

12 October 2010

Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Members,

Inquiry into Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010

The PILCH Homeless Persons' Legal Clinic (**HPLC**) and the Council to Homeless Persons (**CHP**) welcome the opportunity to provide comment on the Committee's inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* (the **HR Scrutiny Bill**) and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* (together the **Bills**).

The HPLC and CHP welcome the introduction of the Bills, as the starting point for legislative protection of Australians' human rights. However, we recommend further strengthening and specificity within the Bills to further protect and promote the human rights of Australians experiencing homelessness.

About the HPLC

The PILCH Homeless Persons' Legal Clinic (**PILCH**) is a project of the Public Interest Law Clearing House (Vic) (**PILCH**) and was established in 2001 in response to the great unmet need for targeted legal services for people experiencing homelessness. Legal services are provided by volunteer lawyers from private law firms at 13 homeless assistance services in and around Melbourne and regional Victoria. Services are provided by the HPLC at crisis accommodation centres and welfare agencies to encourage direct access by clients.

In addition to its legal assistance work the HPLC engages in community education, public policy advocacy and law reform work, while seeking to identify gaps in the delivery of services to homeless people and examining other relevant law and policy reform issues. The planning and delivery of the HPLC's services are founded on a human rights based approach, which informs the development and execution of the HPLC's casework, advocacy and capacity building, including through the informed participation of the HPLC Consumer Advisory Group (**CAG**), made up of people with lived experiences of homelessness.

About CHP

Council to Homeless Persons (**CHP**) is the peak body representing individuals and organisations with an interest or stake in homelessness in Victoria. Our mission is to work towards ending homelessness through leadership in policy, advocacy and sector development.

CHP also incorporates the Homelessness Advocacy Service (**HAS**), which provides individual advocacy to homeless people and those at risk of homelessness, secondary consultation, training and

consumer participation through the Peer Education Support Program (**PESP**). PESP is a consumer group, trained and supported to provide input into sector practice, community and government education and policy development relating to homelessness.

Homelessness in Australia

Homelessness in Australia is defined by reference to '*shared community standards about the minimum accommodation that people have the right to expect in order to live according to the conventions of contemporary life.*'¹ In Australia, the accepted minimum community standard is understood to be 'a *small rented flat*', with the minimum required amenities, such as a bedroom, living room, bathroom and kitchen.²

In broad terms, this 'cultural definition' of homelessness³ has led to the identification of three categories within the homeless population:⁴

- ▶ **primary homelessness** –people without conventional accommodation living on the streets, in deserted buildings, railway carriages, under bridges, in parks etc (*i.e.* 'rough sleepers');
- ▶ **secondary homelessness** –people moving between various forms of temporary shelter including friends, emergency accommodation, refuges and hostels; and
- ▶ **tertiary homelessness** –people living permanently in single rooms in private boarding houses without their own bathroom or kitchen and without security of tenure. They are homeless because their accommodation does not satisfy the requisite conditions of the minimum community standard.⁵ Medium to long-term residents of caravan parks would, in most circumstances, be considered to be experiencing tertiary homelessness.

The minimum community standard provides a benchmark for measuring and monitoring homelessness in the Australian context and the cultural definition of homelessness has been adopted by Australian Bureau of Statistics (**ABS**). Using this definition, on census night in 2006, the homeless population in Australia was calculated at 105,000 people: 16% of these people were experiencing primary homelessness, with the remaining percentage experiencing secondary or tertiary homelessness, including 45% staying temporarily with friends or relatives, 21% staying in boarding houses and 19% staying in supported accommodation (such as hostels for the homeless, night shelters and refuges).

Homelessness is a human rights issue

There is a clear causal link between violations of a person's human rights and their experience of homelessness.⁶ Homeless people often experience daily violations of their human rights.

Specifically, the UN Special Rapporteur on the Rights to Housing has described homelessness as '*the most visible and severe symptom of the lack of respect for the right to adequate housing.*'⁷ Importantly,

¹ C Chamberlain, *Counting the Homeless: Implications for Policy Development*, ¹Australian Bureau of Statistics (1999) 49.

² Ibid.

³ C Chamberlain and D MacKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274; and C Chamberlain and G Johnson, 'The Debate about Homelessness' (2001) 36(1) *Australian Journal of Social Issues* 35.

⁴ Ibid.

⁵ C Chamberlain, G Johnson and J Theobald, *Homelessness in Melbourne: Confronting the Challenge* (February 2007) Centre for Applied Social Research, RMIT University, 13–14.

⁶ Philip Lynch, 'Homelessness, Human Rights and Social Inclusion' (2005) 30(3) *Alternative Law Journal* 116.

⁷ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Mission to Australia (11 May 2007) A/HRC/4/18/Add.2.

there are numerous international human rights instruments, to which Australia is a party, that enshrine a right to housing or home⁸ that the Australian government is obligated to implement. However, the intersectional and interrelated nature of the causes of homelessness illustrates that homelessness is not just an issue of housing, rather it is much more complex and gives rise to multiple and interdependent human rights issues. As one person who has formerly experienced homelessness aptly said: '*homelessness is not just houselessness*.'⁹

Since the Special Rapporteur's report, the Australian Government has released its White Paper on Homelessness, *The Road Home: A National Approach to Reducing Homelessness (White Paper)*, which recognises the urgent need to address the extent of homelessness in Australia. The White Paper is an ambitious policy document that contains commendable targets and goals, including halving overall homelessness by 2020.

