d).

¹⁶⁷Consumer Affairs Victoria, 'Tenancy Databases (Blacklists)', *Consumer Affairs Victoria*, (Web Page, 13 June 2020) <<https://www.consumer.vic.gov.au/housing/renting/applying-for-a-rental-property-or-room/tenancy-databases>>.

¹⁶⁸*Residential Tenancies Act 1997* (Vic) s 429L.

¹⁶⁹Catherine Mahoney, 'Ticked Off: Regional Research on Tenancy Databases and Homelessness', *NCOSS News* (Sydney, Australia, December 2002), 7.

¹⁷⁰Victorian Law Reform Commission, *Residential Tenancy Database Report* (March 2006) 19-20.

¹⁷¹Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to Adequate Standard of Living*, UN Doc A/HRC/4/18/Add.2 (31 July to 15 August 2006) [79].

¹⁷²Ibid 102.

The right to privacy allows an individual privacy of home and person.¹⁷³ Being forced to wash, urinate, sleep and eat in public spaces interferes with this right. This violation of privacy extends beyond the streets. [Boarding houses and shelters](#) often have shared facilities, such as bathrooms and kitchens.¹⁷⁴ Further, a person may be forced to live in overcrowded accommodation. It has also been reported that people experiencing homelessness are 'more likely to be fined or charged in relation to their behaviour in public spaces'.¹⁷⁵ [This includes](#) personal activities such as sleeping, drinking or 'hanging out'.¹⁷⁶ Being charged or fined for carrying out personal activities in public spaces highlights how violations of a person's right to privacy unjustly impacts people experiencing homelessness in Victoria.

3. Exposure to CCTV/Surveillance

The right to the homeless persons right to privacy is breached by the exposure to CCTV cameras and surveillance. Melbourne City Council [has installed 65 CCTV cameras](#) in the Central Business District of Melbourne which are constantly monitored.¹⁷⁷ Suspicious behaviour is swiftly reported to police.¹⁷⁸ This area was recorded to be [where 247 homeless people slept](#) in 2018.¹⁷⁹ In an attempt to increase community safety, surveillance leads to increased policing of homeless people, [further stigmatising](#) an already vulnerable group.¹⁸⁰ Moreover, the right to privacy allows an individual to express oneself without judgement. Surveillance threatens the dignity of homeless people, as they feel that they must alter their behaviour in the fear that they are being judged.¹⁸¹ This prioritises the perceived security benefits of surveillance at the expense of homeless people.¹⁸²

¹⁷³ICCPR art 17.

¹⁷⁴'Homelessness is a Human Rights Issue', *Australian Human Rights Commission* (Web Page, 2008) <<https://humanrights.gov.au/our-work/homelessness-human-rights-issue-2008>>.

¹⁷⁵Beth Midgley, 'Achieving Just Outcomes for Homeless People through Court Process' (2005) 15(2) *Journal of Judicial Administration* 82, 86.

¹⁷⁶Julian Murphy, 'Homelessness and Public Space Offences in Australia' (2019) 7(1) *Griffith Journal of Law & Human Dignity* 103.

¹⁷⁷City of Melbourne, 'City Safe Cameras', *City of Melbourne* (Web Page, 2020) <[¹⁷⁸Ibid.](https://www.melbourne.vic.gov.au/community/safety-emergency/Pages/safe-city-cameras.aspx#:~:text=As%20part%20of%20the%20City,and%20helping%20in%20crime%20detection.>>.</p></div><div data-bbox=)

¹⁷⁹City of Melbourne, 'Street Count', *City of Melbourne* (Web Page, 2020) <<https://www.melbourne.vic.gov.au/community/health-support-services/social-support/what-we-are-doing/Pages/streetcount.aspx>>.

¹⁸⁰Laura Huey, 'False security or greater social inclusion? Exploring perceptions of CCTV use in public and private spaces accessed by the homeless' (2010) 61(1) *The British Journal of Sociology* 63, 75.

¹⁸¹Ibid.

¹⁸²Ibid.

