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Via email [humanrightsconsultation@ag.gov.au](mailto:humanrightsconsultation@ag.gov.au) and signed copy in post:

Dear National Human Rights Consultation Committee;

**A NATIONAL HUMAN RIGHTS ACT FOR AUSTRALIA**

The Tenants Union of Victoria (TUV) welcomes the opportunity to make this submission.

We endorse the Human Rights Law Resource Centre's extensive and multiple submissions and submit our own in relation to housing. We have also provided individual submissions from TUV workers who were keen to be a part of the consultative process. During the consultative process the TUV also supported and facilitated clients and users of TUV services to make their own submissions. This document is the major submission of the Tenants Union of Victoria.

The Tenants Union of Victoria (TUV) 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 18,000 private and public renters in Victoria each year. Our commitment is to improving the status, rights and conditions of all tenants in Victoria.

## 1. IS THERE A NEED FOR A NATIONAL HUMAN RIGHTS ACT?

There is a definite need for a national Human Rights Act (NHRA) because although we have the Australian Constitution 1901<sup>1</sup>, it does not cover all the human rights that are detailed in international instruments, nor those human rights that exist at state level.

State legislation has attempted to “fill the gaps” and issues that have arisen, but laws differ from each state even if they cover same or similar areas. An example is the lack of uniformity in Australian anti- discrimination laws where there is a notable disparity within state and federal laws<sup>2</sup>. Some states may have certain anti- discrimination or equal opportunity laws protecting people from discrimination due to a particular attribute – but that attribute might not be protected in commonwealth laws- nor even another state.<sup>3</sup> The myriad of acts that exist in the federal and state model of Australia means that there is confusion and sometimes little protection for the individual to address issues of human rights concerns.

The TUV submits that Australia needs a NHRA with clear directives promoting and protecting human rights. A strong and successful NHRA is one that has built into it the importance of educating people about their rights and an agency or commission that is entrusted with that responsibility.

This submission will cover the failure of the Australian government to address housing as a human right issue; the modest success of the Victorian experience with human rights legislation; the arguments for a NHRA as well as the gaps that continue to exist and need to be rectified immediately in a new Act.

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<sup>1</sup> The Australian Constitution, available on [www.austlii.edu.au](http://www.austlii.edu.au), at 31 May 2009

<sup>2</sup> For example, the Equal Opportunity Act 1995 (VIC) includes ‘attributes’ which provides protection for gender identity and sexual orientation but there is no corresponding Act at a commonwealth level.

<sup>3</sup> State laws differ greatly in equal opportunity laws, Tasmania has disability anti-vilification laws, however Victoria does not.

## **2. WHAT ARE AUSTRALIA'S INTERNATIONAL TREATY OBLIGATIONS IN RELATION TO HUMAN RIGHTS & HOUSING?**

The TUV believes that there is a need for a NHRA as Australia is the only developed democracy without robust human rights protections at a federal level. As Australia was one of eight nations involved in drafting of the Universal Declaration on Human Rights in 1948<sup>4</sup>, therefore it is extremely appropriate that we continue and prove that commitment with a NHRA.

Article 12 of the Universal Declaration on Human Rights in 1948 specifically refers to the "home"<sup>5</sup>:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Australia is a signatory to a raft of international covenants and declarations:

- The Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
- Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention against Torture (CAT)

By committing to the various treaties, we agreed in an international sphere to uphold the human rights that are set out in the documents. However, we still lag

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<sup>4</sup> [http://www.hreoc.gov.au/human\\_rights/UDHR/Australia\\_UDHR.html](http://www.hreoc.gov.au/human_rights/UDHR/Australia_UDHR.html) at 31 May 2009

<sup>5</sup> <http://www.un.org/en/documents/udhr/index.shtml> , at 31 May 2009

behind many countries in implementing international instruments into our domestic legislation. As a result, Australia has been repeatedly shamed by the many reports and observations made by United Nations Committees as to our falling behind in our obligations. See later in this paper for comments by the Special Rapporteur on Adequate Housing.

## **2.1 ICCPR V ICESCR RIGHTS**

In the discourse on 'rights', popular opinion has made distinctions between International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) rights. However, a reference to housing, home, and a standard of living - in various forms is prevalent in many international treaties and therefore needs to be implemented in our domestic laws accordingly.