To work towards these commitments, the National Affordable Housing Agreement (**NAHA**) commenced in January 2009. In the NAHA the Commonwealth, along with state and territory governments, will commit \$400 million to increase the supply of social housing, \$5.2 billion over 10 years to expand and improve affordable homes in remote and indigenous areas, and \$1.1 billion over 5 years for an increase in homes and supports for people experiencing and at risk of homelessness.

Despite this laudable policy response, the right to adequate housing is not a reality for many Australians. Homeless Australians currently experience barriers to their enjoyment of many human rights, which in turn constitutes a barrier to those persons effectively dealing with the causes of their homelessness and to their ability to transition out of homelessness. In considering the human rights of people experiencing homelessness, it is critical that these complex and interrelated issues are recognised. A human rights approach to tackling homelessness must uphold the indivisibility and interconnectedness of all human rights.

A human rights approach to resolving homelessness is important as there is a strong and positive correlation between the government's respect for human rights and its '*success in addressing homelessness and poverty, with the realisation of human rights ensuring the enabling conditions of social inclusion, participation and empowerment*.'¹⁰ As one person experiencing homelessness stated: '*We need to make sure that we are protected. To know we are the only developed country in the world without this [human rights] protection; it's not good enough.*'

The Government has committed to delivering new homelessness legislation,¹¹ and in the House of Representatives' Standing Committee on Family, Community, Housing and Youth has noted that this legislation must enshrine the right to adequate housing.¹² We look forward to the introduction of this legislation, which will include mechanisms to protect and promote the human rights of homeless Australians.

⁸ Article 17 ICCPR; Article 5(e) CERD; Article 14 CEDAW; and Article 27 CRC

⁹ PILCH Homeless Persons' Legal Clinic, Green Paper submission, June 2008. Available at www.pilch.org.au/hplc.

¹⁰ Lynch, above n 6, 116. See generally, Amartya Sen, *Development as Freedom* (1999) 3 – 13; and Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2003), 48.

¹¹ Commonwealth of Australia, *The Road Home: A National Approach to Reducing Homelessness* (December 2008).

¹² House Standing Committee on Family, Community, Housing and Youth, *Housing the Homeless: Report on the inquiry into homelessness legislation* (November 2009).

The Bills

The HPLC and CHP welcome the introduction of the Bills, which seek to implement the legislative elements of Australia's Human Rights Framework announced by the Government in April 2010. It disappoints us that the Government has not shown the leadership, supported by 87% of the respondents to the public consultation process, to implement a Human Rights Act. However, the Bills will provide some mechanisms to improve Australia's systemic response to human rights issues.

If enacted into law, the Bills will enhance parliamentary scrutiny of proposed laws for compatibility with human rights, ensuring that the human rights of all persons, including the most vulnerable and disadvantaged members of society, are respected, protected and fulfilled. In this regard, the Bills represent a step forward in the domestic protection and promotion of human rights and fundamental freedoms.

The HPLC and CHP refer to and endorse (completely and without qualification) the submission of the Human Rights Law Resource Centre (**HRLRC**), entitled *Parliamentary Scrutiny and the Promotion and Protection of Human Rights - Submission to the Senate Legal and Constitutional Affairs Committee: Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010* (5 October 2010). In particular, we reinforce the issues expressed by the HRLRC regarding:

- ▶ the definition of 'human rights' must specify the substantive rights contained in all of the international human rights instruments to which Australia is a signatory;¹³
- ▶ more clearly articulating the powers and functions conferred on the Parliamentary Joint Committee on Human Rights, which should include:¹⁴
 - additional functions to inquire into any matter relating to human rights which is referred to it by resolution of either House of Parliament;
 - additional functions to monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council;
 - additional powers and working methods, as set out in the HRLRC submission;
- ▶ the need for more information regarding the nature, scope and detail of assessment to be contained in Statements of Compatibility, which in our view should include:
 - the consideration of human rights, and preparation of Statements of Compatibility, early in the policy development process;
 - reasoned Statements which include detailed and rigorous analysis of the human rights issues and interferences raised by a Bill;
 - Statements that are not be too long, legalistic or technical as this will detract from their utility in informing parliamentary dialogue about rights
 - proper consideration be given to international human rights law and the judgments of domestic, foreign and international human rights courts, bodies and tribunals; and

¹³ HR Scrutiny Bill, clause 3.

¹⁴ HR Scrutiny Bill, clauses 6-7.

- Statements of Compatibility should be tabled with the Second Reading Speech and Explanatory Memorandum of a Bill and also included in Hansard.

In our view, the Bills must be strengthened in these areas to ensure that the Bills will have real effects for the Australian community, including people experiencing homelessness.

Close and directed scrutiny of proposed legislation for compatibility with human rights will shine light on the daily struggle that people experiencing, or at risk of, homelessness face when seeking to assert fundamental rights to access food, adequate housing, employment, and to live a life free of violence and harassment. However, it is no replacement for a Human Rights Act.

Conclusion

The HPLC and CHP welcome the introduction of the Bills, as the starting point for legislative protection of Australians' human rights. However, we recommend further strengthening and specificity within the Bills to further protect and promote the human rights of Australians experiencing homelessness.

We would welcome the opportunity to discuss our submission further and are happy for it to be made publicly available.

Please contact us if you would like to discuss this submission, or the intersection of homelessness and human rights in Australia.

Yours sincerely,

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