PART V: RIGHTS TO EQUALITY AND NON-DISCRIMINATION

The final Part of this Report illustrates the link between homelessness and the right to equality, including the right to non-discrimination. The right to non-discrimination is a right in and of itself, as well as a right to ensure the enjoyment of all other human rights on an equal basis with others.

5.1 Rights to Equality and Non-discrimination

a) International Law

Under international law, the rights to equality and non-discrimination require States to ensure that all persons can enjoy human rights and fundamental freedoms, including the rights discussed in this framework, on an equal basis with others.¹⁸³ No distinctions must be made in the enjoyment of rights, or otherwise, on grounds of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.¹⁸⁴

The inclusion of 'other status' indicates that the list of grounds upon which it is prohibited to discriminate is non-exhaustive. For example, in its [General Comment No. 20](#) on the right to non-discrimination, the CESCR has clarified that 'other status' includes disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, as well as economic and social situation.¹⁸⁵

Discrimination against persons experiencing homelessness may fall within one or more of the prohibited grounds. A person's economic and/or social situation when experiencing homelessness may result in direct and indirect denial of many human rights, as discussed in this framework. A person's economic and/or social situation may be further exacerbated, or linked to, other grounds, such as a person's gender or social origin.

International human rights law protects against discrimination on one or more grounds, known as multiple discrimination.¹⁸⁶ Multiple discrimination can be:

- *cumulative* - a person experiences discrimination on one ground and subsequently, on a different ground; and
- *intersectional* - a person experiences discrimination on one ground in combination with one or more other grounds, the combination of which is what results in the discrimination.

Discrimination, whether on one or more grounds, may be *direct* or *indirect*. International law defines direct discrimination as less favourable treatment than a person in a similar situation on the basis of one or more of the prohibited grounds noted above, or 'detrimental acts or omissions' on the basis of one or more of the prohibited grounds, regardless of the existence of a comparator.¹⁸⁷

¹⁸³ICCPR arts 2(1), 26; ICESCR art 2(2); See also *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) ('ICERD') art 1(1); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, UNTS 1249 (entered into force 3 September 1981) ('CEDAW') arts 1-2.

¹⁸⁴ICCPR arts 2(1), 26; ICESCR art 2(2).

¹⁸⁵UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* UN Doc E/C12/GC/20 (2 July 2009) ('CESCR General Comment No. 20') [27]-[35].

¹⁸⁶Ibid [17], [27].

¹⁸⁷Ibid [10(a)].

Indirect discrimination, on the other hand, is defined as ‘laws, policies or practices’ that seem neutral but has a ‘disproportionate impact’ on a person on the basis of one or more prohibited grounds.¹⁸⁸

Discrimination also includes *harassment* and *failure to provide reasonable accommodation*.¹⁸⁹ Harassment means ‘unwanted conduct’ on the basis of one or more of the prohibited grounds which has the ‘purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment’.¹⁹⁰ This may include both words and acts, such as different forms of violence. Failure to provide reasonable accommodation occurs when a person is denied ‘necessary and appropriate modifications and adjustments’ to ensure that they can enjoy rights and freedoms on an equal basis as others.¹⁹¹

b) State Obligations

As the CESCR has clarified, ‘non-discrimination is an immediate and cross-cutting obligation’.¹⁹² This requires adoption of comprehensive anti-discrimination legislation, to protect against discrimination. Alongside anti-discrimination legislation, States are also required to take affirmative action measures to address systemic and structural inequalities.

The CESCR has further underlined that combating systemic inequality “will frequently require devoting greater resources to traditionally neglected groups”.¹⁹³ Persons experiencing homelessness are [among the most vulnerable in society](#), and frequently overlooked, both by passers-by and policymakers.

c) Human Rights violations

Violations of the rights to equality and non-discrimination are both contributing to, and the consequence of, homelessness. Further, such violations often take place alongside, and in addition to, the violation of the other rights, like the rights discussed in this Report.

Discrimination leading to homelessness

1. Forced evictions

As noted in Part III of this Report, it is often the most vulnerable and disadvantaged groups who are at risk of forced evictions by landlords and real estate agents which limit their ability to guard against homelessness. In addition to violating the right to adequate housing, forced evictions are often connected to discrimination.

