

# STREET RIGHTS

NEWSLETTER OF THE PILCH HOMELESS PERSONS' LEGAL CLINIC

Edition 25 – March 2007

## **Where in the world is Kristen Hilton?**

This month Kristen, Coordinator of the HPLC, is in Geneva attending the 4<sup>th</sup> session of the UN Council for Human Rights as a representative of the National Association of Community Legal Centres (NACLC). As an NGO representative Kristen will be attending various official sessions and parallel NGO forums to try to raise relevant issues among the international human rights community and contribute where possible to the formation of recommendations and resolutions to be put to the Australian government.

On behalf of the NACLC, Kristen also submitted a written statement to the Human Rights Council Secretariat which was endorsed by numerous NGO's across Australia. The statement outlines specific issues in relation to housing and homelessness and makes recommendations for reform. It is hoped that Kristen will be able to reiterate the findings of the UN Special Rapporteur for Adequate Housing and draw attention to the plight of homeless people and people at risk of homelessness in Australia.

The Statement highlights the significant gap existing between Indigenous and non-Indigenous Australians relating to standards of living and health, political participation, the right to self-determination, the administration of justice, land rights, and access to adequate housing and education.

The Statement also recommended:

1. that a National strategy for the prevention of homelessness and provision of affordable housing is developed in accordance with the right to an adequate standard of living;
2. Reform of social security legislation to increase the availability of social security payments to all people who experience a loss of income beyond their control or who require income for a dignified human life; and
3. amendment of federal and state anti discrimination laws to include 'social status' as an attribute on the basis of which discrimination is prohibited.

The Statement seeks to draw attention to the fact that the absence of enforceable human rights protection mechanisms creates a barrier to the realisation of rights under treaties and covenants to which Australia is a signatory.

Kristen is having a fascinating time, taking on board many ideas and insights. Next stop: London!

## **Historic Ruling in US Homelessness Case**

*An Article by Katie O'Bryne*

The judgment of a recent US case of *Jones v City of Los Angeles* 2006 WL 988301 (9<sup>th</sup> Cir. 2006) has been hailed as a landmark decision by homelessness advocates. In the case, six homeless plaintiffs successfully challenged the enforcement of a LA ordinance that makes it an offence to sit, sleep or lie down in public spaces throughout the city.

The handing down of the decision is a crucial step in the promotion and protection of the human rights of homeless people in the US, which may yet have wider ramifications.

### **The Facts**

Many US cities have passed local ordinances making it unlawful to sleep, eat, sit or beg in public spaces. The plaintiffs in *Jones* were arrested for sleeping or resting on the footpath in alleged violation of Ordinance 41.18. Such a violation is punishable by a fine of \$1000 and/or six months' imprisonment.

### **The plaintiffs' case**

The plaintiffs sued LA and members of the police force, arguing that the ordinance breached their Eighth Amendment right under the US Constitution to be free from cruel and unusual punishment.

At the trial, the District Court rejected the plaintiffs' argument. However, on appeal the decision was overturned, concluding that unlimited enforcement of the ordinance against homeless persons in LA violated the Eighth Amendment.

The Ninth Circuit Court of Appeals found that involuntariness is a key factor when determining Eighth Amendment violations. Since LA does not have sufficient shelter beds to provide for the number of homeless people in the city, homeless persons have no choice but to sit, lie down and sleep in public spaces. Therefore penalizing persons for this behaviour constitutes cruel or unusual punishment, and could be seen as the effective criminalization of homelessness in LA.

### **Potential relevance in Australian law**

The principles discussed in *Jones* could be relevant in Australian law, both at a domestic and international level. Council by-laws in some districts in Australia still prohibit sleeping or drinking alcohol in a public place. Public drunkenness was an issue raised in some of the cases discussed by the Court of Appeals in *Jones*. Such by-laws could possibly be contested under discrimination laws for disproportionate impact on homeless people, who have no choice but to conduct their lives in the public eye. Alternatively such laws could be challenged under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which establishes a right to adequate housing, or under the International Covenant on Civil and Political Rights (ICCPR) which prohibits cruel, inhuman or degrading treatment.

## **HPLC GOOD NEWS STORIES**

\*Names have been changed

**Public Transport Infringements:** HPLC lawyers attended the Children's Court at Melbourne in relation to 27 consolidated public transport matters (including resisting arrest, smoking, feet on seats, jumping barriers and ticket offences) for Toby\*. Toby was already on a good behaviour bond, and had previously been subject to an undertaking with the Court. Evidence of Toby's transitional housing history and his ADHD condition was led, in addition to evidence of his efforts to reform his behaviour. Toby pleaded guilty to 25 of the charges (two were withdrawn) and the Magistrate imposed a 6 month good behaviour bond without conviction.

