



homeless persons'  
legal clinic

## Submission to the Review of Identity Motivated Hate Crime

Council to Homeless Persons and  
PILCH Homeless Persons Legal Clinic

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## INTRODUCTION

The Council to Homeless Persons (**CHP**) welcomes the opportunity to make a submission to the Review of Identity Motivated Hate Crime (the **Review**). This submission is made in partnership with the PILCH Homeless Persons Legal Clinic (**HPLC**).

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

CHP also incorporates the Homelessness Advocacy Service (**HAS**), which provides individual advocacy to homeless people and those at risk of homelessness, secondary consultation, training and consumer participation through the Peer Education Support Program (**PESP**). PESP is a consumer group, trained and supported to provide input into sector practice, community and government education and policy development relating to homelessness.

HPLC is a project of the Public Interest Law Clearing House (Vic) Inc (**PILCH**)<sup>1</sup> and was established in 2001 in response to the unmet need for targeted legal services for people experiencing homelessness. HPLC provides free legal services to people who are homeless or at risk of homelessness, and aims to use the law to promote, protect and realise the human rights of people experiencing homelessness; to redress unfair and unjust treatment, to reduce the degree and extent to which people experiencing homelessness are disadvantaged or marginalised by the law; and uses the to construct viable and sustainable pathways out of homelessness.

## THE REVIEW

CHP and HPLC support the objects of the Review, including its emphasis upon whether any changes to the investigation and prosecution of hate crimes should be made to improve the experience of victims.

We particularly welcome the inclusion within the terms of reference for the review, explicit reference to the *Charter of Human Rights and Responsibilities Act 2006* (the **Charter**).

## HOMELESSNESS IN VICTORIA

Homelessness affects people from all backgrounds and all walks of life, regardless of gender or age. The most recent homelessness figures from the

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<sup>1</sup> PILCH is a leading Victorian, not-for-profit organisation that is committed to furthering the public interest, improving access to justice and protecting human rights, by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education. In carrying out its mission, PILCH seeks to: address disadvantage and marginalisation in the community; effect structural change to address injustice; foster a strong pro bono culture in Victoria; and, increase the pro bono capacity of the legal profession.

2006 census report that 122,172 people in Australia are homeless.<sup>2</sup> Of these around 23,000 are in Victoria.<sup>3</sup>

In 2007-08, more than 36,000 people in Victoria were assisted by homelessness support and accommodation services.<sup>4</sup>

#### *Definitional issues*

CHP and HPLC utilize the Australian Bureau of Statistics' (**ABS**) cultural definition of primary, secondary and tertiary homelessness, which highlights the variety of physical conditions in which those who are homeless or at-risk of homelessness are living.

This concept of homelessness be defined by reference 'to shared community standards about the minimum accommodation that people have the right to expect in order to live according to the conventions of contemporary life'.<sup>5</sup> The cultural definition of homelessness is also consistent with the definition adopted by the United Nations Committee on Economic, Social and Cultural Rights (**CESCR**), which provides in effect that a person is homeless unless he or she has adequate housing that affords the right to live in security, peace and dignity.

We also recognise the spiritual definition of homelessness encompassing separation from traditional land or family/networks,<sup>6</sup> which is specific to indigenous Australians and refugees.

The cultural definition of homelessness includes three broad categories:

- **primary homelessness** refers to people without conventional accommodation living on the streets, in deserted buildings, railway carriages, under bridges, in parks, etc (i.e. 'rough sleepers');
- **secondary homelessness** refers to people moving between various forms of temporary shelter including friends, emergency accommodation, refuges and hostels; and
- **tertiary homelessness** refers to people living permanently in single rooms in private boarding houses without their own bathroom or kitchen and without security of tenure.

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<sup>2</sup> Australian Bureau of Statistics (ABS), *Counting the Homeless 2006* (2008).

<sup>3</sup> ABS, *Counting the Homeless 2006: Victoria* (2009)

<sup>4</sup> Australian Institute of Health and Welfare, *Homeless people in SAAP: SAAP National Data Collection annual report 2007-08, Victoria supplementary tables* (2009) 5.

<sup>5</sup> Chris Chamberlain, *Counting the Homeless: Implications for Policy Development*, Australian Bureau of Statistics (1999) 49.