In a September 2019 [Research Paper](#) into vulnerable private renters, the Productivity Commission reviewed a number of Australian studies which aimed at understanding the presence of discrimination in the private rental market. While it is often difficult to prove that refusal to obtain accommodation is due to a prohibited ground, reports may indicate which groups that may be likely to face discrimination in the housing market. In one survey cited by the Productivity Commission, single parents, ethnic minorities, Indigenous people, young persons and persons with disabilities reported

¹⁸⁸Ibid [10(b)].

¹⁸⁹Ibid [7], [28]; UN Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on Equality and Non-discrimination*, UN Doc CRPD/C/GC/6 (26 April 2018) (*CRPD Committee General Comment No. 6*)[18c]-[18d].

¹⁹⁰CRPD Committee General Comment No. 6 [18d].

¹⁹¹Ibid [18c].

¹⁹²CESCR General Comment No. 20 [7].

¹⁹³Ibid [39].

that they had been denied rental accommodation on the basis of these characteristics.¹⁹⁴

The Productivity Commission found that the inability to obtain alternative accommodation sometimes results in homelessness.

2. Discrimination in the access to basic services more broadly

In addition to the risk of homelessness caused by forced eviction which may in some instances be linked to discrimination by landlords and real estate agents, discrimination in the access of other basic services, such as employment and education, may also lead to homelessness.

For example, discrimination in the job market may result in the lack of a stable income which forces a person into homelessness. For example, a person may have to live in overcrowded accommodation or may be evicted for failure to pay rent. Even though the eviction itself might not be on the basis of a prohibited ground, but solely as a consequence of failure to pay rent, discrimination or systematic inequality which prevent a person from earning a basic income or access social security payments can result in homelessness.

According to the Victorian Government's [report](#) from the 2016 Census, groups at risk of homelessness include those who are already marginalised and vulnerable. For example, migrants, persons with disabilities, older persons, Indigenous people and young persons.

3. Gender-based violence

Discrimination on the basis of gender includes gender-based violence. As the [Victorian Royal Commission into Family Violence](#) noted in its 2016 Final Report, many persons who have been rendered homeless are victims of family violence. Victorian [community-based organisations](#) have called on the Victorian Government to fulfil the recommendation by the Royal Commission for stable housing to victims of domestic and family violence after noting that homelessness due to gender-based violence has persisted.

Further, there has been an increase in reports of domestic violence as a result of COVID-19. A [report](#) by Monash Gender and Family Violence Centre found that despite measures by Australian governments to address short-term housing in response to the pandemic, there was still a shortage of safe housing for women experiencing violence.

Discrimination as a result of homelessness

4. Lack of protections against Direct and Indirect Discrimination

As noted above, homelessness is not an express ground upon which it is prohibited to discriminate under international law. However, protection against discrimination on the basis of homelessness can be implied under 'other status', which the CESCR has noted includes grounds such as 'economic and social status'.¹⁹⁵ It may also be related to one or more expressly protected grounds, for example, a homeless person may face discrimination on the basis of a disability or because of their race, in addition to/or in combination with, their social and economic status.

Persons experiencing homelessness in Victoria do not have an effective remedy against discrimination

¹⁹⁴Australian Government Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Research Paper, Australian Government Productivity Commission, September 2019) 87.

¹⁹⁵CESCR *General Comment No. 20* [35].

on the basis of homelessness alone. The list of 'attributes' under section 6 of the [Equal Opportunity Act 2010 \(Vic\)](#) (which is incorporated into the [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#)) protects against discrimination on the basis of a *closed* list of grounds. This list does not include economic and social status.

As noted above, experience of homelessness may be related to discrimination on the basis of one or more grounds upon which it is prohibited to discriminate, such as disability and race. Nevertheless, a non-exhaustive list of grounds, or a test for adding additional grounds, would be necessary to afford broader protection against discrimination on the basis of, or in connection with, homelessness.

