

STREET RIGHTS

newsletter of the pilch homeless persons' legal clinic
issue 57 | january 2010



Q&A

Nicole Reid
Minter Ellison



What inspires you to volunteer as an HPLC lawyer?

My involvement with the HPLC provides me with a great opportunity to provide direct help to people who otherwise may not find legal assistance. I think that, even when the legal problems that our clients have may be relatively small, the fact that we are both willing to listen and able to help achieve a good outcome can assist a client to take other positive steps in his or her life. It is also a great way to build connections with the other lovely people who are part of the Minters HPLC team, as well as people involved at PILCH and other firms.

What do you do when you're not being a lawyer?

I am one of the many singers in a band called The Rebelles. We call ourselves the world's biggest girl group, and nobody has contradicted us yet! They are a wonderful bunch of people and performing with them is a lot of fun. I also enjoy cooking, eating the results of the cooking and curling up on the couch with a good book.

Following the release of the Federal Government's White Paper on Homelessness, all states in Australia are required to develop policies to help meet the government's commitment to halve homelessness by 2020.

In Victoria, the Government is working to create a new Homelessness 2020 strategy.

The Government released a discussion paper, which talks about some of the important 'guiding principles' for addressing homelessness in Victoria. These include:

- homelessness and social inclusion
- prevention and early intervention
- whole of government approaches
- focus on the individual

The PILCH Homeless Persons' Legal Clinic (HPLC) responded to the Government's discussion paper. The HPLC agreed that the national goals for reducing homelessness require a broader 'whole of government' response than that afforded by the current specialist homeless service system – that is, homeless services can't operate by themselves, and they have to work better with other services, like health services, Centrelink, courts, Government departments, and similar services.

We argued that there are two critical strategies and actions that should be incorporated into the Homelessness 2020 strategy:

1. The Victorian government needs to recognize that homelessness as a human rights issue

2. The Victorian government must fulfill Victorians' right to adequate housing

Human rights are critical values in addressing disadvantage, and we think that these values should be a core part of the Homelessness 2020 strategy. The Homelessness 2020 strategy should be built on respect for and commitment to human rights.

Our Consumer Advisory Group (CAG) also met with the Government officials who are developing the Homelessness 2020 strategy. The CAG discussed the role of case managers, trying to establish 'one stop shops' (and how difficult this can be with inexperienced or under-trained staff), the availability and standard of Victoria's public and social housing, the importance of a homelessness ombudsman that people can complain to, and the idea of having all information stored in a central place that any service can access (which we think is a bad idea).

From here, the Government will develop a draft strategy. We'll be working with Government to make sure that they listen to the stories of people who have experienced (or still experience) homelessness – we'll have some more information about this in our next edition of StreetRights.

After the draft strategy is released, and people have the opportunity to comment on it, the Government will adopt a final strategy, which will guide the way it responds to homelessness. Hopefully, it will be a more human rights-based approach, that will respect the human rights of people experiencing homelessness.

Random police searches in ‘designated areas’

Recent changes to the *Control of Weapons Act 1990 (Vic)* mean that police now have the power to stop and search people in ‘designated areas’ without a warrant or reasonable suspicion.

What can police do?

Police can stop and search you, your belongings and your vehicle for weapons if you are in a public place within a ‘designated area’. Police do not need a warrant and can detain you for as long as necessary to conduct the search. Police can seize any weapons that they find on you. Police can also strip search you if needed, but as a last resort.

The police can declare any public area a designated area if:

- More than one violent incident involving weapons occurred in the area in the last 12 months.
- An event will be held in the area and violent incidents involving weapons occurred when the event was held before.
- Police believe that a violent incident involving weapons is likely to happen in an area.

A place can only be declared a designated area for up to 12 hours.

What do police have to do before they search you?

- Tell you that they are going to search you, or your vehicle, for weapons and that they are allowed to do so under the *Control of Weapons Act*.
- Give you a search notice that explains that you are in a designated area, that police are allowed to search you and that it is an offence to obstruct or hinder that search.

