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14 August 2009

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Committee Secretary
House of Representatives Standing Committee on Family, Community, Housing and Youth
Parliament House
CANBERRA ACT 2600
AUSTRALIA

By e-mail to: fchy.reps@aph.gov.au

Dear Committee Secretary

Inquiry into Homelessness Legislation

The Law Institute of Victoria (LIV) welcomes the opportunity to provide a written submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth on its *Inquiry into Homelessness Legislation*.

Our submission is attached. We agree to the publication of the submission on your website.

If you would like to discuss any of the matters raised in the submission, please contact Alice Palmer, Lawyer, Administrative Law & Human Rights Section on (03) 9607 9311 or by email apalmer@liv.asn.au.

Yours sincerely

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Inquiry into Homelessness Legislation

Submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth

14 August 2009

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1. Introduction and Background

1. The Law Institute of Victoria (LIV) is pleased to make this submission to the *Inquiry into Homelessness Legislation* by the House of Representatives Standing Committee on Family, Community, Housing and Youth (the Committee). The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 15,000 members.
2. The issue of homelessness is of critical concern for Victorians. In his review of the Victorian *Equal Opportunity Act 1995*, Julian Gardner outlined some of the issues facing homeless Victorians and recommended that 'homelessness' be included as one of the attributes against which discrimination is prohibited under the *Equal Opportunity Act*.¹
3. More recently in July 2009, the Victorian Government announced several initiatives aimed at improving standards for rooming houses. The LIV and others continue, however, to call for policy and legislative reform to protect the rights of people experiencing homelessness or at risk of homelessness, including those who temporarily reside in rooming houses.² The Government's announcement followed the introduction into the Victorian Parliament in June 2009 of the *Residential Tenancies Amendment (Housing Standards) Bill 2009*, a Private Member's Bill to amend the *Residential Tenancies Act 1997* to enable the prescribing of minimum housing standards by regulation.
4. We note that the Committee's terms of reference require it to 'make inquiries into the principles and service standards that could be incorporated in such legislation, building on the strengths of existing legislation, particularly the *Supported Accommodation Assistance Act 1994*', with particular attention to five matters.³ The LIV submission focuses on the first of the five matters – '[t]he principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness' – although we also address issues of relevance to the remaining four matters to be considered by the Committee.
5. While the LIV welcomes initiatives identified in the Government's White Paper on *Homelessness: The Road Home* (Homelessness White Paper),⁴ we note that there is much more to be done before those initiatives are fully developed and implemented.
6. It is our expectation that the Committee's Inquiry will inform at least one of the initiatives identified in the Homelessness White Paper, namely: '*The Australian Government will enact new legislation to ensure that people who are homeless receive quality services and adequate support*'. In particular, it was noted that:
 - 'service standards encouraging best practice and achievement of outcomes would be set out in the legislation, ensuring national consistency and quality of the services offered to people experiencing homelessness'; and
 - '[t]he best features of the *Supported Accommodation Assistance Act 1994* and the *Disability Services Act 1986* would be incorporated into new legislation on homelessness'.⁵
7. The LIV Submission draws substantially on the recommendations of the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) in response to the Government's Green Paper on homelessness, *Which Way Home? A New*

¹ Recommendation 46, *Equal Opportunity Review Final Report: An Equality Act for a Fairer Victoria* the report of Mr Julian Gardner on independent Review of the *Equal Opportunity Act 1995*, released 31 July 2008 <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebadc04fdc8945a/Final%20Version%20-%20Final%20Report.pdf>

² LIV Media Release, 'LIV Welcomes New Blitz On Sub-Standard Rooming Houses', 16 July 2009.

³ The Committee shall give particular consideration to: 1. The principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness. 2. The scope of any legislation with respect to related government initiatives in the areas of social inclusion and rights. 3. The role of legislation in improving the quality of services for people who are homeless or at risk of homelessness. 4. The effectiveness of existing legislation and regulations governing homelessness services in Australia and overseas. 5. The applicability of existing legislative and regulatory models used in other community service systems, such as disability services, aged care and child care, to the homelessness sector.

⁴ 21 December 2008 <http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Pages/default.aspx>

⁵ Chapter 4. See further Chapter 7.

Approach to Homelessness (AHRC Green Paper Submission).⁶ We have also referred to the Public Interest Law Clearing House (PILCH) Homeless Persons' Legal Clinic submission on the Green Paper.⁷ We highly commend the AHRC and PILCH Green Paper Submissions to the Committee.