In addition to direct discrimination, protection against discrimination on the basis of, or in connection with, homelessness must include protection against indirect discrimination whereby legislation and policy surrounding access to basic services place a disproportionate burden on persons experiencing homelessness. It must also include protection against harassment of homeless persons, such as violence, bullying and other hate crimes. Finally, reasonable accommodation (that does not amount to an undue and unreasonable burden), should be made to ensure that persons experiencing homelessness can enjoy human rights on an equal basis with others.

BIBLIOGRAPHY

A Articles/ Books/ Reports/ Submissions

- Anglicare Victoria, *Rental Affordability Snapshot 2020: Victorian Rental Market* (2020)
- Australian Government Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Research Paper, Australian Government Productivity Commission, September 2019)
- Australian Housing and Urban Research Institute, *Housing, Homelessness and Mental Health: Towards Systems Change* (November 2018)
- Davies, Andrew and Lisa J. Wood, 'Homeless Health Care: Meeting the Challenges of Providing Primary Care' (2018) *Medical Journal of Australia* 230
- Donley, Amy and James Wright, 'Safer Outside: A Qualitative Exploration of Homeless People's Resistance to Homeless Shelters' (2012) 12(4) *Journal of Forensic Psychology Practice* 288
- Federation of Community Legal Centres, Submission to Victorian Parliament, *Victorian Parliament Inquiry into Homelessness in Victoria* (March 2020)
- Flatau, Paul et al, *The State of Homelessness in Australia's Cities: a Health and Social Cost Too High* (2018)
- Huey, Laura, 'False security or greater social inclusion? Exploring perceptions of CCTV use in public and private spaces accessed by the homeless' (2010) 61(1) *The British Journal of Sociology* 63
- Justice Connect, Submission to Victorian Parliament, *Fair's Fare: Improving Access to Public Transport for Victorians Experiencing Homelessness* (March 2016)
- Justice Connect, Submission to Victorian Parliament, *There's No Place Like Home: Submission on the Security of Tenure Issues Paper* (December 2015)
- Justice Connect, *We Want Change! Calling for the Abolition of the Criminal offence of Begging* (November 2010)
- Lynch, Phillip, 'Understanding and Responding to Begging' (2005) 29(2) *Melbourne University Law Review* 518
- Lynch, Phillip and Jaqueline Cole, 'Homelessness and Human Rights: Regarding and Responding to Homelessness as a Human Rights Violation' (2003) 4 *Melbourne Journal of International Law*
- Midgley, Beth, 'Achieving Just Outcomes for Homeless People through Court Process' (2005) 15(2) *Journal of Judicial Administration* 82
- Morris, Alan, 'The lack of a right to housing and its implications in Australia' (2010) 65 *Journal of Australian Political Economy* 28
- Muir, Kristy et al, *Amplify Insights: Housing Affordability & Homelessness. Centre for Social Impact* (2018)

Murphy, Julian R, 'Homelessness and Public Space Offences in Australia: A Human Rights Case for Narrow Interpretation (2019) 7(1) *Griffith Journal of Law and Human Dignity* 103

Phillips, B. and C. Joseph, *Regional housing supply and demand in Australia* (Working Paper No. 1/2017, Australian National University, November 2017)

Public Transport Victoria, *Victorian Fares and Ticketing Conditions* (2020)

Raynor, Kate, Igor Dosen and Caley Otter, *Housing Affordability in Victoria* (Research Paper, Victorian Parliamentary Library and Research Service, 6 December 2017)

Sackville, Ronald, 'Homelessness, Human Rights and the Law' (2004) 10 (1) *Australian Journal of Human Rights* 2

Victorian Department of Health and Human Services, *Rental Report March Quarter 2020* (2020)

Victorian Department of Health and Human Services, *Victorian Homelessness 2020 Strategy* (2010)

Victorian Government, *Victoria's Rough Sleeping and Homelessness Action Plan* (2018)

Victorian Law Reform Commission, *Residential Tenancy Database Report* (March 2006)

Victorian Ombudsman, *Investigation into Public Transport Fare Evasion Enforcement* (March 2016)

Wood, Lisa, Andrew Davies and Zana Khan, 'COVID-19 precautions – easier said than done when patients are homeless' (2020) 212 (8) *Medical Journal of Australia* 384, 384.

