

20 August 2009



The Secretary of the Committee
Standing Committee on Family, Community, Housing and Youth
PO Box 6021
House of Representatives
Parliament House
CANBERRA ACT 2600

<p>Submission No. 24 (homelessness legislation) A.O.C. Date: 20/8/09</p>

BY EMAIL - fchy.reps@aph.gov.au

Dear Secretary,

Inquiry into homelessness legislation

Youthlaw commends the Australian Government for initiating the Inquiry into homelessness legislation (*the Inquiry*), currently being conducted by the House Standing Committee on Family, Community, Housing and Youth (*the Committee*). This Inquiry is an important first step towards tackling the homelessness crisis in Australia. We hope it is also a first step towards affording some of the most disadvantaged and marginalised members of Australian society improved human rights protections, especially homeless young people.

Youthlaw is Victoria's state-wide specialist community legal centre for young people under 25 years of age. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw is co-located with seven other youth services as part of Frontyard Youth Services at 19 King St, Melbourne. Young people accessing Frontyard Services are mostly aged between 18 and 25 and are either homeless, experiencing significant family breakdown or deemed to be 'at risk'.

It is our principal submission that the Government must adopt a human rights framework to address homelessness. From our extensive legal practice experience with homeless young people we know that they are highly vulnerable and subjected to daily discrimination and less than equal treatment. A human rights framework and approach offers the best protection against this diminution of basic rights and appropriate benchmarks for service delivery.

Between April and May 2009, Youthlaw consulted with about 30 young people experiencing or at risk of homelessness about human rights in Australia as part of our response to the National Human Rights Consultation. The resounding response of participants at those consultations was that the human rights that matter most to them are economic, social and cultural rights including: the right to adequate housing; the right to access appropriate health care, the right to education; and the right to social security.

Young Peoples Legal Rights Centre
Inc No A0041616E
ABN 12 794 935 230
www.youthlaw.asn.au
Tel 9611 2412 Fax 9620 3622 Email info@youthlaw.asn.au
At Frontyard, 19 King Street, Melbourne VIC 3000

Participants viewed the quantity, quality, affordability, safety and cultural appropriateness of public housing in Australia as inadequate or very inadequate. Comments from young people included:

“Everyone should have a place to stay – a roof over their head – don’t like not having a place in life.”

“How’s it emergency housing if you have to wait for 4 years?”

“At one stage I was pregnant & homeless – told me that I’d have to wait – during the wait I got sick – pneumonia – lost baby, no housing.”

“Lack of housing – stresses homeless people out, puts at risk – many locked up or getting stabbed.”

“It’s hard to find somewhere – we looked for ages – we were in a THM [Transitional Housing] – went over the lease, the housing worker was trying to do everything – so many knock-backs.”

We therefore submit that new legislation must address homelessness within a human rights framework by incorporating legislative mechanisms based on the well established principles and norms of international human rights law. In a country that has no bill of rights and has not directly implemented ICCPR, ICESCR, or CROC the explicit acknowledgement of Australia’s international obligations to homeless people is an important reflection of the normative force of international human rights standards, and should be recognised in the legislation.

In our view, the implementation of such a framework is necessary not only in discharging Australia’s human rights obligations at international law, but as the foundation for any integrated approach to ending the homelessness crisis. The mainstreaming of human rights considerations in legislative and policy evaluation processes is increasingly common since the UN Secretary General Kofi Annan’s directive in 1997.¹ We submit that approaching the issue of homelessness within a human rights framework will create positive outcomes by:

- ensuring effective homelessness policy;
- enhancing homelessness services;
- providing an effective tool for advocacy and improved government accountability;
- community empowerment, education and a reduction of the social stigma attached to homelessness.