TUV submits that human rights belong to all persons by virtue of being 'human'. We state that human rights are indivisible and therefore a federal HRA should include civil and political as well as economic, social and cultural rights. It becomes a matter of practicality; a person's right to privacy will be inextricably linked with the right to adequate housing. Similarly, a person who does not have shelter (ICESCR right) will be less concerned with their right to vote (ICCPR right). If rights are to be properly implemented then all rights must be protected and provision made for in a NHRA.

## **2.2 THE UNITED NATIONS AND HOUSING**

According to the United Nations Committee on Economic, Social and Cultural Rights at a minimum, housing must be affordable, accessible to disadvantaged groups, habitable, culturally appropriate, provide occupants with security of tenure and afford access to appropriate services, materials, facilities and infrastructure, including employment, health care, schools and other social facilities.<sup>6</sup>

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<sup>6</sup> CESCR, General Comment 4: The Right to Adequate Housing, UN Doc HRI/GEN/1/Rev.5 (2001) 22

The TUV supports this statement as the right to a home is more than a roof over one's head, albeit that is essential and this paper will go into further detail as to housing rights.

We support the United Nations interpretation of the human right to housing as 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, cooling 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.

### 2.3 COMPOUNDED DISCRIMINATION

The violation of the right to adequate housing may have different meanings for women and men. This has been one of the themes taken up the UN Special Rapporteur on Adequate Housing<sup>7</sup>.

Women usually bear the primary responsibility for sustaining and maintaining homes, and it is vital that this critical role is recognized and their rights advanced. Any understanding of adequate housing in relation to women must take into account the context and housing and living conditions of the community and the family in which they live. The impact of inadequate living conditions and homelessness on children therefore becomes equally important for their mothers. The lives of many women are intrinsically linked to those of their families and their children.

Homelessness for women carries great dangers. Accordingly, national Governments and the international community need to ensure that women are accorded substantive rather than illusory housing rights. Equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that deny women their rights to their natal and marital homes are critical issues. Moreover, laws and policies must be articulated and implemented in ways that recognize the specific constraints and vulnerabilities of women in

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<sup>7</sup>[https://wcd.coe.int/ViewDoc.jsp?id=1292391&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P106\\_12882](https://wcd.coe.int/ViewDoc.jsp?id=1292391&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679#P106_12882) and the reference to UN Doc. E/CN.4/2003/55. *Economic, Social and Cultural Rights, Women and adequate housing*. Miloon Kothari. p. 8 at 04 June 2009

relation to the right to adequate housing. The attainment of legal security of tenure is of critical importance to a large number of women.

The UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (the Special Rapporteur), Miloon Kothari, visited Australia in 2006 and he concluded that “Australia has failed to implement its international legal obligation to progressively realize the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country.”<sup>8</sup>

### **3. WHAT CAN A NATIONAL HUMAN RIGHTS ACT DO?**

#### **3.1 THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 VIC (CHARTER)**

In Victoria the *Charter of Human Rights and Responsibilities Act 2006* (Charter) gained assent on 25 July 2006 and became fully operational on 1 January 2008 and the effects are beginning to be felt now. It is evident of the Charter’s influence on government policy, practice and procedure with rights based language being used more frequently than pre-Charter. The TUV has had success using the Act in our casework and in advocacy.

#### ***CASE STUDY 1: The CHARTER has... PREVENTED HOMELESSNESS!***

*A transitional community housing provider who was the landlord (LL) attempted to evict two tenants (Jane and Bob)\* who were the parents of seven children who lived with the tenants. State government owned properties that are let out to persons on a ‘transitional’ basis. The LL had given Jane and Bob a ‘no reason’ notice to vacate and when asked as to why they were being evicted, the tenants were told that it was the LL ‘policies’ that persons do not stay in transitional*

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<sup>8</sup> [http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/AI\\_Australia42.doc#\\_Toc198973493](http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/AI_Australia42.doc#_Toc198973493) Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum, MISSION TO AUSTRALIA, (31 July to 15 August 2006), UN Doc. A/HRC/4/18/Add.2. para 126.

*housing beyond a certain period of time. Jane and Bob had been looking for private rental but were unable to find anything suitable for their family and were at immediate risk of homelessness.*

*The TUV made detailed submissions on behalf of the Jane and Bob, raising the Charter and in particular Jane and Bob's right to life, protection for families and children and the unlawful and arbitrary interference with the home\*\*.* Submissions were made that the housing provider was a 'public authority' and performing a function on behalf of the government and therefore must give proper consideration to human rights when making decisions that affect a persons rights.