B Legislation

1989 Tenancy Act 8541 (France)

COVID-19 Omnibus (Emergency Measures) Act 2020 (Vic)

Privacy Act 1988 (Cth)

Residential Tenancies Act 2006 (Canada)

Residential Tenancies Act 1997 (Vic)

Residential Tenancies Act 1997 (Tas)

Summary Offences Act 1966 (Vic)

C Treaties

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)

Convention on the Rights of Persons with Disability, 61st sess, Item No. 67(b), UN Doc A/RES/61/106

(24 January 2007)

International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

International Convention on Protection of the Rights of All Migrant Workers and Members of their Families, open for signature 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, UNTS 3 (entered into force 3 January 1976)

Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948)

Vienna Declaration and Programme of Action, UN GAOR, UN Doc A/CONF.157/23 (12 July 1993)

D. UN Documents

Cannataci, Joseph, Special Rapporteur, *Report of the Special Rapporteur on the Right to Privacy*, UN Doc A/HRC/40/63 (27 February 2019)

Kothari, Miloon, Special Rapporteur, *Preliminary Report: Mission to Australia 31 July – 15 August 2006*, Office of the High Commissioner for Human Rights (Report, 15 August 2006)

Kothari, Miloon *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living: Mission to Australia*, UN GAOR, 4th sess, Agenda Item 2, UN Doc A/HRC/4/18/Add.2 (11 May 2007)

Farha, Leilani, Special Rapporteur, “‘Housing, the Frontline Defence Against the COVID-19 Outbreak’” says UN Expert’, *United Nations Office of the High Commissioner for Human Rights* (Web page, 18 March 2020)

<<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>>

Farha, Leilani, Special Rapporteur, ‘COVID Guidance Note: Protecting Those Living in Homelessness’, *Office of the High Commissioner for Human Rights* (Document, 28 April 2020)

<https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf>

Farha, Leilani, Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, UN GAOR, 71st sess, Agenda Item 69(b), UN Doc A/71/310 (8 August 2016)

Farha, Leilani, ‘Housing, the Front Line Defence Against the COVID-19 Outbreak,’ says UN Expert’, *Office of the High Commissioner for Human Rights* (Media Release, 18 March 2020)

<<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>>

International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and*

Cultural Rights (22 - 26 January 1997)

Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No. 21, The Right to Adequate Housing* (2009)

Office of the High Commissioner for Health and the World Health Organisation, *Fact Sheet No. 31: The Right to Health* (June 2008) 24
<<https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>>

UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant*, 5th sess, UN Doc E/1991/23 (14 December 1990)

UN Committee on Economic, Social and Cultural Rights, *General Comment No.4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 6th sess, UN Doc E/1992/23 (13 December 1991)

UN Committee on Economic, Social and Cultural Rights, *General Comment No.14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd sess, UN Doc E/C.12/2000/4 (11 August 2000)

UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)* UN Doc E/C12/GC/20 (2 July 2009)

UN Committee on the Rights of Persons with Disabilities, *General Comment No. 6 on Equality and Non-discrimination*, UN Doc CRPD/C/GC/6 (26 April 2018)

UN Economic and Social Council, Commission for Social Development, *Affordable Housing and Social Protection Systems for all to Address Homelessness: Report of the Secretary-General*, UN ESCOR, 58th sess, Agenda Item 3(a) of the provisional agenda, UN Doc E/CN.5/2020/3 (10-19 February 2020)

UN Economic and Social Council, Commission for Social Development, *Homelessness: A Prominent Sign of Social Inequalities*, 58th sess (10-19 February 2020)

UN Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)*, 16th sess (30 April 1982)

UN Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 33rd sess, UN Doc HRI/GEN/1/Rev.9 (8 April 1988)

UN Human Rights Committee, *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, UN Doc CCPR/C/GC/36 (3 September 2019)

UN Human Rights Committee, *General Comment No. 35 Article 9 (Liberty and Security of Person)*, UN Doc CCPR/C/G/35 (16 December 2014)

