1 July, 2011

Mr Edward O’Donohue, MLC
Chairperson
Scrutiny of Acts and Regulations Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr O’Donohue,

Thank you for the opportunity to make the following submission on behalf of Hanover Welfare Services to the Committee’s review of the Charter of Human Rights and Responsibilities Act 2006

About Hanover

Hanover Welfare Services is a leading, independent agency working in the field of homelessness. Hanover was founded in 1964 and its mission is:

- to empower people who are homeless or at imminent risk of becoming so,
- to enable them to take greater control over their lives and
- to stimulate and encourage change in Australian society to benefit them.

This is achieved by delivering services at seven locations across inner, southern and south east Melbourne, conducting research and through advocacy. Hanover is a non-profit company limited by guarantee and is a registered charity. Hanover has no structural links to government or churches. Hanover is governed by a Board elected by and from members of the company.

The organisation has an annual turnover of approximately $18 million and employs approximately 200 staff.

Homelessness and Human Rights

Homelessness of itself is a recognised breach of international human rights. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises the right to an “adequate standard of living for himself and his family, including adequate food, clothing and housing”.

There are also strong associations between homelessness and human rights. Human rights violations and implementation failures can cause, contribute to and maintain homelessness. Furthermore, homelessness can render people more vulnerable to human rights violations.¹ People experiencing homelessness are among the most disadvantaged in Australia and are subject to multiple and intersectional human rights violations.

The previous United Nations Special Rapporteur on adequate housing, Miloon Kothair, concluded that there is a hidden national housing crisis in Australia and was particularly troubled by the inadequate housing and living conditions and the persistence of homelessness. The Special Rapporteur further noted that there is a need for a human rights approach that includes the right to adequate housing and provides for a means of justiciability for these rights.

Hanover has undertaken a number of projects exploring the different aspects of human rights and homelessness including the day-to-day experiences of people experiencing homelessness, voter participation and public perceptions of homelessness. These projects are detailed below. Understanding the lived experiences of people experiencing homelessness enables us to identify and where possible respond to the continuing inequality and discrimination facing homeless people.

Hanover recognises the intrinsic nature of human rights and purposively utilises the language of human rights to advocate for and on behalf of people experiencing homelessness. The language of human rights also allows us to reframe common, albeit stereotypical, understandings of homelessness.

Response to Terms of Reference

1. The matters referred to in section 44(2) of the Charter

1.1 Whether additional rights should be included in the Charter, including economic, social, cultural, children’s, women’s and self-determination rights

As an agency with a sole mission focused on homelessness it would not be surprising that we strongly support the inclusion of these additional rights into the Charter Act. (also refer to Section 4 of the submission)

As previously mentioned, the persistence of homelessness is a clear breach of the human rights of those Victorians affected. At the 2006 Census there were 20,511 Victorians’ homeless on census night. While there is some discussion as to the methodology used in the Census other data indicates that many more than 20,000 Victorian experience homelessness over an entire year. Despite economic growth and prosperity, the incidence of homelessness has increased over the last decade.

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3 Ibid.
While homelessness is a direct breach of Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, homelessness leads to breaches of other rights contained in the various conventions.

Education opportunities (or lack of) for children experiencing homelessness is a critical issue. The second national census of homeless school students provides insight into the education circumstances of young homeless people. In 2001, there were about 12,230 homeless secondary school students in the census week with about 2,890 students in Victoria, representing 10 cases for every 1,000 students in the Victorian school population.

From the research we know that children experiencing homelessness have poor educational outcomes. This includes lower school attendance, a higher prevalence of early school leaving and lower levels of educational attainment including post-compulsory schooling (see below). This, in turn, leads to longer-term costs in unemployment, lost productivity to the economy and reduced life opportunities for these children.