*The LL withdrew their 'no reason' notice to vacate application and Jane and Bob could remain in their home.*

*\*The clients' names have been changed to ensure privacy.*

*\*\*It must be noted that the reference to 'home' is contained in the 'Privacy and Reputation' section of the Charter and not an express section in its own right which it ought to be.*

In Case Study 1, it is clear that having a human rights instrument benefited the tenants, however this is limited to protections for persons in Victoria and the Australian Capital Territory – which has its own Human Rights Act 2004. It must be strongly noted that these protections would not extend to other states.

The Charter places specific obligations on public authorities to act in a way that is compatible with human rights and this conduct mandate is a powerful tool in shaping government policies and in the delivery of services.<sup>9</sup> If federal public authorities were bound by a NHRA, they would have to abide by the requirements of that Act.

In Victoria, when new bills are being proposed by a Member of Parliament, they must be accompanied by a 'statement of compatibility' which details if the Bill is

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<sup>9</sup> S 38 Charter of Human Rights and Responsibilities Act 2006 VIC



compatible or incompatible with human rights<sup>10</sup>. A committee has been expressly formed to scrutinise each Bill when it comes before Parliament.<sup>11</sup>

Courts have to interpret all legislation consistently with the rights in the Charter. Similarly a federal Act should give all courts the powers to interpret all laws of the commonwealth with the rights in the NHRA, as far as possible to do so within the purpose of that particular legislation.<sup>12</sup> Limitations on a persons human rights are expressly included in the Charter with a “proportionality” test<sup>13</sup>. The TUV submits that limitations if properly used can be a good use of balancing the substantive rights.

A human rights based framework for housing will allow such to be progressively realised. Rights will be thought of and used when instilled in policy and service delivery.

Where the Charter has not had any success is - its applicability in the private sphere and as the TUV submits that human rights are inalienable and indivisible and therefore they should apply equally to all persons, not just create obligations on public authorities.

### **3.2 A DIALOGUE MODEL FOR CULTURAL CHANGE**

Without human rights protections, a government does not have the checks and balances that are needed in a democratic society and therefore if they have the balance of power they can pass legislation that curtails a persons human rights without due consideration. Examples of such has included anti- terrorism laws which passed through a previous federal parliament with little scrutiny as there was no human rights Act to which they could be measured against.

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<sup>10</sup> S 28 Ibid

<sup>11</sup> S 30 Ibid

<sup>12</sup> S 32 Ibid

<sup>13</sup> S 7 Ibid

A human rights framework influences policies and programmes. It allows for systemic change, it protects minorities but also everyone by virtue of being 'human' and it can be used to challenge barriers to social inclusion. If governments are given a pro-active objective then human rights are on the agenda first and foremost.

In Victoria, there is a definitely cultural change when approaching the notion of human rights. Government departments are to follow a conduct mandate that has processes that must consider rights in policy, in actions, before implementing. As more awareness grows, persons become aware of their rights and responsibilities.

In Victoria, the Charter is set up as a 'dialogue model' which has the lines of communication between the Parliament, Executive and Judiciary clearly demarcated with roles and expectations. The Charter is an ordinary Act of Victoria's Parliament but it is still an Act which alongside all other Acts and laws are measured. If the Supreme Court makes a declaration that legislation can not be interpreted consistently with human rights, the next step is for the relevant minister administering that Act to respond in Parliament.

...a dialogue is facilitated about the content and operation of the legislation – hence this is sometimes called the "dialogue model".<sup>14</sup>

The Charter encourages interpretation of laws with consideration to other states as well as international case law and a NHRA should look to international jurisprudence when determining housing matters.

A human rights based framework for housing will create a whole of government approach to housing to be progressively realised. Rights will be thought of and used when instilled in policy and service delivery.

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<sup>14</sup><http://www.supremecourt.vic.gov.au/wps/wcm/connect/Supreme+Court/resources/file/eb2bec4cd00e7af/Enhancing%20Australian%20democracy%20with%20a%20federal%20charter%20of%20rights%20and%20responsibilities%20Bell%20J.pdf> , p 5 at 03 June 2009

In the United Kingdom there have been many examples of housing and rights protection. The British Institute of Human Rights has documented case studies of the importance of working within a human rights framework in advocacy and service delivery.<sup>15</sup>

At the TUV, we have created workshops on using the Charter in workplaces for internal, organisational change as well as for a client's benefit. We have received positive feedback as to the effect this has had on workplace practices and clients advocacy.

We encourage the federal government to commit to working in a human rights framework and by doing so enact a federal Charter that protects and promotes our rights and responsibilities.