E. Other

Andrews, Daniel (Premier) 'Supporting Tenants And Landlords Through Coronavirus', *Victorian State Government Department of Premier and Cabinet* (Media Release, 15 April 2020)
<<https://www.premier.vic.gov.au/supporting-tenants-and-landlords-through-coronavirus/>>

Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness, 2016* (Catalogue No. 2049.0, 14 March 2018)

Australian Housing and Urban Research Institute, 'What is at stake for people experiencing homelessness during the coronavirus pandemic?', *Australian Housing and Urban Research Institute* (Web Page, 8 April 2020) <<https://www.ahuri.edu.au/policy/ahuri-briefs/what-is-at-stake-for-people-experiencing-homelessness-during-the-coronavirus-pandemic>>

Australian Human Rights Commission, 'Homelessness is a Human Rights Issue (2008)', *Australian Human Rights Commission* (Web Page, 2008) <<https://humanrights.gov.au/our-work/homelessness-human-rights-issue-2008#fnB29>>

Australian Human Rights Commission, 'Violence, Harassment and Bullying and Homelessness', *Australian Human Rights Commission* (Web Page, 14 December 2012) <<https://humanrights.gov.au/our-work/commission-general/violence-harassment-and-bullying-and-homelessness#fnB10>>

Australian Institute for Health and Welfare, 'Alcohol, tobacco and other drugs in Australia: Homeless Persons', *Australian Institute for Health and Welfare* (Web Page, 26 June 2020) <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/homeless-people>>

Australian Institute for Health and Welfare, 'Australia's Children: Housing Affordability', *Australian Institute for Health and Welfare* (Web Page, 3 April 2020) <<https://www.aihw.gov.au/reports/children-youth/australias-children/contents/housing/housing-stress>>

Australian Institute for Health and Welfare, 'Housing Affordability', *Australian Institute for Health and Welfare* (Web Page, 11 September 2019) <<https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>>

Australian Productivity Commission, 'Report on Government Services 2019: Housing and Homelessness', *Australian Productivity Commission* (Web Page, 27 June 2019) <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/housing-and-homelessness>>

Bell, The Hon. Kevin, 'Protecting public housing tenants in Australia from forced eviction: the fundamental importance of the human right to adequate housing and home' (Speech, Monash University Costello Lecture, 18 September 2012)

Bosely, Matilda and Luke Henriques-Gomes, 'It sucks': Homeless Victorians Asked to Help Pay for Lockdown Hotels', *The Guardian* (online, 28 May 2020) <<https://www.theguardian.com/australia-news/2020/may/28/it-sucks-homeless-victorians-asked-to-help-pay-for-lockdown-hotels>>

City of Melbourne, 'City Safe Cameras', *City of Melbourne* (Web Page, 2020) <[City of Melbourne, 'Street Count', *City of Melbourne* \(Web Page, 2020\)](https://www.melbourne.vic.gov.au/community/safety-emergency/Pages/safe-city-cameras.aspx#:~:text=As%20part%20of%20the%20City,and%20helping%20in%20crime%20detection.></p></div><div data-bbox=)

<<https://www.melbourne.vic.gov.au/community/health-support-services/social-support/what-we-are-doing/Pages/streetcount.aspx>>

Consumer Affairs Victoria, 'Tenancy Databases (Blacklists)', *Consumer Affairs Victoria*, (Web Page, 13 June 2020) <<https://www.consumer.vic.gov.au/housing/renting/applying-for-a-rental-property-or-room/tenancy-databases>>

Council to Homeless Persons, '5 Reasons the Mental Health Royal Commission Must Examine Housing and Homelessness', *Council to Homeless Persons* (Web Page, 22 January 2019) <<https://chp.org.au/five-reasons-why-victorias-mental-health-royal-commission-must-examine-the-role-of-housing-and-homelessness/>>

Davies, Anne, 'Courtney Herron: woman murdered in Melbourne park died from 'horrendous bashing'', *The Guardian* (online, 26 May 2019) <<https://www.theguardian.com/australia-news/2019/may/26/parkville-melbourne-reacts-with-horror-as-police-hunt-killer>>

