

Housing Discrimination
Submission to the UN Special Rapporteur on the
Right to Adequate Housing

Prepared by

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May 2021

Mr. Balakrishanan Rajagopal

United Nations Special Rapporteur on
the Right to Adequate Housing
Office of the High Commissioner for Human Rights
Special Procedures Branch, Palais Wilson
CH – 1211 Geneva, Switzerland

13 May 2021,

Dear Mr. Rajagopal,

The Castan Centre for Human Rights Law, based in the Faculty of Law at Monash University, and Inner Melbourne Community Legal are pleased to submit our answers to the questionnaire on housing discrimination and spatial segregation.

This submission seeks to highlight the issue of housing discrimination as it occurs in the State of Victoria, Australia. Where relevant, we also make reference to issues at a national level which impact on the enjoyment of adequate housing in Victoria, and in other states and territories to illustrate how widely spread these issues are in Australia. In particular, the submission focuses on questions **7-9 and 29-30** of the questionnaire.

Our submission seeks to illustrate the impacts of a harmful cycle which is disproportionately impacting upon groups such as persons from culturally and linguistically diverse backgrounds, Indigenous persons, persons with disabilities, mental health consumers and women, among others.

This cycle sees housing discrimination and barriers to private rentals push individuals and families into social housing (public and community housing).¹ Substandard and inadequate supply of public housing adversely impacts upon the above groups, and has led to people increasingly relying on community housing. Community housing however lacks sufficient protections for residents, and has led to the erosion of their rights, and disproportionate exposure to eviction and homelessness. Disadvantage and issues such as homelessness then go on to exacerbate housing discrimination due to stigma.

While government policy has resulted in some growth in community housing, there has been no equivalent investment to maintain existing public housing stock, which has contributed to substandard conditions and severely impacted on the rights of residents. This was demonstrated in the targeted lockdown of public housing tower residents in Melbourne in July 2020, the likes of which did not occur in any other part of Australian society.

Notably, we have drawn on both our academic expertise in the area of human rights law generally and the right to adequate housing specifically, as well as IMCL's work advocating for tenants with lived experience of housing discrimination and segregation in Victoria. Please note that many of the

¹ Note: Social housing is an umbrella term used to describe both public and community housing. Public housing is owned and managed by state and territory governments in Australia; in Victoria, this management is undertaken by the 'Director of Housing'. Community housing is managed by non-profit organisations.

observations contained in this submission are drawn from previous research conducted by both authors. The full text of these submissions is available via hyperlink under questions 29 and 30 below.

We thank the Special Rapporteur for the opportunity to contribute our insights on this important subject, and look forward to reading thematic reports to the United Nations General Assembly on these issues.

Sincerely,

Professor the Hon. Kevin Bell AM QC
Castan Centre for Human Rights Law

Damian Stock
Inner Melbourne Community Legal

TABLE OF CONTENTS

BASIC INFORMATION	4
Q7. DISCRIMINATION AGAINST VULNERABLE GROUPS	5
7.1 Groups Vulnerable to Discrimination	5
7.1.1 Discrimination on the basis of race, disability and other attributes	5
(a) CALD Communities and Indigenous Australians	5
(b) Persons with Disability	8
(c) Mental Health Consumers	10
(d) Women	12
Q8. DISCRIMINATION - ADEQUATE HOUSING	15
8.1 Accessibility	15
8.1.1 Overview	15
(a) General accessibility - housing shortage	15
(b) Lack of accessibility for persons who have obtained housing	19
8.2 Habitability	21
(a) Overcrowding	21
(b) Poor Conditions and Housing Maintenance	21
8.3 Affordability	22
8.3.1 An ongoing affordability crisis	23
8.4 Security of Tenure	24
8.4.1 (In)security of tenure	24
8.4.2 Tenure for persons with mental health conditions	25
8.5 Availability of services, materials, facilities and infrastructure	26
8.5.1 Availability of basic services	26
8.5.2 Availability of safe sanitation facilities	26
8.6 Location	26
8.7 Cultural Adequacy	27
8.7.1 Lack of culturally appropriate responses during the public housing lockdown	28
Q9. DISCRIMINATION - LAW AND POLICY	29
9.1 Law	29
9.1.1 Absence of a national Charter of Rights	29
9.1.2 Limitations of the Victorian Charter of Human Rights and Responsibilities	31
Q29. DATA ON DISCRIMINATION IN HOUSING	37
29.1 Suggested Further Readings	37
Q30. DATA ON COMPLAINTS AND RESOLUTION	38