<sup>6</sup> See further Christina Birdsall-Jones and Wendy Shaw, *Indigenous homelessness: place, house and home* (July 2008); Keys Young, *Homelessness in the Aboriginal and Torres Strait Islander Context and its Possible Implications for the Supported Accommodation Assistance Program (SAAP)*, (1998); Paul Memmott, Stephen Long, Catherine Chambers and Frederick Spring, *Final Report: Categories of Indigenous Homeless People and Good Practice Responses to their Needs* (2003).

Definitional issues are particularly important for the Review as there is a risk that people may equate homelessness with primary homelessness only. However, less than 13 per cent of people experiencing homelessness in Victoria are 'rough sleepers', with the vast majority in other unstable and inappropriate housing such as staying with friends, couch surfing, in squats, rooming houses or hostels, and in refuges and other forms of temporary accommodation.

We submit that while rough sleepers may be at particular risk of hate crime due to their presence in public space, other locations of homelessness (particularly rooming houses, squats, etc) also increase the risk of violence, including hate motivated violence.

### **Recommendation**

**1. That the Review adopt the cultural definition of homelessness when making recommendations regarding hate crime and people experiencing homelessness.**

## **HATE CRIME AND HOMELESSNESS**

There is a lack of comprehensive research on hate crime and homelessness in Victoria. However, it is well understood that people who are homeless experience higher levels of violent crime than housed populations.<sup>7</sup>

In a United Kingdom study of homeless adults, over half reported having experienced violence in the past year, compared to just four per cent of the general population.<sup>8</sup>

A US study found that in the previous two months, 18 per cent of a homeless sample had been threatened with a weapon, 16 per cent had been beaten and 6 per cent had been sexually assaulted.<sup>9</sup>

In Australia, a study by the National Drug and Alcohol Research Centre found that over half of their sample of people experiencing homelessness (in New South Wales) reported violent victimisation in the last year, compared to the general population rate of assaults of around 1 per 1000 persons.<sup>10</sup>

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<sup>7</sup> Sarah Larney, Elizabeth Conroy, Katherine L. Mills, Lucy Burns and Maree Teesson, 'Factors associated with violent victimisation among homeless adults in Sydney, Australia' (2009) 33 (4) *Australia and New Zealand Journal of Public Health* 347.

<sup>8</sup> Tim Newburn and Paul Rock, 'Living in fear: Violence and victimisation in the lives of single homeless people. (2005). Cited in Larney et al, above n 8.

<sup>9</sup> Julie Lam and Robert Rosenheck, 'The effect of victimisation on clinical outcomes of homeless persons with serious mental illness' (1998) 49 *Psychiatr Servo* 678. Cited in Larney et al, above n 8.

<sup>10</sup> Larney et al, above n 8, 349.

It is also well understood that violence can lead to homelessness, particularly as regards sexual assault and family violence.<sup>11</sup> Homelessness itself further exacerbates risk of violence, particularly for women and young people, but also for people with mental health or acquired brain injury disabilities, intellectual disability or those who are drug dependent, or have dual diagnosis/co-morbidities.

We recognize that many of these attributes are arguably covered by the applicable provisions in the Sentencing Act 1991 (Vic) (**Sentencing Act**). However, CHP and the HPLC submit that the spatial factors associated with homelessness that increase the risk of assault or other forms of identity related crime are unique and therefore worthy of explicit recognition. These spatial factors are most obviously prevalent when a person is street homeless, but also operate in the range of emergency and temporary accommodation options that people are forced into including squats, rooming housings, hotels and hostels.

Thus regardless of whether a person is homeless *and* mentally ill, young, alcohol dependent, **homelessness itself heightens the risk of violence**; that is, the identity as a homeless person may be enough to put a person at risk of hate crime. If a person is identified by a perpetrator as having more than one attribute (homeless plus an attribute), the risk is likely to increase.

Evidence indicates:

- People who are homeless and have a mental illness are were three times as likely to be victimised than those without that disability. Symptoms such as talking to oneself and disordered behaviour may also lead to victimisation as they draw attention. Given that people experiencing homelessness spend large amounts of time in public spaces, the risk of violent victimisation may be magnified.<sup>12</sup>
- Young people's risk of physical and sexual violence is increased dramatically as a result of being homeless. A study of homeless young people in Melbourne revealed 92 per cent were scared or frightened for their personal safety and feared violent acts, and that that 76 per cent of female and 29 per cent of male respondents had been sexually assaulted since becoming homeless.<sup>13</sup> The major perpetrators of violence reported by the participants were strangers.<sup>14</sup>

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<sup>11</sup> See eg Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice? The Legal Needs of Homeless People in NSW* (July 2005) 72; Donna Chung, Rosemary Kennedy, Bev O'Brien and Sara Wendt, *Home Safe Home: The Link between Domestic and Family Violence and Women's Homelessness* (2000).

