

PROTECTING HUMAN RIGHTS IN AUSTRALIA

A REGIONAL PERSPECTIVE

**Submission to the National Human Rights
Consultation Committee**

12th June 2009

 **Ioddon campaspe
community legal centre**

A program of the Advocacy & Rights Centre Ltd

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Part A – Executive summary and recommendations

1. Executive summary

The Loddon Campaspe Community Legal Centre welcomes the opportunity to contribute to the National Human Rights Consultation. We commend the Australian Government on its initiative in commissioning the Consultation.

The Bendigo based Loddon Campaspe Community Legal Centre (**LCCLC**) is a generalist community legal service. LCCLC is committed to human rights and social justice. The Centre provides free legal assistance, undertakes community legal education and engages in legal policy and law reform work. LCCLC also provides a range of specialist services targeting unmet legal need or particularly disadvantaged communities within the region. These include services for migrants, the homeless or those experiencing homelessness, victims of family violence, and older people.

LCCLC and the PILCH Homeless Persons Legal Clinic¹ conducted two consultations with 17 people who were homeless or had been homeless to discuss their views in relation to the National Human Rights Consultation. LCCLCs work with vulnerable and disadvantaged individuals and communities, together with feedback provided during these consultations, inform this submission.

Australia has an obligation to promote and protect each of the human rights contained in international treaties to which Australia is a signatory. Evidence of breaches of human rights in Australia, particularly of the vulnerable and disadvantaged, is one factor which indicates that that Australia could be better protecting human rights.² Introducing a Human Rights Act would contribute significantly to the promotion and protection of the human rights in Australia.

A Human Rights Act should require government to assess future legislation against the human rights that they have an obligation to promote and protect. There should be avenues to make a complaint when laws or departmental policy breach human rights. A declaration that triggers a review of the law or policy should be able to be sought by people

¹ The Public Interest Law Clearing House (VIC) Inc. (**PILCH**) is an independent, not-for-profit organisation which is committed to furthering the public interest, improving access to justice and protecting human rights. The Homeless Persons' Legal Clinic (**HPLC**) is a project of PILCH. The HPLC is a specialist legal service that provides free legal assistance and advocacy to people who are homeless or at risk of homelessness within a human rights framework. <http://www.pilch.org.au/hplc/> accessed 12 June 2009.

² People who have experienced homelessness indicate that the right to be treated with dignity and respect is often breached in their interactions with Centrelink. The right to health is also breached in Australia with people unable to afford access to a Doctor and because of the lack of Doctors in regional areas. The right to a home is also breached in Australia with over 100,000 homeless people in Australia every night, the right to an adequate standard of living is also breached with Centrelink being below the poverty line. The right to live with your family is breached by Australia's restrictive laws surrounding which family members can be given visas based on family rather than skill or some other claim. The right of women and children living in domestic violence situations needs greater protection in Australia.

who are suffering breaches of their human rights. Such a declaration could be available through a range of mechanisms.

Education and community awareness programs are needed to ensure that Australia has a builds a culture of respecting human rights.

2. Recommendations

LCCLC submits that the National Human Rights Consultation Committee should recommend:

- (1) Australia should protect each of the human rights contained in international treaties to which Australia is a signatory.
- (2) In light of the failures of the current system to adequately protect human rights, a Human Rights Act should be enacted protecting the rights contained in international treaties.
- (3) A Human Rights Act should provide suitable avenues to make a complaint where human rights breaches occur. Government should be required to assess all future legislation in the light of the Human Rights Act. A declaration that something is incompatible with a human right should be available and should trigger a review of the legislation or policy in light of the Human Rights Act.
- (4) An education and community awareness program is important for the effective protection of Human Rights.

3. Endorsements

LCCLC endorses the submissions made to the National Human Rights Consultation by the Human Rights Law Resource Centre Inc and Public Interest Law Clearing House Inc.: Homeless Persons' Legal Clinic.

Part B – About this submission

4. About Loddon Campaspe Community Legal Centre

LCCLC is based in Bendigo, Victoria and is committed to human rights and social justice. It services the local government areas of Macedon Ranges, Mt Alexander, Central Goldfields, City of Greater Bendigo, Loddon and Campaspe.



The Centre is a generalist community legal service, providing free legal advice, referral and ongoing assistance to residents in a range of areas including family, consumer, debt, discrimination, family/domestic violence, crime, motor vehicle accidents, welfare rights, employment, guardianship, complaints, victims of crime and migration law.