BASIC INFORMATION

1. Name of Individual, Organization, Institution, Agency or State:

Castan Centre for Human Rights Law (Castan Centre) and Inner Melbourne Community Legal (IMCL)

Type of Entity*

- National Government or federal governmental ministry/agency
- Inter-governmental organization or UN agency
- Local or regional government, agency, representative or mayor
- Association, tenant union or housing cooperative
- NGO network, umbrella organization
- Community-based NGO (IMCL)**
- Academia (Castan Centre)**
- Foundation
- National human rights organization, ombudsperson
- Real estate, urban planning or construction
- Real estate investor or investment fund
- Trade Union
- Other:

2. Categorization of your Work

Please select one or more responses, as appropriate.

- Public administration
- Advocacy (Castan Centre; IMCL)**
- Funding
- Legal Assistance (IMCL)**
- Networking
- Policy (Castan Centre; IMCL)**
- Research**
- Technical Assistance
- Training
- N/A
- Other:

3. City/Town: Melbourne

4. State/Province: Victoria

5. Country: Australia

6. Contact e-mail (will remain confidential) in case we have questions:

Kevin.Bell@monash.edu (Castan Centre) and Damian.Stock@imcl.org.au (IMCL).

Q7. DISCRIMINATION AGAINST VULNERABLE GROUPS

What specific forms of de facto or legal discrimination or barriers towards equal enjoyment of the right to adequate housing do the following groups face in your country (please provide evidence with examples, studies, reports and relevant statistical information):

7.1 Groups Vulnerable to Discrimination

In Australia, several groups are vulnerable to housing discrimination and face barriers to their full enjoyment of the right to adequate housing, including persons from culturally and linguistically diverse backgrounds ('CALD communities'), Indigenous individuals and families, persons with disability, persons experiencing mental ill health, women, children and youth, older persons, low-income persons, members of LGTBQA+ community and many others. This submission will focus on the first five of these groups, while recognising that many others also encounter disadvantage in Victoria and across the country.

7.1.1 Discrimination on the basis of race, disability and other attributes

(a) CALD Communities and Indigenous Australians

There have been various reports of racially motivated housing discrimination across Australia.² In the state of Victoria, a 2012 report by the Victorian Equal Opportunity and Human Rights Commission ('VEOHRC') indicated that race was a factor preventing some individuals and families from obtaining private rental properties.³ The VEOHRC conducted a survey of 165 respondents, 37 of which reported that housing discrimination on the basis of race.⁴ Respondents included recently arrived migrants from Syria and Afghanistan, who reported that limited rental history served as a barrier to housing, and perceived that having to provide their passports as identification led to refusal of applications in some instances.⁵ Migrants from Africa and Indigenous Australians further reported that perceptions and stereotypes affected their chances of obtaining private housing, including perceptions that tenants of certain nationalities made properties 'dirty'.⁶ According to Aboriginal Housing Victoria, Aboriginal people on low incomes or welfare are often perceived as 'high risk' tenants, making the private rental market 'effectively inaccessible to them'.⁷ The VEOHRC rightly highlighted however that proving housing discrimination on the basis of race is difficult given that rental agents generally provide other reasons for refusal of rental applications.⁸

