Homelessness and Human Rights:

Using human rights as an advocacy tool for ending homelessness – ‘doing’ rights in casework, organisational change and law reform

1. Introduction


The objectives of the forum were to explore how human rights can be used as an advocacy tool to end homelessness through:

- Better outcomes for individuals;
- Supporting practice and systems change in order to imbed a human rights culture in policy and practice in community sector organisations;
- Ensuring increased consumer participation; and
- Achieving policy and legislative change.

Approximately 70 people attended the forum from a range of community sector organisations. Participants included community sector senior management, staff and workers, consumers and representatives from State Government agencies and State Government departments.
2. The Victorian Charter of Human Rights & Responsibilities 2006 (Vic)

In January 2006, the Victorian Government enacted the Victorian Charter of Human Rights and Responsibilities 2006 (Vic) (‘the Charter’) as a mechanism designed to protect the fundamental rights and freedoms of all Victorians.

The Charter aims to protect human rights by requiring that government and other public authorities observe the Charter when making decisions, creating laws, setting policies and providing services.


The report highlighted many situations in which the Charter has been invoked to bring positive change for individuals and communities, however also noted that there is more work to do to ensure it effectively protects the rights of all Victorians.

3. VCOSS and Human Rights

VCOSS has been actively involved in the development and implementation of the Victorian Charter of Human Rights and Responsibilities (the Charter), from conducting consultations around its introduction, to advocacy, training and education of community sector workers and advocates, education and publications.

Publications included a preliminary audit and needs analysis of human rights education and training needs for community sector organisations, Audit and Needs Analysis: Human Rights Education and Training Report, a report on the ways in which community sector organisations are using the Charter in policy and practice - Using the Charter in Policy and Practice Report², and a special, dedicated human rights

4. The Forum

Welcome and Acknowledgment of Country, Carolyn Atkins, Deputy Director VCOSS

Carolyn Atkins welcomed participants and acknowledged the Wurruudjeri Peoples as the traditional custodians of the land. She then gave a brief outline of the aims of the VCOSS Human Rights project and survey report.

Following this, panel members were introduced and each panellist delivered a twenty minute presentation focussing on their area of specialty in the context of homelessness in Victoria.

Panel Presentations

1. Using human rights as an advocacy tool for ending homelessness - Achieving individual change

James Farrell, Manager/Principal Lawyer, PILCH Homeless Persons’ Legal Clinic

James Farrell is the Manager/Principal Lawyer of the PILCH Homeless Persons’ Legal Clinic, a specialist legal service established in response to the great unmet need for targeted legal services for people experiencing homelessness. The Clinic offers free weekly legal services at 13 outreach locations that are accessed already by people who are homeless for basic needs (such as soup kitchens and crisis accommodation facilities) and social and family services. More information is available at www.pilch.org.au/hplc/. James is a former corporate lawyer with a variety of experiences in community organisations, and holds undergraduate degrees in commerce and law (with honours), and postgraduate qualifications in law, legal practice and applied human rights.
James began his address by providing an overview of the work of the Homeless Persons’ Legal Clinic at the Public Interest Law Clearing House (‘PILCH’). He outlined the relevant sections of the Charter to consider in the context of human rights and Victorians experiencing homelessness:

- Section 13: The right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with;
- Section 17: Protection of families and children;
- Section 8: Recognition and equality before the law; and
- Section 9: Right to life.

James cited a recent report by the Law Institute Victoria which showed that these housing related rights are the primary areas in which the application of the Charter is most relevant and useful.

He then described four case studies which highlighted situations in which the Charter has been applied by PILCH and VCAT to protect the rights of individual consumers. These range from situations involving disputed Notices to Vacate being issued to residents in rooming houses, to disputes regarding transitional housing and parole decisions.

James concluded by identifying the Charter as a valuable tool for advocating for individuals experiencing homelessness as it allows redress for individual wrongs in situations where people experiencing homelessness are aware of their rights or can access assistance from organisations such as PILCH.

However, the inclusion of economic, social and cultural rights in the Charter, particularly the right to an adequate standard of living (which includes the right to adequate housing) is fundamental to protecting and promoting the rights of Victorians experiencing homelessness.

Adopting the ‘language’ of human rights as a driver to improve practices, organisational cultures and systemic responses is a key part of achieving change.

**Tiffany Overall, Advocacy and Human Rights Officer, Youthlaw**

Tiffany Overall is the Advocacy and Human Rights Officer at Youthlaw, a specialist community legal centre in Victoria for young people under 25 years. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and

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Homelessness and Human Rights –16 October 2010
preventative education programs, within a human rights and social justice framework.

Tiffany has worked in the community sector for 16 years as a legal and law reform advocate, including over 9 years in community legal centres.

Tiffany provided an overview of Youthlaw’s work as a part of Frontyard and highlighted that young people experiencing homelessness are subject to multiple violations of their rights. She also noted that the Victorian Government has an obligation to redress these violations not only in relation to the Charter, but in a broader context under international human rights treaties to which Australia is a party4.