We further submit that a rights-based approach to homelessness of children and young people should be adopted and is beneficial because:

- it ensures the integration and inclusion of an otherwise marginalised group (children) in policy-making and evaluation;
- it does not demand uniformity of outcomes but creates a principles-based approach which ensures that the individuality, differing maturity levels and best interests of each child is recognised and considered.
- meaningful and genuine participation of homeless young people in the development of laws, policies and programs that affect them,²

The recent introduction of the *Charter of Human Rights and Responsibilities Act 2006 (the Charter)* in Victoria has resulted in ‘new ways of thinking’ within government, including giving young people greater say in decisions that affect them.³ Youthlaw is aware of a growing body of case studies from Victoria of how human rights are being used to change, not only the culture of government action and decision making in issues that affect children and young people, but also the approach of young people and their advocates. Such participation

¹ Secretary-General’s “A Programme for Reform” (14 July 1997); See also Vienna Declaration on Human Rights and Program of Action A/CONF.157/23 (12 July 1993)

² Deena R Hurwitz ‘Lawyering for Justice and the Inevitability of International Human Rights Clinics’ (2003) 28 *Yale Journal of International Law* 505, 516.

³ Victorian Equal Opportunity and Human Rights Commission, *Emerging Change: The 2008 report on the operation of the Charter of Human Rights and Responsibilities* (2009), 3.

not only enhances an individual's personal autonomy and self-confidence, it also results in more effective and targeted policies and programs.⁴

The current governing legislation, the *Supported Accommodation Assistance Act 1994 (SAA Act)*, recognises international human rights protection standards in its preamble and at a minimum this should be adopted into any new legislation. The preamble recites that Australia has acted to protect homeless people or those at risk of homelessness by recognising international standards for the protection of human rights and fundamental freedoms.⁵

However the SAA Act does not provide for any clear mechanisms by which those human rights standards must be achieved (i.e. there is no clear correlation between the funding mechanisms in the SAA Act and the need to ensure that services have the effect of realising human rights). We note that this legislation, which was developed in the 1980s, has provided an important first step in legislative protection for people experiencing homelessness; however, it is now time for the reach of this legislative protection to be greatly extended.

Further detail about the immediate importance of situating the problem of homelessness within a human rights framework, and how to implement such a framework in new legislation, is set out in the comprehensive submission of the PILCH Homeless Persons' Legal Clinic (*the HPLC*) submission. Youthlaw unreservedly endorses the HPLC's submission to this Inquiry.

Further to the HPLC's submission, we recommend that the *Supported Accommodation Assistance Act 1994 (Cth)* (SAA Act) should be amended or new homelessness legislation should be introduced to:

1. **Enshrine an enforceable right to adequate housing.** The meaning and definition of the right to adequate housing contained in international human rights law, in particular the *International Covenant on Social, Economic and Cultural Rights*, should be incorporated within the new legislation. For example, the seven indicia referred to in international human rights law when considering whether housing is adequate must be integrated within the new legislation. The seven aspects of the adequacy of housing include: (1) *Legal security of tenure*;⁶ (2) *Availability of services, materials, facilities and infrastructure*;⁷ (3) *Affordability*;⁸ (4) *Habitability*;⁹ (5) *Accessibility*;¹⁰ (6) *Location*;¹¹ and (7) *Cultural adequacy*.¹²
2. **Clearly set out the Government's responsibility for ensuring progressive realisation of the right to adequate housing.** In considering how to incorporate

⁴ Refer to Office of the High Commissioner of Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002). See also Scott Leckie 'Another Step towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights' (1998) 20(1) *Human Rights Quarterly* 81, 106; and Anne Gosley, *Stop and Listen... Don't Assume – Why the Homeless People's Association was formed* (2003) Paper presented at the 3rd National Homelessness Conference 'Beyond the Divide'.

⁵ A key feature of SAA Act, as found in 4(d), is to promote an image of people who are homeless that emphasises their human dignity and the fact that, irrespective of their current circumstances, they are entitled to opportunities that will enable them to participate fully in community life.

⁶ All persons, regardless of their form of tenure and including people in emergency, crisis or public housing, should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

⁷ An adequate house must contain certain facilities essential for health, security, comfort, nutrition and sustainable tenancies. People must have access to natural and common resources including, among others, safe drinking water, heating, lighting, sanitation, washing facilities and refuse disposal.

⁸ The cost of housing should not be at such a level that the attainment and satisfaction of other basic needs are threatened or compromised.