Findlay, Carly, 'What it's like to be homeless and have a mental illness', *SBS News* (online, 22 June 2017) <<https://www.sbs.com.au/topics/voices/health/article/2017/06/22/what-its-be-homeless-and-have-mental-illness>>

Herde, Jesse and Maria Pallotta-Chiaroli, 'Homelessness and Violence', (Blog Post, 30 May 2019) <<https://pursuit.unimelb.edu.au/articles/homelessness-and-violence>>

Kelly, David, Libby Porter and Kate Shaw, 'Shh! Don't Mention the Public Housing Shortage. But No Serious Action on Homelessness Can Ignore it', *The Conversation* (online, 10 October 2019) <<https://theconversation.com/shh-dont-mention-the-public-housing-shortage-but-no-serious-action-on-homelessness-can-ignore-it-124875>>

Mahoney, Catherine, 'Ticked Off: Regional Research on Tenancy Databases and Homelessness', *NCOSS News* (Sydney, Australia, December 2002)

Melbourne City Mission, 'What is Youth Homelessness', *Melbourne City Mission* (Web Page, 2020) <<https://www.mcm.org.au/homelessness/frontyard/what-is-youth-homelessness>>

Minister for Housing, 'Cheaper, Fairer Public Transport For Vulnerable Victorians', *Victorian Government Department of Premier and Cabinet* (Media Release, 26 October 2018) <<https://www.premier.vic.gov.au/cheaper-fairer-public-transport-for-vulnerable-victorians/>>

Nicholson, Johanna, 'Homelessness in summer and the struggle to find shade and water', *ABC News* (online, 9 January 2018) <<https://www.abc.net.au/news/2018-01-09/homeless-in-summer-and-the-struggle-to-find-shade-and-water/9214070>>

North and West Homelessness Networks, 'The Health Impacts of Homelessness', *North and West Homelessness Networks* (Web Page, 2020) <<http://www.nwhn.net.au/Health-Homelessness.aspx>>

Price, Benjamin and Samantha Hutchinson, 'Unprecedented in our lifetimes': Victoria issues grim economic warning', *The Age* (online, 21 April 2020) <<https://www.theage.com.au/national/victoria/unprecedented-in-our-lifetimes-victoria-issues-grim-economic-warning-20200421-p54lwf.html>>

Street Smart Australia, 'Why Homelessness Means a Shorter Life and What Night Nurses are Doing

to Help', *Street Smart Australia* (Web Page, 1 June 2018) <<https://streetsmartaustralia.org/why-homelessness-means-a-shorter-life-and-what-night-nurses-are-doing-to-help/>>

Tenants Victoria, 'Tenant databases or "blacklists"', *Tenants Victoria* (Web Page, May 2020) <<https://www.tenantsvic.org.au/advice/tenant-databases-blacklists/>>

Topsfield, Jewel, 'How the shock of COVID-19 could end street homelessness in Victoria', *The Age* (online, 13 June 2020) <<https://www.theage.com.au/national/victoria/how-the-shock-of-covid-19-could-end-street-homelessness-in-victoria-20200612-p551vk.html>>

Tuffield, Rhiannon, 'COVID-19 putting food charities and the homeless under extreme pressure', *ABC News* (online, 21 March 2020) <<https://www.abc.net.au/news/2020-03-21/homelessness-charities-hard-hit-by-covid-19-pandemic/12071758>>

Victorian Department of Health and Human Services, 'Housing and Homelessness', *Victorian State Government* (Web page, 2020) <<https://www.dhhs.vic.gov.au/housing-and-homelessness>>

Victorian Legislative Council, 'Inquiry into Homelessness in Victoria', *Parliament of Victoria* (Web Page, 16 June 2020) <<https://www.parliament.vic.gov.au/lsc-lc/inquiry/976>>

Victorian Public Tenants Association, '100,000 Victorians Waiting for a Home in 2020', *Victorian Public Tenants Association* (Web Page, 12 November 2019) <<https://vpta.org.au/100000-waiting-for-a-home-in-2020/>>