2. The right to adequate housing and other human rights

8. More than a 'principle', the LIV considers that the fundamental right to adequate housing should underpin the provision of services to Australians who are experiencing homelessness or at risk of homelessness. The right to adequate housing is protected under Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), an international agreement to which Australia is a party. The United Nations Committee on Economic Social and Cultural Rights (CESCR) has stated in a General Comment on Article 11 that the right to adequate housing 'should be seen as the right to live somewhere in security, peace and dignity'.⁸
9. While the right to adequate housing is essential to protecting the rights of people experiencing homelessness or at risk of homelessness, other human rights are also significant. The Australian Human Rights Commission has noted that people experiencing homelessness are subject to multiple and 'intersectional' human rights violations.⁹
10. In addition to the right to adequate housing, human rights put at risk by homelessness include the right to privacy, the rights of families and children, the right to life, the right to liberty and security, the right to freedom of movement, the right to participation in public affairs, the right to freedom from cruel, inhuman or degrading treatment, the right to freedom from discrimination, the right to property, the right to social security, the right to the highest attainable standard of health, the right to work and the right to education. The range of human rights relevant to people experiencing homelessness or at risk of homelessness has been well documented elsewhere.¹⁰
11. In its 2009 Concluding Observations on Australia's compliance with ICESCR, the CESCR noted its concern that the incidence of homelessness has increased in Australia over the last decade. It recommended that Australia:
 - take effective measures, in line with the Committee's general comment No.4 (1991) on the right to adequate housing (art 11, para 1, of the Covenant), to address homelessness in its territory; and
 - implement the recommendations of the Special Rapporteur on the Right to Adequate Housing contained in the report of his mission to Australia (A/HRC/4/18/Add.2).¹¹
12. The LIV considers that the Australian Government should act on the CESCR recommendations. In particular, it should provide people experiencing homelessness or at risk of homelessness and others who suffer abuses of their economic, social and cultural

⁶ Submission of the Human Rights and Equal Opportunity Commission (HREOC) to the Green Paper on *Homelessness - Which Way Home?* 4 July 2008 http://www.hreoc.gov.au/legal/submissions/2008/20080704_homelessness.html

⁷ 'Righting the Wrongs of Homelessness', PILCH Homeless Persons' Legal Clinic submission to the Federal Government's Green Paper: 'Which Way Home?' 27 June 2008 <http://www.pilch.org.au/Assets/Files/Submission-Green%20Paper-27June2008.pdf>

⁸ Paragraph 7 of the Committee's general comment No.4 (1991) on the right to adequate housing (art. 11, para. 1, of the Covenant) [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)

⁹ Human Rights and Equal Opportunity Commission, *Homelessness is a Human Rights Issue* (2008) http://www.hreoc.gov.au/human_rights/housing/homelessness_2008.html

¹⁰ See e.g. the AHRC and PILCH Green Paper submissions.

¹¹ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, 22 May 2009 E/C.12/AUS/CO/4 <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc>

rights with access to an international complaints mechanism by signing and ratifying the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*.¹²

3. A National Human Rights Charter and lessons from Victoria

13. Australia does not currently have a national charter of human rights which could assist in protecting the right to adequate housing. In its submission to the National Human Rights Consultation, the LIV called on the Australian Government to introduce a National Human Rights Act that provides for the protection of all human rights and a right of enforcement and remedy.¹³
14. In contrast to the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Victorian Charter), a National Human Rights Act should protect all economic, social and cultural rights, including the right to adequate housing. Although the protection of civil and political rights and other rights protected under the Victorian Charter might provide some protections for people experiencing homelessness or at risk of homelessness (such as the right to privacy), the protection of economic and social rights under a National Human Rights Act would provide more targeted protections.
15. Despite its limited scope, the Victorian Charter has been an effective tool for protecting the rights of people experiencing homelessness or at risk of homelessness. For example, the Victorian Civil and Administrative Tribunal ('VCAT') recently held that a non-profit welfare agency acted unlawfully under the Victorian Charter in seeking to evict a young tenant from transitional housing where it was likely that the tenant would become homeless.¹⁴ VCAT found that the relevant agency had acted in way that was incompatible with the right to privacy in section 13 of the Victorian Charter and that it had failed to give proper consideration to that human right.
16. The application of the right to privacy to people experiencing homelessness or at risk of homelessness has occurred in other jurisdictions, such as the European Court of Human Rights.¹⁵
17. A National Human Rights Act could provide the overarching framework within which specific legislative reforms for people experiencing homelessness or at risk of homelessness could be introduced.