She outlined why a human rights approach is fundamental to promoting the rights of young people experiencing homelessness in that a human rights framework provides:

- A powerful mobilising advocacy instrument;
- A common lens to respond to issues; and
- Adopts universal standards and principles by which organisations such as Youthlaw operate. These principles are *participatory, inclusive and involve accountability, non-discrimination and empowerment.*

These principles inform Youthlaw’s advocacy, policy and law reform work. Approaching legal issues involving young people experiencing homelessness using a human rights framework:

- Encourages meaningful and genuine participation of homeless young people in the development and evaluation of laws, policies and programs that affect them;
- Improves public authority/government accountability (ie- ensure governments act in a rights compatible manner or take up conduct that is in breach of human rights; and
- Empower and educate the community to help reduce the social stigma attached to homelessness.

Tiffany outlined a test case initiated by Youthlaw currently proceeding in the Supreme Court arising from a decision of the Office of Police Integrity not to investigate a serious complaint against police. The case will test whether decisions by the Office of Police Integrity can be appealed to the Supreme Court under the Charter for failing to give consideration to human rights contained in the Charter, and whether there is an obligation on the Office of Police Integrity and State of Victoria to conduct an independent and effective investigation of serious police complaints.

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4 These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).
She then highlighted some initiatives developed by Youthlaw, such as a DVD entitled “Respect- say it like you mean it” which aims to improve relations between young people and police following consultations with young people which identified poor communication and a lack of understanding between both parties as a cause of negative relationships and interactions.

**Impact of increase police powers**

The impact of the introduction of ‘move on’ and ‘stop and search’ powers on young people were discussed. These powers have been shown to disproportionately target and affect young people in public places, and in the context of Charter rights violate young people’s rights to non-discrimination, privacy, children’s ‘best interests’ and freedom of movement among others.

In closing, Tiffany outlined Youthlaw’s recommendations that:

- In light of new laws which have broadened the power of police and authorised officers, ensure adequate safeguards are put in place to protect and respect young people’s rights;
- the establishment of an independent body to investigate complaints against police and public transport officers; and
- Training and support for Victoria Police and Public Transport officers to model respect and adhere to and respect the human rights of young people.

2. **Using Human Rights as an advocacy tool for ending homelessness – ‘doing rights’ and achieving organisational change**

*Jason Rostant, Manager, Community Engagement, Planning & Development, Western Region Health*

Jason Rostant graduated with a Bachelor of Social Work in 1994 and has worked in a variety of policy, education and direct service delivery roles in government and NGO settings. From 1994-96 he volunteered full time on the Tasmanian gay law reform campaign, before spending four years working in youth homelessness in Hobart and Sydney, and another two establishing Tasmania’s first funded coming out support service. Between 2003-05 Jason was an advisor to the Australian Democrats Senate team on sexuality and gender issues, disability, and the occasional attorney-general and justice issues that especially interested him – most notably proposed changes to the SDA and DDA. In 2005 he moved to Melbourne, and following eight months as a drug and alcohol policy officer, moved to the Victorian Equal Opportunity and Human Rights Commission where he managed human rights education for the four years immediately following the Charter’s enactment. In October 2010 Jason commenced in his current role as Manager
Community Engagement, Planning and Development at the Western Region Health Centre.

Jason highlighted at the outset the importance of shifting thinking about human rights away from an ‘obligation’ and toward a ‘human rights culture’ (see table below). He then outlined the benefits of a human rights based approach to organisational policy and practice:

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<tr>
<th>Charity approach</th>
<th>Needs approach</th>
<th>Rights approach</th>
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<tr>
<td>- Focus on input not outcome</td>
<td>- Focus on input and outcome</td>
<td>- Focus on process and outcome</td>
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<tr>
<td>- Emphasises increasing charity</td>
<td>- Emphasises meeting needs</td>
<td>- Emphasises realising rights</td>
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<tr>
<td>- Recognises moral responsibility of rich towards poor</td>
<td>- Recognises needs as valid claims</td>
<td>- Recognises individual and group rights as claims toward legal and moral duty-bearers</td>
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<tr>
<td>- Individuals are seen as victims</td>
<td>- Individuals are objects of development interventions</td>
<td>- Individuals and groups are empowered to claim their rights</td>
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<td>- Individuals deserve assistance</td>
<td>- Individuals deserve assistance</td>
<td>- Individuals are entitled to assistance</td>
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<tr>
<td>- Focuses on manifestation of problems</td>
<td>- Focuses on immediate causes of problems</td>
<td>- Focuses on structural causes and their manifestations</td>
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Jason concluded by noting that there is a statutory right to permanent housing in Scotland which was achieved through an amendment to the Housing Act. This is significant in that Australia can learn much from its northern hemisphere colleagues regarding social investment in promoting rights and the adoption of a human rights framework more broadly.