<sup>12</sup> Larney et al, above n 8, 349.

<sup>13</sup> Christine Alder, *Homeless Youth as Victims of Violence*, Department of Criminology, The University of Melbourne, (1990) 18.

<sup>14</sup> 40 per cent of all violent incidents involved a stranger. *Ibid*, 21.

Consultations undertaken by HPLC in 2009 confirm the pattern of abuse and degrading treatment while in public spaces. Participants comments included “[I was] spat on, bashed...” and “I was set on fire and pissed on by some kids...”<sup>15</sup>

In common with other forms of prejudice, not all hate based activity constitutes a criminal offence, for example verbal abuse. In common with the concept of ‘everyday racism’, people who are homeless experience this day to day victimization and abuse as part of the reality of homelessness. The law may be a blunt tool for tackling this type of mistreatment, however leadership around breaking stereotypes and increasing community awareness of homelessness must come from all arms of government.

### REPORTING OF CRIME BY PEOPLE EXPERIENCING HOMELESSNESS

It is well accepted that hate crimes generally are under-recorded by Victoria Police (**VicPol**) and under-reported by victims.<sup>16</sup> This works against concentrated policy and operational efforts to tackle these forms of crime.

In the absence of comprehensive data collection by VicPol it is difficult to assess the true extent of hate crimes against any identifiable group, including people experiencing homelessness.

Currently, homelessness is not an attribute included in the VicPol data collection (LEAP database) on bias motivated crime. This means that officers have no means of recording the crime against the person who is homeless as a bias crime, nor do they have a trigger for even asking the question.

The absence of a data collection is exacerbated by the very low rates of reporting by people who are homeless, and other categories of persons targeted by perpetrators of hate crime.

Various studies<sup>17</sup> suggest that failure to report relates directly to victim’s perception that the matter will not be taken seriously by police, or because of generally poor relations between police and the population group. Non-reporting rates of around 80 per cent amongst young people experiencing homelessness have been noted.<sup>18</sup>

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<sup>15</sup> HPLC, *Promoting and Protecting the Human Rights of People Experiencing Homelessness in Australia*, National Human Rights Consultation Submission setting out the views and comments of people experiencing homelessness about human rights in Australia (15 June 2009), 30.

<sup>16</sup> See eg Mark Sherry, *Don't Ask, Tell or Respond: Silent Acceptance of Disability Hate Crimes* (2003); Gail Mason, *Hate crime laws in Australia: Are they achieving their goals?* (2010); Liz de Rome, *Racial and Religious Tolerance Legislation: A response to the discussion paper and model bill* (undated).

<sup>17</sup> See eg Islamic Women’s Welfare Council of Victoria, *Race, faith and gender: converging discriminations against Muslim women in Victoria* (2008); Bec Smith and Shane Reside, *Boys, you wanna give me some action? Interventions into Policing of Racialised Communities in Melbourne* (2010).

<sup>18</sup> Alder reports that 80 per cent of participants had never reported violent incidents of which they were victims; and 76 per cent had not or would not report a violent incident to police. In that study, attitudes

People experiencing homelessness may have had negative experiences of police as a result of being charged or reprimanded for public space offences, such as drinking in a public place, and street offences such as begging.<sup>19</sup> During 2009 consultations into human rights, HPLC spoke to Tom, who was assaulted and thrown into the Yarra River. Tom had been drinking, and when the police arrived Tom heard a policeman say "They are all the same". Tom felt that when he gave his address as "no fixed abode" he was considered a third class citizen by the police. At this time, despite being a victim of crime (assault), Tom was arrested for being drunk in a public place. Tom's story is consistent with previous research, which indicates that harassment and targeting of homeless people by police is widespread and that most people who are experiencing homelessness are intimidated and stressed by police presence.<sup>20</sup>

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This may be exacerbated if you are young, and homeless. As noted by a young woman at a CHP youth forum in 2009:

*Police get violent with youth if you have no-one to help you. If you go to the station and you don't have an adult with you they just think you're homeless and you're shit. It's wrong.*

Additionally, victims experiencing homelessness may be reluctant to report where they are unable to provide any identification or an address for follow up if the matter is prosecuted.