#### **4. HOUSING IS A HUMAN RIGHT!**

As stated earlier, we strongly support the United Nations position on the right to adequate housing and we would like to see this right reflected in a NHRA.

In Australia housing is not a human right protected at a federal level and it is only through government policies and restrictive Acts that housing is addressed. As explained earlier, we have ICESCR obligations that we are not meeting but have agreed to implement into our domestic laws.

The TUV submits that everyone should have the right to housing in so far as government progressively realises this objective. This means that measures are put in place to reach a goal of housing for all and no regressive actions are taken. Each time the Australian government cuts public housing funding or closes down

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<sup>15</sup> <http://www.bihar.org.uk/> at 01 June 2009

accommodation, we are going back when we should be going forward. In South Africa, the 'right to housing' does not mean an automatic right to a home but<sup>16</sup>:

It is the government's duty to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. The constitution allows that the right to adequate housing cannot be achieved immediately but must be achieved over time. Nevertheless government must show that it has worked effectively as possible to achieve this right.

The TUV submits that for many people, public housing is about the "landlord of last resort" as generally people do not choose to be public tenants, but circumstances force them to seek such housing. The demand for public housing is still greater than the supply, even though Australia only provides public housing to a very limited segment of the population.

In research by the Australian Housing and Urban Research Institute, public housing tenants had the lowest mean score for perceived quality of life, health status, perceived health, and employment status (i.e. they were more likely to be unemployed or outside the workforce). They had the greatest fear of crime, the highest rate of poverty, and the highest rate of anomie. They had the second highest score for social exclusion and experience of crime, and second lowest score for educational attainment.<sup>17</sup>

Private housing is equally important and the TUV submits that the NHRA should not only bind government agencies but the private housing market as well. In Australia the number of people in public housing is far lower than that in the private market and so government needs to address this with adequate legislative protections.

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<sup>16</sup> [www.un.org/ga/Istanbul+5/1-southafrica.PDF](http://www.un.org/ga/Istanbul+5/1-southafrica.PDF) at 31 May 2009

<sup>17</sup> The paragraph is taken from [http://www.ahuri.edu.au/themes/housing\\_policies\\_programs/raps1.html](http://www.ahuri.edu.au/themes/housing_policies_programs/raps1.html) at 04 June 2009

Housing stress is when more than 30% of an income is spent on rent, leaving little else for essentials such as food, transport and medical expenses. Low income people living in the private rental market, and not able to access public housing nor likely to be able to buy their own property, are more prevalent in Australia than even before. Homelessness and ownership of housing are interrelated albeit they are on opposite ends of the spectrum. As a result housing stress has become the norm, rather than the exception for many low – to middle income earners.

There are no minimum standards for private rental – low income earners are subjected to harsh rental conditions and unable to secure safe nor affordable places. The governing legislation relating to tenancy laws in Victoria is the Residential Tenancies Act 1997 (VIC) and it does not make provision for a basic minimum standard of amenities in a property. As a result the TUV has experienced situations where persons have rented a property and then realised there is no cooling/heating and are unable to get the landlord to install air conditioning as the Residential Tenancies Act 1997 (VIC) refers to a 'fault or breakdown of any essential service or appliance provided for hot water, water, cooking, heating ...'<sup>18</sup> but not to a minimum standard of amenities beyond a place that has functional capacity for water and electricity or gas. Renting a property without an air conditioner is perfectly within the Residential Tenancies Act 1997 (VIC) and there is no recourse for the renter. A NHRA with an expansive definition of the right to adequate housing could and should address these multiple deficiencies.

Where once people could think about home ownership, for many that is not even a dream with property prices being driven by a free market economy. The long term decline of public housing has created an unfulfilled gap in the market where the appropriate housing options for low income people are few and far between.

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<sup>18</sup> S 3 Residential Tenancies Act 1997 VIC

