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Human Rights Consultation Committee
Department of Justice
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By Email: humanrights@justice.vic.gov.au

1st August 2005

Dear Committee Members,

RE: HUMAN RIGHTS CONSULTATION - COMMUNITY DISCUSSION PAPER

The Tenants Union of Victoria welcomes the opportunity to respond to the Human Rights Consultation Community Discussion Paper prepared by the Department of Justice.

We endorse the submissions made to you by the Public Interest Law Clearing House (PILCH) Homeless Persons' Legal Clinic.

However, we thought it appropriate to respond to this Discussion Paper to highlight the disadvantage experienced by low-income Victorians in the private rental market, which effects their capacity to access housing that is affordable, appropriate and secure. It is our contention that access to suitable housing contributes to a demonstrably better quality of life for citizens. Housing provides not only shelter from the elements; it is also the source of other personal and ultimately communal benefits. Given that the purpose of defining and protecting human rights is to enhance the quality of life for all, we believe that housing, and how affordable and appropriate housing is to be provided and maintained, is an issue that should be considered in any serious discussion about human rights.

Who we are

The Tenants Union of Victoria was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 30,000 private and public renters in Victoria every year. We also promote community awareness of tenancy law and issues, lobby for tenancy law reform and provide accredited training for tenancy and housing workers in Victoria.

The Tenants Union is committed to improving the status, rights and conditions of all tenants in Victoria. We represent the interests of tenants in law and policy making by lobbying government and businesses to achieve better outcomes for tenants, and

by promoting realistic and equitable alternatives to the present forms of rental housing and financial assistance provided to low-income households.

Housing and Human Rights

That access to adequate housing is a human right is expressed in a number of international instruments:

- The *Universal Declaration of Human Rights*, Article 25:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood....

- The *International Covenant on Economic, Social and Cultural Rights*, Article 11:

The States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions....

- The *Convention on the Elimination of All Forms of Discrimination Against Women*, Article 14:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas ... to ensure ... the right ... to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications....

- The *Convention on the Elimination of All Forms of Racial Discrimination*, Article 5:

States Parties undertake to prohibit and to eliminate racial discrimination ... and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, ... in the enjoyment of ... the right to housing....

- *Convention on the Rights of the Child*, Article 27:

States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.... States Parties ... shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support ..., particularly with regard to nutrition, clothing and housing.

- *Convention Relating to the Status of Refugees*, Article 21:

As regards housing, the ... States ... shall accord to refugees ... treatment as favourable as possible and ... not less favourable than that accorded to aliens generally in the same circumstances.

- *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 43:*

Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to ... Access to housing, including social housing schemes, and protection against exploitation in respect of rents.

These expressions of the human right to housing are intended to promote the right of all people to live in security, peace and dignity. It involves more than the right to access shelter and includes the following indivisible, interdependent and interrelated human rights:

- The human right to adequate shelter.
- The human right to an adequate standard of living.
- The human right to access to safe drinking water and sanitation.
- The human right to the highest attainable standard of physical and mental health.
- The human right to a safe and healthy environment.
- The human right of the child to an environment appropriate for physical and mental development.
- The human right to access to resources, including energy for cooking, heating, and lighting.
- The human right of access to basic services, schools, transportation and employment options.
- The human right to affordability in housing so that other basic needs are not threatened or compromised.
- The human right to freedom from discrimination in access to housing and related services based on sex, race, or any other status.
- The human right to choose one's residence, to determine where and how to live and to freedom of movement.
- The human right to freedom from arbitrary interference with one's privacy, family or home.
- The human right to security, including legal security of tenure.
- The human right to protection from forced evictions and the destruction or demolition of one's home including in situations of military occupation, international and civil armed conflict, establishment and construction of alien settlements, population transfer, and development projects.
- The human right to equal protection of the law and judicial remedies for the redress of violations of the human right to adequate housing.

Furthermore, human rights are only given practical effect by the enactment of laws, the development and implementation of government policy and programs, and the deployment of resources that aim to give substance to the statement of the rights. Any governmental expression of human rights must be accompanied by policy, programs and resources to ensure that the rights have substance and are not merely empty declarations.