## ENHANCING LEGISLATIVE PROTECTIONS

CHP and HPLC welcome the recent changes to the Sentencing Act which specify that, when sentencing, courts must consider whether offences are motivated by hate or prejudice against a particular group of people.

We note that the sentencing provision will apply whether the offence was motivated in whole or part by hatred or prejudice, and will also protect people associated with the victim. We welcome those features.

We further note that in the second reading speech for the Sentencing Act Amendment Bill 2009 (**SAAB Speech**), the Minister introducing the Bill discussed the categories of persons protected by the provisions, and made specific reference to people experiencing homelessness.<sup>21</sup> CHP and HPLC welcome this measure but believe that the Sentencing Act would be further strengthened by

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toward the police and an expectation that they would not be sympathetic were commonly claimed reasons for not reporting violent attacks: Alder, above n 14, 40-43.

<sup>19</sup> See further Beth Midgley, *Improving the Administration of Justice for Homeless People in the Court Process: Report of the Homeless Persons' Court Project* (2004).

<sup>20</sup> *Ibid*, 24.

<sup>21</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 17 September 2009, 3358 (Rob Hulls, Attorney-General).

the inclusion of a non-exhaustive list of social groups protected by the provision, and that such as list should include people experiencing homelessness.

The Sentencing Advisory Committee argued in their report to the Attorney-General that a list should not be included on the basis that discretion should remain with the judiciary.<sup>22</sup> CHP and HPLC note that sentencing judges have long had such a discretion (to order an increased penalty where it has been established that the offence was motivated by hate or prejudice) but have generally failed to apply it.

We consider that increased specificity in the legislation would promote judicial understanding of the hate and prejudice against people who are homeless, and promote a more sustained and comprehensive response when sentencing. This in turn would send a clearer message to the community that such crimes will not be tolerated.

#### **Recommendations:**

- 2. That the Sentencing Guidelines be amended to include reference to the categories of persons identified in the SAAB Second Reading speech, including specific reference to homelessness as an attribute attracting protection under the provisions.**
- 3. That the *Sentencing Act* be further amended to include a non-exhaustive list of social groups protected, and that such a list specifically include people experiencing homelessness.**
- 4. That any civil or criminal law legislative responses recommended by the Review specifically include protections for people experiencing homelessness.**
- 5. That existing social issues awareness education programs undertaken by the Judicial College of Victoria be enhanced to specifically include homelessness and hate crime awareness education.**

## **IMPROVING EXPERIENCES OF VICTIMS THROUGH EFFECTIVE POLICING**

As noted above, one of the major barriers to understanding and responding to hate crimes is under-reporting by victims. This may be intensified where there is a negative history of individual interactions with police but also goes to more systemic factors, which may further serve to undermine community relations.

We note in particular the enactment of the *Summary Offences and Control of Weapons Acts Amendment Act 2009 (SOCW Act)*, which provides for extensive move on and stop and search powers, in contravention of the rights contained in the Charter. Our organizations have previously made submissions on the SOCW

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<sup>22</sup> Sentencing Advisory Council, *Sentencing for offences motivated by hatred or prejudice* (July 2009) 5. See also Victoria, *Parliamentary Debates*, Legislative Assembly, 24 March 2005, 433 (Rob Hulls, Attorney-General).

Act, expressing our deep concern in regards to the disproportionate impact the provisions will have upon people experiencing homelessness, in particular young people and rough sleepers.<sup>23</sup>

We include reference to the SOCW Act in this submission as an example of a systemic driver of poor relations between police and people who are homeless. In the context of this and other aspects of the criminal law, including the continued criminalization of begging,<sup>24</sup> it is difficult to build relationships of trust so that victims of hate crime on the basis of homelessness will come forward.

However, there are options that could be pursued, building on local initiatives that improve relationships with VicPol. This could include the development of state-wide protocols on policing and homelessness, in particular reviewing the the *Victorian protocol for people who are homeless in public places*<sup>25</sup> developed for the Commonwealth Games. This would be consistent with VicPol's strategic focus on 'connecting the community'.<sup>26</sup>

Further, training of police (both as recruits and through in-service) should include homelessness awareness and rights based policing methods with this community. Such training should be designed and delivered in partnership with homelessness organizations (including CHP and HPLC) and have a clear consumer focus.

Such education would improve police and homeless relations generally, and alert police officers to be mindful that offences against a person experiencing homeless may in whole or part be motivated by hatred or prejudice. Enhanced understanding by police of the nature of homelessness is also likely to result in more consistent treatment generally, and specifically around hate crime, in much the same way as the culture of policing has shifted in regards to family violence. However, for this to occur, sustained and comprehensive leadership within VicPol will be required.