4. Legislative reform at federal, state and territory levels

18. The LIV endorses the 'whole of government' approach recommended in the Homelessness White Paper to address homelessness through a sustained, long-term effort from all levels of federal, state and territory governments. While we recognise that business, the not-for-profit sector and the whole of the community is engaged in providing homelessness services and support, it is for government to ensure that adequate resources are available to non-governmental service providers to maintain and improve those services and support.
19. The LIV considers that federal oversight of homelessness services and assistance is essential to ensuring that all states and territories are working collaboratively with the Commonwealth in the strategies that each adopts to address homelessness. A lack of

¹² See <http://www2.ohchr.org/english/bodies/cescr/docs/A-RES-63-117.pdf>.

¹³ See https://www.liv.asn.au/members/sections/submissions/20090615_65/index.html.

¹⁴ *Homeground Services v Mohamed (Residential Tenancies)* [2009] VCAT 1131 (6 July 2009). See also 'Pregnant Single Mother Avoids Eviction into Homelessness' <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/case-studies/>.

¹⁵ See e.g. *Stanková v Slovakia* [2007] ECHR 7205/02 (9 October 2007); *Connors v United Kingdom* [2004] 40 EHRR 189.

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- conformity in standards and regulation between states and territories is likely to increase the problem of homelessness as people in search of a home might move to where things may be better. This has the twin disadvantage of (1) causing people to move away from where they might otherwise wish to live and have existing support networks and (2) creating the risk of overburdening those sectors that are performing well.
20. Protecting the right to adequate housing, seen as the right to live somewhere in 'security, peace and dignity', includes preventing homelessness by addressing the risk factors that lead to homelessness. The risk factors include the lack of affordable housing, poverty, unemployment, and a lack of access to health care. It is for this reason that all providers of services to people experiencing homelessness or at risk of homelessness (e.g. unemployment, health and education services), must be engaged in legal and policy reform aimed at addressing homelessness.
 21. In the absence of a National Human Rights Act and consistent with the recommendations made in the AHRC Green Paper Submission, the *Supported Accommodation Assistance Act 1994* (Cth) (SAA Act) should be amended or new legislation should be introduced to provide people experiencing homelessness or at risk of homelessness with a right of access to services or assistance and to guarantee that emergency and supported housing fulfils adequacy requirements.
 22. In particular, the SAA Act should be amended, or new legislation should be introduced, to:
 - provide for a right to adequate housing, seen as the right to live somewhere in 'security, peace and dignity'.
 - include within a right to adequate housing, a right to emergency housing and related services for people experiencing homelessness or at risk of homelessness.
 - include national standards for adequate housing, including safety standards, which apply to all providers of services to people experiencing homelessness or at risk of homelessness (e.g. unemployment, health, education), not just those providers in the homelessness sector.
 - ensure that forced eviction from accommodation provided to people experiencing homelessness or at risk of homelessness is a measure of last resort.
 - provide for procedures for enforcement and remedies.
 - incorporate the right to adequate housing, seen as the right to live somewhere in 'security, peace and dignity', as a principle guiding the development of policy and the delivery of services to people experiencing homelessness or at risk of homelessness.
 - incorporate the best interests of the child as a principle guiding the development of homelessness policy and the delivery of homelessness services that affect children.
 23. Legislative and policy reforms must give particular attention to the needs of women, children, Australian Indigenous peoples, asylum seekers and new migrants. In providing access to housing and related services, reforms must also take account of the needs of those who are particularly at risk of being denied access to those services, such as people with a disability or people affected by mental illness.
 24. The LIV also supports national harmonisation of anti-discrimination laws. We refer the Committee to the Standing Committee of Attorneys General Anti-Discrimination Laws Harmonisation project and the National Anti-Discrimination Information Gateway.¹⁶ We believe that national anti-discrimination laws should prohibit discrimination based on 'social or other status', including discrimination on the basis of 'homelessness'.¹⁷
 25. In addition to legislative and policy reforms at the federal level and consistent with the recommendations made in the AHRC Green Paper Submission, the Commonwealth government should facilitate a review of state and territory residential tenancy and other

¹⁶ See <http://www.antidiscrimination.gov.au/>.

¹⁷ See further *Equal Opportunity Review Final Report: An Equality Act for a Fairer Victoria* the report of Mr Julian Gardner on independent Review of the *Equal Opportunity Act 1995*, released 31 July 2008 <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/resources/file/ebadc04fdc8945a/Final%20Version%20-%20Final%20Report.pdf>.

laws to ensure compliance with international human rights standards relevant to homelessness, including protection from forced evictions, and to address any disproportionate impact upon people experiencing homelessness, such as public drinking and public sleeping laws.

5. Conclusion

26. The LIV is pleased that the Government is taking steps to address homelessness. We would welcome the opportunity to review and comment on any legislative reforms proposed by the Committee following its inquiry or proposed by the Government following the release of the Homelessness White Paper.