LCCLC also provides a range of specialist services targeting unmet legal need or particularly disadvantaged communities within the region. These include services for migrants, the homeless or those experiencing homelessness, victims of family violence, and older people.

The Community Legal Centre is a partner with the PILCH HPLC and two private firms in providing Homeless Persons Legal Clinic at two locations in Bendigo.

LCCLC also undertakes community legal education and engages in legal policy and law reform work.

LCCLC and the PILCH HPLC conducted two consultations (**the homelessness consultation**) with 17 people who were homeless or had been homeless in the Loddon

Campaspe region, to discuss their views in relation to the National Human Rights Consultation. These consultations ground this submission in the lived experiences of individuals who are significantly disadvantaged and vulnerable.

The views expressed in this submission are drawn from LCCLC's experience of working with vulnerable and disadvantaged groups in our community, together with our research with people who are homeless or have previously been homeless

5. Scope of the submission

This submission is made in response to the three key questions raised in the Attorney-General's National Human Rights Consultation: Background Paper (*Background Paper*) namely:

1. Which human rights (including corresponding responsibilities) should be protected and promoted?
2. Are these human rights currently sufficiently protected and promoted?
3. How could Australia better protect and promote human rights?

This submission will focus on the human rights of the vulnerable and disadvantaged with particular reference to the views expressed directly by homeless people.

6. Structure of the submission

This submission will address each of the three questions outlined above.

Part C – Question 1: Which human rights should be protected and promoted?

7. Introduction

All of the rights in international treaties to which Australia is a signatory should be protected and promoted. However, LCCLC's work with the vulnerable and disadvantaged often exposes specific rights that require protection and promotion.

8. Which specific rights should be protected and promoted?

Australia has an obligation to protect each of the human rights contained in international treaties which Australia has signed.

Participants in the homelessness consultation identified the following rights to be of importance:

- **the right to health**
- **the right to housing**
- **the right to an adequate standard of living and**
- **the right to be treated with dignity and respect**

LCCLC works with many victims of family violence. The common rights that are in issue in these cases are:

- **freedom from torture or cruel, inhumane or degrading treatment**
- **the right to liberty, safety and security of the person**
- **children's rights**
- **women's rights**
- **the right to be treated with dignity and respect**
- **the right to life**

LCCLC also assists refugees. Our work with refugees reveals that the following rights are important for these people:

- **the right to live with your family**
- **the right to equality and freedom from discrimination**
- **the right to maintain culture and language**

- **the right to be treated with dignity and respect**

In our experience refugees appear to value human rights greatly, having left countries of origin because many of their most basic human rights have been neglected or abused, often in horrific ways.

Recommendation No. 1

That Australia protects each of the human rights contained in international treaties to which Australia is a signatory.

Part D – Question 2: Are human rights currently sufficiently protected and promoted?

9. Introduction

LCCLC commonly observes situations where people's human rights are not adequately protected. This section looks at the current protection of human rights and draws the reader's attention to failures of the current system to adequately protect human rights.

10. The current system for protecting and promoting human rights

LCCLC understands that there are some existing, albeit limited, human rights protections under the Constitution, some statutes and the common law.

The Constitution contains the following express rights:

- The right to trial by jury for indictable federal offences
- Freedom of religion
- Freedom from discrimination because of interstate residence
- Freedom of interstate trade
- Right to compensation for compulsory acquisition

There have been a number of rights implied by the High Court including:

- The separation of judicial power from executive and legislative power
- The freedom of political communication

Some human rights are protected in an ad hoc way through statute. Examples of protective statutes include:

- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Human Rights and Equal Opportunity Commission Act (Cth)

These acts only partially implement Australia's obligation under international treaties.

Common law is another avenue of human rights protections in Australia. This protection is piecemeal and inadequate.

Australia's existing human rights protections, they are failing to completely implement the human rights contained in international treaties.

11. Failure of current system to adequately protect and promote human rights

Homelessness

There are many examples of where the human rights of homeless people are not adequately protected or where people experiencing homelessness do not have the resources to access protection for their human rights.

In preparation for this submission LCCLC and the PILCH HPLC conducted two workshops with people who were homeless or who had previously been homeless. A total of 17 people attended.