## **CASE STUDY 2: HOME OWNERSHIP TO HOMELESSNESS**

*Valerie\* had a mortgage on a property in the outer suburbs of Melbourne. She had a secure job and lived in the property on her own. A year into her mortgage she was in a terrible car accident which caused certain disabilities but she was still able to work part time. However, the pressure of mortgage payments and recurrent stress related illness from the accident meant that she was unable to maintain her position and she left the company. Valerie defaulted on the loan and moved into private rental. She had applied for public housing but was told that the wait was at least a few years and as she did not meet their 'urgent' requirements e.g. recurrent homelessness, she could be waiting for up to 12 years to be offered a place. Note – her disabilities did not require any adjustments to the property. While in private rental her landlord increased the rent every 6 months quite substantially and although this was within the landlord's right to do so under the Residential Tenancies Act 1997 (RTA) (VIC), Valerie realized that she was paying more than 35% of her income on rent and finding it hard to buy medication, food and transport expenses after paying the rent each month (note – Valerie was now experiencing housing stress). Slowly Valerie began to fall behind in her rent and was soon served with a 14 day Notice to Vacate for rent arrears. She was evicted and went to look for a new property. After repeated attempts to secure a property failed, Valerie contacted the national tenancy database NTD, which is a largely unregulated database that real estate agents use to keep track of renters and she found that her VCAT hearing and eviction had been noted on the database. Realising that she was effectively struggling to pay private rental and she had now been blacklisted, Valerie approached a homelessness agency to help her secure housing. They in turn gave her a cheque for two weeks rent and 'placed' her in a 5 bedroom rooming house in which there were 4 strangers that she would now have to live with. The agency informed her that the cheque and placement in the rooming house was the extent of their support – and as they covered quite a few surrounding suburbs, she would have to contact another agency in a different part/catchment of Melbourne for any future housing needs and move to that locality – wherever it might be.*

*After a few days in the rooming house Valerie realised that her safety was compromised, the lock on her bedroom door was broken and the rooming house manager refused to fix it (although they must under the RTA). When she asked the rooming house manager to attend to the blocked toilet she was told to leave the property and although Valerie (after experiencing the VCAT system) was somewhat aware of her rights, when she tried to raise them with the rooming house manager she was told that "there are plenty more of you out there, so get out and I will have someone in that room within an hour". Valerie left the property and through the advice of a friend arrived at a caravan park where she managed to rent a caravan as her principal place of residence.*

*Valerie is now counted in future census' as 'homelessness', Valerie was once a homeowner.*

*\*The client's name has been changed to ensure privacy.*

The above case study might sound extraordinary but it is a fact that people are placed in situations where they have no security of tenure, landlords can exploit a prejudiced rental market and the legal remedies are ineffective in protecting renters. We need a NHRA to protect persons housing and therefore human rights.

In Victoria, rooming houses are becoming more of a norm for single parents (with children), students, persons with drug and alcohol issues. Anecdotal evidence from a number of organisations as well as our own Rooming House Outreach Programme suggests that government rather than addressing the issues of rooming houses and their unsuitability as a housing option for many – continues to put Housing Establishment Fund (HEF) monies into housing agencies to place people in unsafe accommodation. The TUV conducts outreach programmes by where we have visited rooming houses in which there have been more than twelve residents living in six bedrooms and each person has paid around \$120-\$180 per person a week. Overcrowding, unsafe spaces and the exploitation of vulnerable renters is rife in private rental. The TUV submits that a NHRA would address this by sending a message to all people that housing is a human right and therefore is protected at a federal level.

In the Office of Housing Rental Report for the December 2008 quarter, In Melbourne only 6.6% of rental properties were affordable for lower income households and across Melbourne only 2.5% of one bedroom dwellings were affordable to low income singles<sup>19</sup>. The Real Estate Institute of Victoria states that

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<sup>19</sup>[http://www.housing.vic.gov.au/data/assets/pdf\\_file/0010/333379/Rental-Report\\_Dec-Q-08.pdf](http://www.housing.vic.gov.au/data/assets/pdf_file/0010/333379/Rental-Report_Dec-Q-08.pdf) at 02 June 2009

vacancy rates in Melbourne have been well below 2% since 2006 and frequently dipped to 1% - this they state does not create a balanced market<sup>20</sup>.

In Victoria 23,299 people were recorded as homeless on Census night 2006. They included those sleeping outside or in improvised dwellings, sleeping temporarily with friends or relatives, staying at caravan parks or in boarding houses, and staying in supported accommodation funded by the Supported Accommodation Assistance Program (SAAP)<sup>21</sup>.

The accepted community and census definition of homelessness includes<sup>22</sup>:

Primary homelessness: people without conventional accommodation – e.g. living on the streets, in deserted buildings, in cars, under bridges, in improvised dwellings (known as ‘sleeping rough’). Homelessness is often portrayed with images of a man sleeping on a park bench, people sleeping rough make up less than 15% of the homeless population

Secondary homelessness: people moving between various forms of temporary shelter, including staying with friends or relatives, emergency accommodation and boarding houses. These people form about 65% of the homeless population.