- If you ask, tell you or write down their name, rank and place of duty. Show you identification if they are not in uniform.

What does a search involve?

Police will usually start with an ‘electronic device’ search by running a metal detector over your outer clothing. If the police think that you are concealing a weapon, the police can:

- Ask you to empty any bag or receptacle

that you have and search through its contents.

- Ask you to turn out your pockets, pat down your pockets and search through your pockets.
- Conduct an ‘outer search’ by running their hands over your clothing and asking you to take off your outer clothes like your coat, jacket, shoes, hat or gloves. Police can then pass a metal detector over you again and search the outer clothes that you took off by looking at the inside and outside of those clothes, patting them down and running a metal detector over them.

When the police conduct an outer search, they must:

- Tell you that you must take off your outer clothing and why they think you need to.
- Ask you for your cooperation and conduct the search as quickly as possible.

Strip searches

After these searches, if police have reasonable grounds to think that you have a concealed weapon and it is serious and urgent enough, they can conduct a strip search which involves:

- Asking you to come to a private area nearby.
- Asking you to take off all of your clothes and examining your body by sight.
- Searching the clothes that you took off by looking at the inside and outside of those clothes, patting down the clothes and running a metal detector over those clothes.

Before the police conduct a strip search, they must:

- Tell you their name, rank and place of duty or give it to you in writing if you ask.
- Show you identification if they are not in uniform.
- Tell you that you will need to take off your clothes and why they think it is required.

When the police conduct a strip search, they must:

- Conduct the search in a private area as

quickly as possible.

- Avoid unnecessary force, not touch you to search you and must not search your body cavities.
- Use a police officer of the same sex to conduct the search, not search you in the view of a person of the opposite sex and have as few people as possible present.
- Only ask you to remove as few clothes as necessary to conduct the search.
- Allow you to dress as soon as the search is finished.
- Preserve your dignity and self-respect.

What can police take from you?

Police can seize weapons that they find on you when they search you. This includes weapons like swords, guns, knives, knuckledusters, martial arts equipment, spear guns and nail guns. Weapons also include dangerous objects like broken bottles, sharpened sticks and cricket bats with nails hammered into them. Police can also seize, and charge you for, anything else illegal that you have on you like drugs or graffiti implements. Special rules for children and intellectually disabled people

If police reasonably believe that a person that they want to search is either a child or an intellectually disabled person, then they must conduct the search with the person’s parent or guardian present. If the person does not want to be searched in front of their parent or guardian, or if a parent or guardian is not present, then the police must conduct the search in the presence of an independent person who can represent the child, or intellectually disabled person’s interest.

When the police conduct search on someone they suspect is a child or is intellectually disabled, they must conduct the search in the presence of either a parent or guardian, or an independent person who can represent the child or intellectually disabled person.

More information

For more information please contact the HPLC on 1800 606 313.

Severe Substance Dependence Treatment Bill 2009

The *Severe Substance Dependence Treatment Bill 2009*, recently brought before the Victorian Parliament, was introduced to allow people with a severe substance dependence to be detained and treated where this is necessary to save the person's life or prevent serious damage to the person's health.

The HPLC wrote to the Scrutiny of Acts and Regulations Committee to express concern that parts of the Bill are incompatible with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*. The Bill potentially limits several human rights, including the right not to be subjected to medical treatment without consent, freedom of movement, liberty and security of the person, fair hearing and equality.

The HPLC is particularly concerned that the Bill may disproportionately impact people experiencing homelessness, who may suffer from substance dependence. Between March and May 2009, the HPLC held 18 workshops at homelessness specific service providers in Victoria to ask people experiencing homelessness what they think about human rights in Australia. During the consultations many participants talked about the significant difficulty they had accessing voluntary treatment and rehabilitation programs.