The Rental Sector Context

The Tenants Union contends that a significant proportion of Victorian tenant households in the private rental market subsist in poverty, and that their housing costs directly contribute to their financial distress. Of the 247 208 households in the private rental market, 194 507 are in receipt of Commonwealth Rent Assistance (CRA), a supplement available to recipients of other forms of government income support intended to ease housing costs for renters in the private market. Even when in receipt of CRA, 67, 051 households still spend 30% or more of their income on housing, a proportion that is generally recognised as a key indicator of poverty for households whose income are in the bottom 40% of distribution. There are 85 186 households in the private rental market who have a weekly income of less than \$500.

Private rental is the most likely form of housing tenure for low income earners (excluding aged pensioners), particular for the young adult and middle aged demographics. According to the Australian Housing and Urban Research Institute report *Analysis of Expenditure Patterns and Levels of Household Indebtedness of Public and Private Rental Households, 1975 to 1999*, the cost of private rental has increased by 24% during the period 1975-99, and for low income households, housing costs (on average) increased from 16% to 23% of income.

These statistics demonstrate that the cost of rent is a direct cause of the housing-related poverty experienced by many low-income households in Victoria, whereby households direct such a large quantity of their income towards rent that they have insufficient income to meet the other essential costs of living after they pay their rent.

While we appreciate that a comprehensive analysis of the causes of poverty is not the purpose of this consultative process, we nonetheless believe that the Committee and the State Government need to understand the circumstances in which low income renters live, and the effect that the cost of rent alone has on their experience of poverty. In the context of a discussion about human rights, we emphasise the phenomenon of housing-related poverty because of the correlation between poverty and social exclusion, and inferior outcomes in health, education and general wellbeing.

The Tenants Union believes that measures taken to alleviate poverty will have the positive effect of increasing the opportunities and quality of life of low income Victorians. As poverty is the direct consequence of the high costs of rent for many low-income households, a realistic way to ameliorate hardship is to make housing more affordable. While we are aware that the responsibility for housing is shared by the Federal and State Governments, the State Government can assist by (among other things): investing in more social housing; encouraging the construction of more affordable and environmentally sustainable housing via planning law and targeted subsidies; legislating for minimum standards of accommodation and enhanced tenure security; and by lobbying the Federal Government to improve the CRA program.

Key Issues and Questions

1. Is change needed in Victoria to better protect human rights?

The Tenants Union contends that change is required to better protect the human right to housing in Victoria. Certain human rights are protected on an ad-hoc basis in various pieces of legislation and regulatory bodies. Enacting a Charter of Rights that includes the right to adequate housing would demonstrate the State Government's commitment to providing and maintaining housing for disadvantaged Victorians and function as a guide to government decision-making.

However, we believe that human rights are only given effect by the direct and practical implementation of policy and programs designed to effect their achievement. To this end, the enactment of any instrument including housing as a human right must be accompanied by policy, programs and resources to give the right a practical effect.

2. If change is needed, how should the law be changed to achieve this?

We support calls for the enactment of a Charter of Rights stating the commitment of the Victorian Government to achieving a more just, equitable and inclusive society. However, merely enumerating various rights will not be sufficient. We believe that further laws and regulation will be required to animate the various rights included, which may be best enacted in their own statutes or by amending existing laws.

3. If Victoria had a Charter of Human Rights, which Rights should it protect?

The Tenants Union recommends that housing be included in any Charter of Rights for Victoria. Housing is a well-established human right that has found expression in the major instruments of international law.

Furthermore, we believe that adequate and affordable housing directly contributes to the support and protection of vulnerable and disadvantaged people, which is the purpose of protecting human rights. Recent research indicates that being appropriately housed leads to a number of long term benefits for both those housed and for the community in general - we direct your attention to the Australian Housing and Urban Research Institute report, *Housing Assistance and Non-Shelter Outcomes* (AHURI, June 2003) for further detail on point.

We accept that inclusion of housing in a Charter may have resource allocation implications, and also bear on Commonwealth-State relations because the Commonwealth and the States share responsibility for housing funding and administering housing policy and programs. This should not prevent housing from being included, as effectively protecting all human rights will involve effort to alleviate poverty and disadvantage.

4. What should be the role of our institutions of government in protecting human rights?

The Tenants Union believes that all arms of government would have a role in protecting the human right to housing. Protecting this right will involve more than simply enumerating it in a Charter – giving it effect will have significant policy, program and resource allocation implications necessitating a co-ordinated approach by Parliament, the Executive and it's Departments, Authorities and Committees, and the Judiciary.