Tertiary homelessness: people living in single rooms in private boarding houses on a long-term basis – without their own bathroom, kitchen or security of tenure – and people living as ‘marginal residents’ in caravan parks where no person in the household is in full time employment and all persons are at their usual address’. About a quarter of homeless people are in this situation.

A lot more people fit into the category of ‘homelessness’ than many Australians realise. We need a NHRA that protects all persons and expressly those who are

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<sup>20</sup>[http://www.reiv.com.au/uploads/submissions & policy/statebudget%20submission%20v4%20020309.pdf](http://www.reiv.com.au/uploads/submissions_%20policy/statebudget%20submission%20v4%20020309.pdf) at 04 June 2009

<sup>21</sup> [http://www.chp.org.au/public\\_library/items/2008/12/00222-upload-00001.pdf](http://www.chp.org.au/public_library/items/2008/12/00222-upload-00001.pdf) at 02 June 2009

<sup>22</sup> Ibid, at 02 June 2009



counted as homeless. The right to be treated with dignity and respect is interrelated with the right to adequate housing.

## **5. THE ROLE OF COMMUNITY EDUCATION**

The TUV submits that if a NHRA is created, there is a strong need for a body to be entrusted with community education of the new Act. Experience in the United Kingdom<sup>23</sup> as well as in Victoria<sup>24</sup> strongly states that the community education role is vital in educating and empowering people about their rights.

The Victorian Equal Opportunity and Human Rights Commission has been given specific functions from the Charter to provide education about human rights and the Charter.<sup>25</sup>

Whereas community legal centres including the TUV deliver training and advocacy programmes, the outreach is limited to resources given which are consistently dwindling and therefore government needs to take a whole of Australia approach and take responsibility on government to fund and deliver human rights education. It is also important that there be an independent body to report on our human rights scorecard against the NHRA and this could be a role for the Australian Human Rights Commission or another independent statutory authority.

## **6. IN CONCLUSION**

The TUV strongly supports the creation of a NHRA and the inclusion of ICESCR and in particular housing rights in a new Act.

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<sup>23</sup> <http://www.bihhr.org.uk/sites/default/files/The%20Human%20Rights%20Act%20-%20Changing%20Lives.pdf> at 03 June 2009

<sup>24</sup> <http://www.humanrightscommission.vic.gov.au/pdf/2008charterreport.doc> at 03 June 2009

<sup>25</sup> S40 COHARA at 04 June 2009

The Victorian Charter of Human Rights and Responsibilities Act does not include an individual cause of action for a person who alleges a breach of their human rights – instead they need an existing legal complaint and “piggyback” the Charter rights on to their matter. This is an un-necessary restriction and therefore the TUV submits that an individual cause of action should be expressly created in a NHRA. This allows for a greater reach of people to be able to exercise their rights.

Critics of a NHRA have stated that it will result in vexatious litigants and legal practitioners tying up public resources – so the creation of a “lawyers picnic”, but this has not happened in Victoria<sup>26</sup> nor the A.C.T, nor even the U.K. As we have stated, the introduction of human rights legislation in Victoria has introduced a rights discourse into government and community workers language and so should in all of Australia.

A failing of the Charter is that there is no practical nor personal mechanism for addressing a breach of a persons human rights beyond a declaration by a judicial officer or parliament to address the inconsistency in that particular legislation. This means that a person can go through the processes of alleging their human rights have been unlawfully infringed upon. The TUV submits that there be an agency with powers to fine or to “name and shame” a public authority that has breached human rights. This would allow for more transparency in our democratic system of government and instil more accountability in the decision making process.

We again submit that as human rights belong to all persons, they should apply equally and therefore not only are public authorities to be bound by a NHRA, but so should be private organisations. There is no valid argument against binding private organisations and in a prosperous and progressive nation like Australia,

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<sup>26</sup> <http://www.lawyersweekly.com.au/blogs/opinion/archive/2009/02/25/the-victorian-charter-is-improving-lives.aspx> at 03 June 2009

the only deterrent to enacting far reaching human rights legislation is political goodwill.

When housing is put firmly on the agenda and all states are in agreement with the federal laws, only then can Australia be a country that respects and upholds the human rights of its people.

If you wish to meet with us or discuss this submission, please contact the writer on 9411 -1444 should you require further information.

Yours sincerely,

A handwritten signature in black ink that reads "Alyena M". The signature is written in a cursive style with a long horizontal stroke at the end.

**Alyena Mohummadally**  
Solicitor (policy)  
Tenants Union of Victoria