Of the 17 people who attended 7 (41%) said that one of the reasons they became homeless was because of mental health issues. This raised the issue that if a right to health was adequately protected and promoted this cause of homelessness may be reduced.

When asked the question '*What is your view of the quantity, quality, affordability, safety and cultural appropriateness of accommodation and housing services in Australia?*' 10 out of the 17 participants responded they were very inadequate and 3 people said they were inadequate.

In response to the question '*What is your view of the quantity, quality, affordability, safety and cultural appropriateness of public housing in Australia?*' 8 people said it was very inadequate, and 4 people said it was inadequate. It is clear from these responses that the participants thought that the right to an adequate standard of living is not adequately protected in Australia for people who need assistance.

Concerning health care, 12 of 17 people said that they had a current health care need and 8 people said it had worsened as a result of homeless. 4 people said that their health care needs were a result of homelessness. This shows the importance of the right to an adequate standard of living and the interrelationship between adequate housing and health outcomes, namely the right to enjoy the highest attainable standard of physical and mental health.

A majority of participants (9) listed lack of money to pay for service as a barrier to health care. 7 said competing needs of basic living needs (ie food and housing) meant they were unable to afford the health care that they needed. Again, the respondents clearly did not believe that the right to an adequate standard of living is adequately promoted and protected in Australia.

A number of people raised the issue of a lack of health care providers. In regional areas there is often a lack of services compared with those provided in metropolitan areas. Even

where services are provided in regional cities, such as Bendigo, there is often large distances to be travelled in order to access these services. In promoting and protecting human rights some attention needs to be paid to ensuring that people in remote and regional areas do not have less protection or promotion of their human rights simply because they do not live in a metropolitan area.

Concerning adequate standards of living, 16 out of the 17 participants indicated that they believed that Centrelink was inadequate to meet basic needs. Participants clearly thought that inadequate Centrelink payments indicated inadequate protection of the right to an adequate standard of living.

Over half of the participants (53%) had previously had their Centrelink payment withheld. 3 (out of 17) had their payment stopped for over one month. When you take into account that Centrelink is considered inadequate, it is not likely that these individuals would have had savings to cover the period of not being paid. In situations such as this the most vulnerable in our society can be left without resources for food, housing and health care.

Another issue that was clearly raised was the right to be treated with dignity and respect when they were dealing with Centrelink. It was clearly raised by these homeless people that there was a lack of dignity and respect in how they were treated by Centrelink. The promotion and protection of this right was clearly important for these people.

76% of the participants said they had been treated in a cruel and degrading way while experiencing homelessness. Some of the stories surrounding these responses were:

- that hospitals didn't treat the person well because of their homelessness
- that police didn't believe a victim of domestic violence and were reluctant to assist her to leave the violent relationship
- that society looked down upon the homeless and issues relating to stigma of homelessness.

Refugees

LCCLC provides a Migration Agent's advice service (Paula Glassborow MARN 0745115) to Sudanese refugees in Castlemaine and Karen refugees in Bendigo. Working with refugees has shown that the right to live with your family is not adequately protected. Many of my clients want to bring their brothers, sisters and parents over to Australia but for parents there is long waiting period (approximately 10 years) to be able to come to Australia and often for brothers and sisters they need to be able to apply for a visa in their own rights. The only suitable visa is often a refugee or humanitarian visa and these visas are hard to obtain.

Family Violence

LCCLC provides a Family Violence Legal Assistance Service at the Bendigo and Maryborough Court. These services assist mainly applicants for family violence Intervention Orders. Since the commencement of LCCLC it has assisted with 701 Intervention Order cases.

The Australian Bureau of Statistics conducted a Personal Safety Survey in 2005; the findings demonstrate how widely spread the issue of family violence is:

- One in three women had experienced physical violence since the age of 15.
- Nearly one in five women had experienced sexual violence since the age of 15.
- 16% of women had experienced violence by a current or previous partner since the age of 15.
- 36% of women who experienced intimate partner violence were pregnant at the time of the violence and 17% of those women were pregnant when the violence started.³

The rights of women and children who are living in domestic violence situations also need greater protection. These people deserve support by the police and government agencies in dealing with these issues. There should be adequate resources to support women and children to be safe.

Recommendation No. 2

In light of the failures of the current system at protecting human rights a Human Rights Act should be enacted protecting the rights contained in international treaties.