Our letter to the Scrutiny of Acts and Regulations Committee highlighted studies about substance abuse and homelessness that have found that for homeless substance users, substance use often occurs as a result of homelessness, as a way of dealing with an unpleasant and stressful environment. We believe that involuntary treatment will do little to address substance abuse – especially when the treatment is given in isolation from follow up support services, and without considering what the underlying causes of the substance abuse may be.

The HPLC has urged the Government to commit resources to funding voluntary alcohol and drug treatment options that provide holistic treatment and ongoing support for people with substance abuse issues, including people experiencing homelessness.

HPLC good news stories

The Smiths* approached HPLC lawyers because the Director of Housing (DOH) had made an application for an Order of Possession over their rental property. The application alleged breaches of a Compliance Order that the Smiths and their family were subject to. If the DOH's application were granted, it would have meant that the Smiths and their children would be evicted from their home of almost 10 years, exposing them to a serious risk of homelessness.

HPLC lawyers contacted the DOH to obtain the evidence forming the basis of the DOH's application for the Order of Possession. The DOH informed HPLC lawyers that their policy is to provide such evidence at the hearing itself, and not before the hearing.

A hearing was held and HPLC lawyers argued that the DOH's failure to provide the evidence it was relying on did not accord with the Government's 'Model Litigant' policy, and that it breached the Smiths' right to a fair hearing under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* because they were not made aware of the case they had to answer to.

VCAT granted Orders requiring the DOH to provide the evidence being relied on by the DOH and adjourning the hearing until such evidence was provided to us.

In response to these Orders, the DOH withdrew the application for an Order of Possession over the Smiths' rental property and has agreed to seek an alternate resolution by meeting with the Smiths. The Smiths are delighted with the result and look forward to remaining in their home.

* Name has been changed

Subscribe

Please contact 1800 606 313 or hplc@pilch.org.au to subscribe, or to have your say.

The HPLC provides free legal advice at these locations and times:

Melbourne Citymission
214 Nicholson Street
Footscray 3011
Mon: 10:30am - 1:00pm
Footscray train station - Tram 82 (Droop St)

Ozanam House
179 Flemington Rd
North Melbourne 3051
Tues: 10:00am - 12:00pm
Flemington Bridge train station
Trams 55, 59, 68 (Flemington Rd)

Urban Seed (Credo Café)
174 Collins St, Melbourne 3000
(Approach via Baptist Pl, off Little Collins)
Tues: 12:00pm - 1:00pm

St Kilda Crisis Contact Centre
(for women and their accompanying children)
29 Grey St
St Kilda 3182
Tuesdays 12pm - 3pm
Trams 79, 96, 112

Flagstaff Crisis Accommodation
9 Roden St,
West Melbourne 3003
Tues: 1:00pm - 2:30pm
North Melbourne train station - Tram 57
(Victoria Street)

Salvation Army Life Centre
69 Bourke Street
Melbourne 3000
Tues: 12:30pm - 2:00pm

The Lazarus Centre
203 Flinders Lane
Melbourne 3000
By appointment - call 9639 8510

Hanover Southbank
52 Haig St, Southbank 3205
Wed: 1:15pm - 3:00pm
Southern Cross train station - Tram 112
(Clarendon Street)

HomeGround Housing
1A/68 Oxford Street
Collingwood 3066
Thurs: 12:00pm - 2:00pm
Collingwood train station - Tram 86 (Smith Street)

VACRO
116 Hardware Street
Melbourne 3000
Thurs: 1.00 - 3.00pm
Melbourne central station - Tram 19, 57 and 59
(Elizabeth Street)

Koonung Mental Health Clinic
Friday 1pm - 3pm
Level 1, 43 Carrington Road
Box Hill 3128
Ph: (03) 9843 5800

The Big Issue
148 Lonsdale Street
Melbourne 3000
Fri: 2pm - 3pm

St Luke's Anglicare
175 Hargreaves Street, Bendigo
Every Friday, 10am - 12pm

PILCH
Level 17, 461 Bourke Street
Melbourne, VIC 3000
(03) 8636 4408 or 1800 606 313
www.pilch.org.au