3. The experience of homelessness

Giulia Bastoni, Consumer

“Since early adulthood I have been in and out of prison and mental health institutions due to drug addiction. As a result I experienced homelessness on numerous occasions. Having had a transformative experience in Christ, I am drug free and now work in a call centre. I am studying screenwriting at RMIT and have been a volunteer at the Homelessness Advocacy’s Peer Education Support Program. I also participate on the Council to Homelessness Person’s
Guilia welcomed being appointed to the Council to Homeless Persons’ Policy Advisory Committee as she had felt excluded these processes in the past given limited consumer involvement.

She highlighted that the way in which organisations provide services can significantly influence the outcomes for consumers, and respectful processes are vital. When service providers have patience, are mindful of the often complex needs of consumers, suspend judgment and communicate with other related services to find the best options, they can enact positive change. Being encouraged to participate and become involved in the Homelessness Advocacy’s Peer Education Support Program empowers consumers and promotes opportunities for change.

To achieve positive change, it is essential to review policies and service delivery around homelessness in an inclusive manner which embraces diversity and ensures consumer participation. Being included is ‘priceless’.

4. **Using human rights as an advocacy tool for ending homelessness – ‘doing rights’ in law reform**

Michelle Burrell, Chief Executive Officer, Council to Homeless Persons

Michelle Burrell was appointed as Council to Homeless Persons CEO in February 2010. She was previously Deputy Director of the Council of Social Service of NSW (NCOSS), the peak body representing NGOs in NSW.

Michelle managed the Victorian Government consultation on the Charter of Human Rights and Responsibilities Act before becoming Manager, Community Law Reform at the Victorian Law Reform Commission. Prior to joining CHP, Michelle was Senior Adviser, Strategic Projects at the Victorian Equal Opportunity and Human Rights Commission where she managed the research and policy arm of the Commission, specialising in issues of systemic discrimination.

Michelle highlighted the importance of shifting from a compliance approach to promoting human rights via a cultural approach which involves systemic change and policy and law reform. The experience of homelessness often involves violence and hate crimes. Freedom from violence is a fundamental human right.
Michelle noted that it was disappointing that the recently released Homelessness 2020 Strategy did not include mention of human rights, social inclusion or consumer participation - all of which must be defining principles for any concerted effort to make homelessness and human services systems work better and to address structural as well as personal causes of homelessness. However, as a policy framework to lower the incidence of homelessness, the Strategy goes some way as a collection of projects and platforms. Yet, it is fundamental to view homelessness as a human rights issue above all else.

There are significant opportunities Federally and for Victoria to enact policy and legislative reform which supports adopting a human rights framework in all Government decision making processes. A Federal Bill is currently being developed around homelessness legislation - it is fundamental that the right to housing is enshrined in law.

**Upcoming review of the Charter in 2011**

The Charter review process in 2011 is an opportunity to achieve a more rights-consistent approach to homelessness. Only 51% of young people experiencing homelessness have completed any education. Furthermore, those experiencing homelessness also experience critical and chronic health issues.

Michelle outlined the importance of the inclusion of economic, social and cultural rights and the right to self determination in the upcoming review of the Charter. Implementing the rights included in treaties ratified by Australia such as the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CROC) is also essential in order to adequately protect and promote rights in Victoria and more broadly.

Michelle cited a 2006 survey which found that 70% of homeless people experienced discrimination, most commonly by real estate agents, but also in general public life.

**Law reform – Victorian context**

Given we do not currently have a clear human rights framework which informs out response to homelessness, opportunities for positive change have been missed. In particular, the failure to legislate to include homelessness as an attribute in the Equal Opportunity Act 1995 (Vic) has prevented practical reform. There is an opportunity to review elements of the Equal Opportunity Act 1995 (Vic), particularly those involving homelessness and its inclusion as an ‘attribute’ under the Act so that it is unlawful to discriminate on the basis of homelessness.

To end homelessness, it is essential to address both its causes and consequences. This can partly be achieved by including homelessness in the amended Equal Opportunity Act 1995 (Vic). Furthermore, making Parliament more accountable to a human rights framework when passing legislation is vital. The establishment of a Human Rights Committee of Parliament as adopted in the United Kingdom would
involve a systemic analysis of human rights issues and strengthen Parliament’s adherence to a human rights framework.

Law reform – National context

The Australian Government has committed to delivering new homelessness legislation which will include mechanisms to protect and promote the human rights of homeless Australians\(^5\). The *Human Rights (Parliamentary Scrutiny) Bill 2010* will also allow federal compliance with human rights.

In closing, Michelle challenged participants to advocate for necessary reforms which will allow a legislative and policy base to end homelessness. She cited the example of Scotland, which in the last three years introduced a statutory right to permanent housing for all people experiencing homelessness, as an example of how law reform can significantly improve the quality of life of people experiencing homelessness.

In Victoria, we have the opportunity to embark on the same ‘ambitious’ campaigns and enshrine the right to a home in law.

*Questions from participants were then taken by Panellists.*

**CONCLUSION**

Chief Executive Officer of the Council to Homeless Persons, Michelle Burrell, provided a closing summary and urged participants to continue their advocacy around homelessness.

Participants indicated that they enjoyed the opportunity to come together to focus on how a human rights approach can be implemented in different contexts and felt re-energised to further develop a rights-based approach in their work.

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