**Housing:** In 1999 Sue\* was a tenant in an office of housing property in Shepparton. While Sue was away from the property, 2 girls broke into the flat, caused flooding, and ripped up the carpet. The Office of Housing sought payment of \$2000 from Sue for the cost of repairs and the outstanding debt was preventing her from applying for new housing. HPLC lawyers held discussions with the Office of Housing which established that the debt had been erroneously entered under Sue's name and that no such debt was in fact owed by her. On this basis, Sue was free to proceed with her new application for public housing.

## DISCRIMINATION ON THE GROUNDS OF HOMELESSNESS OR SOCIAL STATUS

### SUMMARY OF FINDINGS: REPORT TO THE DEPARTMENT OF JUSTICE

*A summary of the report by Mathew Tinkler, Acting Coordinator, PILCH Homeless Person's Legal Clinic.*

In 2007, the Victorian Government will introduce guidelines on discrimination on the grounds of homelessness or social status (**Guidelines**). The Guidelines will apply to businesses and other entities that provide accommodation or goods and services. The aim of the Guidelines is to protect, educate and reduce the extent of this form of discrimination.

In January's Edition of *StreetRights* the PILCH Homeless Persons' Legal Clinic (**Clinic**) put out a call for participants in 13 Consumer consultation workshops. The purpose of the workshops was to collect information regarding experiences of discrimination on the basis of homelessness or social status which could inform the Guidelines. Our call was answered by 183 generous Consumers who attended workshops held at various HPLC Clinics and Homelessness agencies across Melbourne, and Geelong. Consumers were asked to complete a structured survey about participants' personal experiences of discrimination on the grounds of homelessness and social status in relation to accommodation and goods and services providers. The information from these surveys has since been collated and the results suggest that the discrimination on the grounds of homelessness and social status is frequent and widespread in Victoria.

Almost 70% of people surveyed have experienced discrimination on the basis of homelessness or social status at the hands of accommodation providers. Most frequently, people are discriminated against in private rental or by real estate agents, followed by boarding houses, transitional or crisis accommodation, hotels and public housing. Almost half of those surveyed reported that discrimination on these grounds had prolonged their homelessness and had made it increasingly difficult to find a sustainable pathway out of homelessness.

A similar picture emerges in relation to goods and services providers, who discriminated against almost 60% of respondents on the basis of their homelessness or social status. Discrimination was most often experienced from restaurants, cafés or bars, followed by banks, retail shops, hospitals and telecommunications providers.

The adverse consequences experienced as a result of both forms of discrimination include poor physical and mental health, social isolation and family or relationship difficulties. As a result of discrimination, the feelings of victims range from marginalisation and frustration, to anger, worthlessness, grief, anxiety and suicidal tendencies. Perhaps unsurprisingly, some respondents have simply become accustomed to such treatment and have learned to deal with it.

People who have experienced discrimination on the grounds of homelessness or social status are overwhelmingly in favour of the proposed Guidelines, and most are optimistic that the Guidelines will reduce the amount of discrimination that occurs on these grounds. However, some are understandably cynical at the ability of the Guidelines to overcome the behaviour that a lifetime of experience has led them to expect.

HPLC would like to thank all who participated in or assisted with the Discrimination Surveys. A summary of the guidelines will be included in coming editions.

*'Discrimination is discrimination, whether on the basis of race, religion, sex or homelessness. Everyone has a right to fair treatment. So in my view, discrimination on the grounds of homelessness is as bad as any other, and setting up guidelines is a step in the right direction.'* (Respondent from Ozanam House)

*'Probably because I was unshaven, had coffee on my shirt and no socks. They said they had no space- I know that wasn't true. If a person is unemployed or on a pension the estate agent will never give it to them. In most cases the homeless people would be fantastic tenants because they would appreciate it so much.'* (Respondent from St Mary's House of Welcome)

*'Being discriminated against makes you feel hopeless, like no one cares what happens to you.'* (Respondent from Outpost)

The full report can be obtained from our website: [www.pilch.org.au](http://www.pilch.org.au). If you would like further information in relation to this project, please contact Mat Tinkler on 9225 9984 or [projects.pilch@vicbar.com.au](mailto:projects.pilch@vicbar.com.au).

## THE CLINIC PROVIDES FREE LEGAL ADVICE AT THESE LOCATIONS AND TIMES:

**The Big Issue**  
148 Lonsdale St, Melb 3000  
**Mon: 10:00am - 11:00am**

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

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

**Urban Seed (Credo Café)**  
174 Collins St, Melb 3000  
**Tues: 12:00pm - 1:00pm**

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

**The Lazarus Centre**  
203 Flinders Lane, Melb 3000  
By appointment - call 9639 8510

**St Peter's Eastern Hill**  
15 Gisborne St, East Melb 3002  
**Wed: 7:30am - 9:00am**  
Parliament train station  
Trams 24, 42, 109 (Victoria Pde)

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

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

**Salvation Army Life Centre**  
69 Bourke St, Melb 3000  
**Tues: 12:30pm - 2:00pm**

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

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