⁹ Housing must provide sufficient space and protect people from cold, damp, heat, rain, wind and threats to health. The physical safety of occupants must also be guaranteed.

¹⁰ Disadvantaged groups (such as the elderly, the mentally and physically ill, the disabled and the homeless) should be given priority in relation to accessing housing.

¹¹ Housing must be in a location that allows access to employment, health care, schools and other essential social services.

¹² The way that housing is constructed, the building materials used and the policies supporting these, must appropriately enable the expression of cultural identity and diversity of housing. Refer to - Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing* (1991) ¶ 8.

this responsibility within legislation we refer the Committee to the section 26 of *the Constitution of the Republic of South Africa*.

3. **Provide a model of best practice, based on human rights principles, by which Government, its agencies and service providers must abide.** Fundamental principles include; the notion of accountability, the principle of universality, non-discrimination and equality, the principles of participation and empowerment, and recognition of the interdependence and indivisibility of rights.¹³ These essential characteristics of a human rights approach operate to 'set standards'¹⁴ and function as a 'model'¹⁵ for government decision-making, law reform, policy development, programmatic design and service delivery.¹⁶
4. **Set out minimum standards, based on human rights principles of service delivery, which must be met by service providers in order to access Government funding.**
5. **Ensure Government accountability and the accountability of service providers by establishing a regulatory system that includes penalties for breach of duty, an independent complaints body and an independent overseeing body that can investigate systemic issues within the homelessness sector. Accessible for young people**

Any mechanisms of enforcement in relation to breaches of human rights need to be accessible and appropriate to, and have a timely outcome for, children and young people and need to ensure that children and young people can fully participate in enforcement processes and proceedings. Young people do not easily make complaints or seek redress because these are processes that take time and young people may not have adequate information or legal assistance.

6. **Incorporate the best interests of the child as a principle guiding both the development of homelessness policy and the delivery of homelessness services that affect children.**

While we support this Inquiry process and acknowledge that there is a great need to improve homelessness legislation, we also submit that the Government must go much further than this Inquiry process. There is an urgent need to review the impact of all laws and policies on people experiencing or at risk of homelessness in Australia.

Some obvious areas in need of review include:

- national anti-discrimination laws should prohibit discrimination based on 'social or other status', including discrimination on the basis of 'homelessness'.¹⁷
- lack of accommodation options, especially for homeless young people, resulting in a young person being refused bail and remanded. Young people on remand are often accommodated with convicted offenders and/or adult prisoners. Accordingly State and Territory jurisdictions need to extend diversionary practices that prevent homeless young people being placed on remand in custody because they cannot afford bail.
- Monitor issues between young people in public spaces and police and how policing practices impact on homeless young people.

¹³ Ibid.

¹⁴ Maria Foscarinis, 'Homelessness and Human Rights: Towards an Integrated Strategy' (2000) 19 *St Louis University Public Law Review* 327, 347.

¹⁵ Raoul Wallenberg Institute of Human Rights and Humanitarian Law, *A Human Rights Based Approach to Development* (undated), available at www.rwi.lu.se/news/pastact/hrba.pdf.

¹⁶ See also Philip Lynch 'Homelessness, Human Rights and Social Inclusion' (2005) 30:3 *Alternative Law Journal* 116, 117.

¹⁷ See further Gardner review

- Research undertaken by welfare organisations such as the Australian Council of Social Services (ACOSS), consistently shows that Youth Allowance recipients live below the poverty line.
- Lack of post-release programs for young people leaving juvenile justice or adult correctional facilities to prevent an offender becoming homeless after release.

Accordingly, we submit that it should be a recommendation of the Committee that the Australian Government review all legislation and policies that impact disproportionately and discriminatorily on people experiencing or at risk of homelessness, with a view to repealing and/or amending legislation and policies that perpetuate the cycle of poverty and disadvantage and which operate as a barrier for people attempting to transition out of homelessness.

Yours sincerely,

A handwritten signature in cursive script that reads "Ariel Couchman".

Ariel Couchman
Director
Youthlaw