One Victorian study concluded that chronic school absenteeism often begins in the preparatory year and that poor school attendance is associated with families that have other problems in their lives, which tended to impact on their children and affected school attendance. A review of the Youth Pathways Program (YPP) in Victoria, reported that for young people who had disengaged from school, this disengagement had often started in primary school or in the early years of secondary school.

There is clear evidence regarding homelessness and developmental and educational disadvantage. The importance of the middle years is well established in education literature where average student achievement plateaus or can decline during this time. Critically, the middle years are also consistent with the age when homeless children and young people begin to disengage from school.

The evidence suggests that homelessness reduces school attendance rates. Using SAAP national data for 2001-02, 17.6 per cent of young people aged 12-13 years were not a student immediately before accessing SAAP support. For the aged groups 14-15 years and 16-17 years, the respective figures were 39.4 per cent and 50 per cent, which included non-attendance at post-secondary studies and employment training.

The rate of early school leaving is a further indicator of the effect of homelessness and insecure housing for children and young people. Evidence suggests that, within 12 months of becoming homeless, two thirds of young people leave school and, once having left school, find it harder to complete their education. Not only is early school leaving an indicator of educational disengagement, but it also has longer-term effects such as lower wages and financial insecurity, a greater likelihood of unemployment, and poorer mental and physical health outcomes.

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A growing and increasing significant trend in homelessness nationally is the prevalence of families (usually female-headed) and accompanying children\(^\text{13}\). Issues of homelessness for female-headed families and accompanying children are of concern. For example, for those families with children receiving SAAP services in Victoria, the majority (78 per cent) are female headed families. In 2004-05, out of the 18,550 support periods, provided by Victorian SAAP services to families\(^\text{14}\), 14,500 support periods were provided to families headed by a female received SAAP support, a further 1,300 support periods (7 per cent) were families headed by a male and 2,750 support periods (15 per cent) were for a couple with children.

As noted above, a further issue for some families is the incidence of domestic and family violence. This has a traumatic effect both on women and children who are the subject of this violence. For instance, two thirds (66%) of all accompanying children in SAAP in 2003-4 were accompanying a female or guardian escaping domestic violence.

1.2 Whether further provisions should be made regarding public authorities’ compliance with the Charter, including regular auditing and further provision for remedies.

There are a number of practical measures which could be implemented to improve compliance with the Charter by public authorities.

Freiberg (2010)\(^\text{15}\) outlines the various forms of regulation and the tools available to government to regulate to achieve desired policy outcomes. Some of these forms of regulation do not require legislative change or court oversight. Freiberg refers to “authorisation as regulation” i.e. where a government can regulate through licensing or requiring accreditation or registration in order to be eligible to enter into a government contract. In homelessness and social housing two forms of authorisation apply; Registration with the Housing Registrar for the provision of social housing and Accreditation to the Homeless Assistance Service Standards (HASS) for providers of funded homelessness specialist services. Neither of these regulatory mechanisms requires organisations to demonstrate that they comply with the Charter, and Hanover would submit that both should. This is particularly important in those areas where agencies might exercise some form of coercion or impose a disadvantage to a client e.g. refusing service, eviction from service, entering clients’ rooms.

Of course these approaches alone are not sufficient to ensure compliance with the Charter. For example, many accredited aged care facilities have been found to be providing sub standard services.

Hanover submits that compliance with the Charter by public authorities would also be increased by allowing for select reviews or public inquires into compliance with the Charter by public authorities. It would be efficient if such inquires were to focus on those public authorities where breaches are likely to have a greater impact on individuals’ rights, such as prisons, psychiatric hospitals/ mental health service providers, housing providers and homeless support services.