## Recommendations

**6. That Victoria Police develop a statewide protocol on policing and homelessness, in partnership with the homelessness sector and homeless consumer representatives.**

<sup>23</sup> See HPLC submission dated 20 November 2009 (available online at [http://www.parliament.vic.gov.au/sarc/Alert\\_Digests\\_09/Submissions/summary%20offences%20-%20pilch.pdf](http://www.parliament.vic.gov.au/sarc/Alert_Digests_09/Submissions/summary%20offences%20-%20pilch.pdf)) and CHP submission dated 19 November 2009 (available online at [http://www.parliament.vic.gov.au/sarc/Alert\\_Digests\\_09/Submissions/Summary%20Offences%20-%20Council%20to%20homeless%20persons.pdf](http://www.parliament.vic.gov.au/sarc/Alert_Digests_09/Submissions/Summary%20Offences%20-%20Council%20to%20homeless%20persons.pdf)).

<sup>24</sup> See further HPLC, *We Want Change: Public Policy Responses to Begging in Melbourne* (2005).

<sup>25</sup> Available online at <http://www.yarracity.vic.gov.au/council/Meetings/pdf/minutes06/Mins21Feb/10.2%20ATT1-2.pdf>.

<sup>26</sup> See Victoria Police, *The Way Ahead strategic plan 2008-13* (2008).

**7. That existing social issues awareness education undertaken in police training, and through in-service education be enhanced to specifically include homelessness and hate crime awareness education. Such education should include training about the nature of homelessness, causes of homelessness, pathways out of homelessness and effective communication with people experiencing homelessness.**

**8. That the VicPol LEAP database be enhanced by including a specific flag for homelessness when recording bias-related crime; and that VicPol officers be trained to identify and record incidents on that database where hatred or prejudice against a homeless persons was a motivating factor.**

### **THIRD PARTY REPORTING**

Potentially third party reporting to the Victorian Equal Opportunity and Human Rights Commission, and other agencies could help to encourage both victims and witnesses to hate crimes perpetrated against homeless people, to come forward and report incidents.

However, for this to be a useful intervention consultative research with homeless consumers (and other communities affected by hate crime) would need to be undertaken to determine the efficacy and design of this type of reporting mechanism. We note for example the work undertaken in New Zealand in directly consulting with communities about the design of third party reporting systems.<sup>27</sup>

We also acknowledge the wealth of experience in Gay, Lesbian, Bisexual, Transgender and Intersex (**GLBTI**) communities regarding third party reporting, in particular the work of Project Respect, and we would encourage the Review to consider lessons from these initiatives. However, we note that each community of interest, including people experiencing homelessness, will have unique needs in regards to third party reporting.

### **Recommendations**

**8. That the Victorian Equal Opportunity and Human Rights Commission be resourced to undertake consultative research into the design and efficacy of third party reporting mechanisms.**

**9. That such research include consultation with and active participation of homelessness organizations and consumers.**

### **CONCLUSION**

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<sup>27</sup> Debbie Khoner, *Towards a Reporting System for Racist Incidents in Nelson/Tasman: Diverse Communities Speak* (2009).

The Review of hate crime legislative and operational responses provides a timely opportunity to enhance and protect the rights of people experiencing homelessness.

Current protections under the *Sentencing Act 1991* need to be maintained and enhanced through improved legislative drafting, judicial and police education and through effective consultation with people who are homeless about what works and what doesn't when it comes to protecting their safety, including use of third party reporting.

People who are homeless, in common with all other Victorians have a right to live free from violence, and have protection under the law. They also have a right to effective and responsive policing. The review provides a unique opportunity to make a significant difference to the lives of people by making recommendations across the justice system, including Victoria Police to assist in reducing the over-representation of this population group amongst those subject to violence, including hate motivated violence.

CHP and HPLC welcome the opportunity to make this submission, and invite you to meet directly with homeless consumers in a face to face consultation, at a time and venue of your convenience.

If you have any queries regarding this consultation, and to arrange a face to face consultation with homeless consumers, please contact Michelle Burrell (CHP) on 9419 8699/[michelle@chp.org.au](mailto:michelle@chp.org.au) or James Farrell (HPLC) on 8636 4410/[james.farrell@pilch.org.au](mailto:james.farrell@pilch.org.au).