³ Australian Bureau of Statistics. 4906.0 *Personal Safety Survey* (2005).
[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/056A404DAA576AE6CA2571D00080E985/\\$File/49060_2005%20\(reissue\).pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/056A404DAA576AE6CA2571D00080E985/$File/49060_2005%20(reissue).pdf) at 19 June 2008.

Part E – Question 3: How could Australia better protect and promote human rights?

12. Introduction

Australia could better protect and promote human rights. This section outlines our discussions with homeless people in regards to better protections for human rights and outlines our organisations views on how human rights can be better protected.

13. A Human Rights Act

Most participants in the homelessness consultation conducted with homeless people indicated that they believed the current overall protection of human rights was not adequate (41%) and 29% believed that it was very inadequate. 88% of participants thought the law should be changed to better protect their human rights and 100% of participants thought Australia should have a Human Rights Act. With the exception of one person (who did not answer this question) the participants thought an Australian Human Rights Act should protect civil and political rights and well as economic, social and cultural rights.

The participants believed an Australian Human Rights Act should do the following (in order of number of participants who included this in their answer):

- **Educate people about human rights (14, 82%);**
- **Ensure effective remedies are available for breaches of human rights (13, 76%);**
- **Promote human dignity and respect (12, 71%);**
- **Protect me from human rights violation by government and its agencies (12, 71%);**
- **Impose responsibilities on government to respect, protect and fulfil my human rights (12, 71%);**
- **Ensure that government are held responsible for human rights breaches (12, 71%);**
- **Protect the human rights of all people, particularly the most vulnerable members of society (11, 65%);**
- **Create a human rights respecting culture (11, 65%).**

Although all participants thought Australia should have a Human Rights Act, 11 of the participants thought that the following individually would be sufficient to protect their human rights:

- **Education and community awareness campaign about human rights;**
- **Voluntary Charter of Rights for the homeless sector**
- **Voluntary Charter of Rights for business, government and the not-for-profit sector.**

14 participants thought guidelines for government and its agencies that require that people are treated with respect and dignity.

14. Key elements of a Human Rights Act

A Human Rights Act should have a number of features:

- It should protect the human rights that Australia has an obligation to protect under international treaties.
- There should be suitable avenues to make a complaint where human rights breaches occur.
- Government should also be required to assess all future legislation in light of the Human Rights Act.

When asked what avenues of complaint should be provided the participants in the homelessness consultation gave the following responses (in order of number of participants who selected this response):

- **Complaints to court (10, 59%);**
- **Complaint to a Human Rights Ombudsman or Commissioner (10, 59%);**
- **Complaint to Human Rights Commission (10, 59%);**
- **Complaint to the relevant government department, agency or public authority (7, 41%)**
- **Complaint to a specialist Human Rights Unit within government (6, 35%)**

People should be entitled to a declaration of inconsistency when a law or a policy by a government department is breaching a human right. Once a declaration is made the law or policy should be reviewed in the light of the Human Right Act.

Recommendation No. 3

A Human Rights Act should provide suitable avenues to make a complaint where human rights breaches occur. Government should be required to assess all future legislation in the light of the Human Rights Act. Declarations of inconsistency should be available when something is breaching a human right and should trigger a review of the legislation or policy in light of the Human Rights Act.

15. Other measures necessary to ensure an effective Human Rights Act

Education and community awareness programs should occur to ensure the effectiveness of human rights protections. All participants in the homelessness consultation indicated that there was a need for education and awareness-raising within the community. The following were responses to what an education and community aware program should include:

- **Information provided by consumer advocates (12, 71%);**
- **Information provided at or by Centrelink offices (10, 59%);**
- **Information provided at or by homelessness assistance services (10, 59%);**
- **Brochures and explanatory advertising materials widely distributed at community hubs and centres (9, 53%);**
- **Information provided at or by legal aid or community legal centres (9, 53%);**
- **Community discussion forums (8, 47%);**
- **Information available on the internet (7, 41%);**
- **Advertisements or information in newspapers (7, 41%);**
- **Community service announcements on radio (7, 41%);**
- **Community service announcements on television (6, 35%).**

There should also be adequate human rights training for government agencies. Government agencies should review their policies in light of the Human Rights Act and appropriate amendments made.

Recommendation No. 4

An education and community awareness programs are important for the effective protection of Human Rights.