Given the magnitude of effectively protecting the right to housing, we believe that this submission is not the appropriate forum to detail functions and apportion responsibilities to the many bodies that would be involved in providing housing and protecting people's rights to housing. At this point, we would support whole-of-government auditing and reporting on compliance with human rights and the development of a Code of Conduct to guide government decision making in relation to human rights.

5. What should happen if a person's rights are breached?

The Tenants Union contends that, if the right to housing is to have any real effect, then the right must be capable of some degree of enforcement. If the statement of the right in a Charter does not itself create a cause of action, laws and regulations passed to give effect to the intention of the right could be utilised to protect citizens.

Existing laws already indirectly protect Victorians' right to housing. For example, equal opportunity legislation can be utilised by people who have been unlawfully discriminated against in the provision of rental accommodation. The entitlement to judicial review of administrative action is another instance of a law that can be employed to protect the right to housing.

6. What wider changes would be needed if Victoria brought about a Charter of Human Rights?

If a Charter of Rights is enacted, it will be necessary to undertake a comprehensive promotional and educational campaign, so that all Victorians become aware of their rights, and that Government, it's Authorities and it's service providers are acquainted with of their new compliance obligations.

We would support promotion of the Charter, and general oversight and administration of human rights, through one central agency. Currently, the Equal Opportunity Commission takes the lead in redressing and educating Victorians about discrimination and vilification, but would need to have it's legislatively defined role and resource base substantially expanded to include administration of a human rights program. Alternatively, a new body charged solely with promoting and protecting human rights could be established.

7. What role could the wider community play in protecting and promoting human rights?

The Tenants Union believes that enacting a Charter of Human Rights protecting the right to housing would be a significant symbolically, demonstrating the

commitment of the Government to achieving a more just and inclusive society. The Charter would play the central role in developing a culture of human rights in Victoria – a culture in which the importance of housing to quality of life was recognised and protected.

The role the of community in protecting and promoting human rights will depend on its awareness of human rights and the means by which breaches can be redressed. The importance of a comprehensive campaign to educate Victorians about human rights, and the benefits of a more equitable society, cannot be overstated.

8. What other strategies are needed to better protect human rights?

The Tenants Union contends that the development of an action plan to protect human rights would be desirable. This action plan would have reporting milestones factored into it, so that that the progress and success of actions associated with human rights can be measured. All stakeholders – State and local government, community groups and the business sector – should be included in this process so that the most fulsome view of improvement can be obtained.

In relation to housing, we suggest that the reporting criteria could include (among other matters):

- The number of homeless Victorians
- The number of households on the public housing waiting list
- The number of Victorians experiencing housing related poverty
- Overcrowding in both public and private market accommodation
- Standards of public and private market accommodation ie the number of properties without heating sources, without locks on windows and doors and the like.

9. If Victoria introduced a Charter of Human Rights, what should happen next?

The issue of strategies directed at protecting human rights assayed in the previous question raises the importance of monitoring, evaluation and reporting. Human rights will not be sufficiently protected by simply enacting a Charter. Policy, programs and resources must be deployed to realise rights. Regular reviews must be undertaken to ensure that strategies embarked upon have the appropriate effect.

10. Is there anything else you would like to tell us about how human rights should be protected in Victoria?

The Tenants Union contends that housing is recognised in international law as a fundamental human right, and as such should be included in any expression of human rights enacted by the State Government. However, the ‘right to housing’

actually involves a range of corollary rights that must all be protected to give the right to housing proper effect.

Translating this right into policy and programs aimed at developing and maintaining affordable and appropriate housing will involve a significant commitment of resources. But ensuring access to housing will directly and demonstrably improve the quality of life of many thousands of Victorians. One of the purposes of protecting human rights is to redress disadvantage with a view to creating a more just and inclusive society. Ameliorating the inequity engendered by a lack of affordable and appropriate housing will go a long way to achieving this vision.

The Tenants Union thanks the Committee Members for this opportunity, and hopes that our submission clarifies the full meaning of the human right to housing. If you wish to discuss this submission further, or require further information about the experience of low-income Victorians in the housing market, please contact Rebecca Harrison, Research and Policy Worker, on 9411 1410.

Yours sincerely,

Rebecca Harrison
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Tenants Union of Victoria