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\(^{13}\) An accompanying child refers to a child who is under 18 years of age; has a parent(s) or guardian(s) who is a SAAP client; and accompanies a parent or guardian at any time during the parent or guardian’s support period; and/ or receives SAAP assistance directly as a consequence of a parent or guardian’s support period. Source: AIHW (2005) SAAP National Data Collection: Collectors Manual, July 2005, Canberra; Available: [http://www.aihw.gov.au/housing/age/ndca/collectors_manual_client_collection_oct_05_with_data_interpretation_document.pdf](http://www.aihw.gov.au/housing/age/ndca/collectors_manual_client_collection_oct_05_with_data_interpretation_document.pdf)

\(^{14}\) The total number of SAAP support periods for families represent 34 per cent of the total support periods in 2004/05 in Victoria with the remainder provided mainly to singles (60 per cent) and couples without children (4 per cent). See: AIHW (2006) Homeless people in SAAP: Victoria supplementary tables, SAAP National Data Collection Agency (NDCA) report

\(^{15}\) Freiberg. *The Tools of Regulation* 2010 Federation Press, Annandale NSW
Such a public inquiry could be conducted upon a referral from the Attorney General to the Victorian Equal Opportunity and Human Rights Commission.

Another scope for review would be to ensure that the Victorian Auditor General considers compliance with the Charter when undertaking performance audits. Guthrie and Parker (1999)\(^{16}\) report the increased incidence of performance auditing by Auditors General in Australia. This is where an Auditor General conducts an audit not only of the financial operations of a government department or program, but also the extent to which the program has delivered its stated outcomes or achieved the program goals. Given that there is a legislative requirement for public authorities to comply with the Charter, it would be quite reasonable to extend the scope for performance audits to include Charter compliance.

2. **The effects of the Charter Act on**

(a) the development and drafting of statutory provisions
(b) the consideration of statutory provisions by Parliament
(c) the provision of services, and the performance of other functions, by public authorities
(d) litigation and the roles and functioning of courts and tribunals
(e) the availability to Victorians of accessible, just and timely remedies for infringements of rights

Hanover is not in a position to make comments on items a), b) and e) above. These are outside our experience with the Charter or expertise.

(c) the provision of services, and the performance of other functions, by public authorities

The Charter has had a positive impact on the provision of services Hanover provides. The Charter reinforced to Hanover the need for considered policies and procedures in those areas of our activity which might infringe the rights of clients. In some areas the Charter meant that Hanover had to review and modify the way we operated.

Organisations working in homelessness deal with many circumstances where it is quite possible for breaches of the Charter to occur. Managing the complex nature and behaviour of some clients, combined with the need to ration a scarce resource (subsidised and supported housing) to ensure those in greatest need receive it, presents significant challenges.

By way of example, a homeless crisis accommodation centre requires the management of a large number of individuals, often with multiple and complex issues such as drug and alcohol and mental illness. In addition, many residents may have serious and violent criminal histories and organisations have no capacity (or desire) to access criminal records. Some services also offer mixed gender accommodation, creating an even more complex environment which needs to be managed. Clearly in these circumstances, rules and procedures, including the circumstances in which an eviction may occur, need to be in place so as to create and maintain a safe environment.

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It is entirely possible to do this and be compliant with the Charter. For example, Hanover ensures that all clients are given a copy of the rules on intake as well as a copy of their rights and obligations. Clients are explicitly told the circumstances when an eviction may occur, what their appeal rights and legal options are if this occurs and where and how to get advice in such circumstances. Similarly, clients are informed as to the exceptions and procedures as to when staff might enter a client’s room.

It is a perfectly reasonable expectation that community organisations delivering homelessness services should comply with the Charter in their day to day operations. The Charter rights which warrant special attention by organisations providing homeless services are:

- Privacy and reputation
- Taking Part in Public Life
- Cultural Rights
- Property rights
- Liberty and security
- Fair hearing

(d) Litigation and the roles and functioning of courts and tribunals

The Charter has provided Hanover clients and other Victorians affected by homelessness with additional protections by Courts and Tribunals, most noticeably around the issuing of notices to vacate housing.

In recent research into Ageing and Homelessness, conducted by Hanover Welfare Services one participant, "Lucy" who was 98 years of age, reported that she was given 60 days notice to vacate the house she had been renting for 21 years. She was unable to find alternative housing during this notice period. Relying on the Charter, her advocates were able to successfully argue at VCAT that the issuing of an eviction notice would constitute breach of the Charter and she was given a 30 day extension of the notice. During this time agencies were able to find housing for her.

3. The overall benefits and costs of the Charter Act

The Charter Act has had two impacts on Hanover. Firstly, as a public authority Hanover is obliged to act compatibly with the Charter. The main costs involved with this were a review of policies and practice, reprinting and updating of material and some staff training. The benefits were improved client practice (as detailed in 2 (c) above) and a closer alignment with Hanover’s core values.\(^\text{17}\)

The second impact is in providing clients with increased access to their human rights. There are some practical examples where the Charter has brought about actions to improve the human rights of clients. For some years Hanover has been concerned by the lack of participation in

\(^{17}\) Hanover values:
- integrity in all its relationships;
- honesty, accountability, courtesy, respect and a generous spirit;
- intelligence in its processes;
- a commitment to learning and improvement, open and rational decision-making and reliance on evidence;
- the intrinsic worth of each individual and the social responsibilities of living and working in our community and nation, and the development and nurturing of community participation.
voting by people experiencing homelessness and conducted research to ascertain the level of voting of Hanover clients in the 2006 and 2010 Victorian Elections and the 2007 and 2010 Federal Elections. This research consistently demonstrates a very low level of participation in voting by clients. The Charter enabled Hanover to advocate for increased measures to improve participation in voting among people who experience homelessness.

The Charter has also enabled people to argue at VCAT that eviction into homelessness would constitute a breach of their rights under the Charter. The case of "Lucy" referred to under 2 (d) above is a most obvious example where the Charter mitigated against a serious injustice, without imposing an undue hardship on other parties, including the landlord. This outcome provided sufficient time for agencies to find housing for Lucy which also provided substantial savings to government. The outcome also prevented Lucy from going to expensive crisis accommodation, the costs of extended case work, and emergency rental costs at a motel or rooming house. Given the established correlation between health and precarious housing\textsuperscript{18} and Lucy's age, it is also reasonable to assume that this outcome provided substantial savings to the health care sector.

4. Options for reform or improvement of the regime for protecting and upholding rights and responsibilities in Victoria.

In addition to the proposals outlined earlier in this submission, Hanover believes that the regime for upholding rights and responsibilities could be further improved through greater community education around human rights and the Charter. Hanover's research into community perceptions and attitudes towards people who experiencing homelessness illustrated the importance of challenging myths and stereotypes that are detrimental to the well being of people who are experiencing homelessness. Such attitudes can hinder the development of a more effective and productive conversation regarding the causes of homelessness and associated policy responses.

Hanover also believes that it is important that specific education around human rights programs should be developed and targeted to those communities at greatest risk of human rights breaches, particularly multiple breaches, (such as people experiencing homelessness, people with mental illness, prisoners) and organisations working with these communities.

Hanover supports the protection and promotion of both civil and political rights, and economic, social and cultural rights. There is an obligation to protect and promote each of the human rights contained in the international treaties, to which Australia is a signatory, in particular the two core covenants:

The International Covenant on Civil and Political Rights, and
The International Covenant on Economic, Social and Cultural Rights.

Of particular importance to people experiencing homelessness are economic, social and cultural rights. Homelessness is not just about the right to adequate housing. In their day-to-day lives rights of people experiencing homelessness are routinely breached - the right to an adequate standard of living, the right to education, the right to privacy.

Furthermore, as we recognise the interrelatedness of human rights – that is, the fact the enjoyment of some rights (such as the right to adequate housing and the right to education) may be crucial to the enjoyment of other rights (such as the right to vote and participate in public life) - the protection and promotion of all human rights is therefore vital for people experiencing homelessness.

Thank you again for the opportunity to make this submission.

Yours sincerely

[Signature]

Tony Keenan
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