This experience is not unique to Victoria. A 2008 study from Equal Opportunity Commission of

² See eg, historical reports: Human Rights and Equal Opportunity Commission, *Racist Violence: Report of the National Inquiry into Racist Violence in Australia* (Report, 1991); Human Rights and Equal Opportunity Commission, *Annual Report 1998-99* (Report, 1999) 29; Tammy Solonec, 'Racial Discrimination in the Private Rental Market: Overcoming Stereotypes and Breaking the Cycle of Housing Despair in Western Australia' (2000) 5(2) *Indigenous Law Bulletin* 4-6; Andrew Beer and Paul Foley, Australian Housing and Urban Research Institute ('AHURI'), *Housing Need and Provision for Recently Arrived Refugees in Australia* (Report, 2003); Rae Dufty, 'At Least I Don't Live in Vegemite Valley': Racism and Rural Public Housing Spaces' (2009) 40(4) *Australian Geographer* 429 - 449.

³ Victorian Equal Opportunity and Human Rights Commission, *Locked out > Discrimination in Victoria's Private Rental Market* (Report, 2012) ('*Locked Out*').

⁴ *Ibid* 12.

⁵ *Ibid*.

⁶ *Ibid*.

⁷ Aboriginal Housing Victoria, Submission to Productivity Commission, *Reforms to Human Services Inquiry* (October 2016) 2-3.

⁸ *Ibid* 16.

Western Australia ('EOCWA'), also found 'substantial evidence of racial discrimination in the private housing rental market'.⁹ That study found that numerous individuals from CALD and Indigenous backgrounds were initially told that properties were available over the phone, but when they arrived in person were told the property was no longer available.¹⁰ Ten years on from the inquiry, media reports continue to indicate that housing discrimination persists, with persons with 'Indigenous or foreign-sounding names' facing rejections of rental applications, often notwithstanding having a steady income, and positive rental records and references.¹¹ Similarly, a 2015 study focusing on Sydney, New South Wales found that real estate agents provided 'greater levels of service, advice and encouragement to Anglo-Australians, and less to Indian Australians and those from a Muslim Middle-Eastern background'.¹² That report also highlighted that international students and humanitarian entrants have been disproportionately impacted by housing discrimination.¹³ At a national level, the Australian Human Rights Commission recognised in 2009 'that people of African backgrounds encounter significant difficulties accessing adequate and appropriate housing in Australia'.¹⁴ More recently still a 2018 national-level study which collected data on experiences of racism from over 6000 respondents around Australia found that 58% of Asian-born participants had experienced racially motivated discrimination when securing private rentals or purchasing a house.¹⁵

Barriers to *accessing* housing on the basis of race also have damaging flow-on impacts for affected individuals, who may have to accept shorter-term tenancies,¹⁶ take on properties in poor condition, and may experience rental stress.¹⁷ For example, many Indigenous Australians who are able to secure private housing encounter rental stress, particularly in metropolitan areas.¹⁸ Data from the Australian Institute of Health and Welfare indicates that the proportion of Indigenous households experiencing rental stress has almost doubled between 2011 and 2016 (from 22% of Indigenous households to 39% of Indigenous households).¹⁹ This is problematic because where households are spending such a large proportion of their income on housing costs, spending is reduced on 'other essentials such as food and health'.²⁰

⁹ See eg, Equal Opportunity Commission - Western Australia ('EOCWA'), *Accommodating Everyone* (Report, 2009) 6, 76 - 81.

¹⁰ *Ibid* 65.

¹¹ James Carmody, 'Racial Discrimination Widespread in the Private Rental Market, Advocates Warn', *ABC News* (17 August 2018) at <https://www.abc.net.au/news/2018-08-17/racism-in-the-rental-sector-wa/10129418>.

¹² Jacqueline Nelson et al, 'Ethnic Discrimination in Private Rental Housing Markets in Australia' in Rae Dufty-Jones and Dallas Rogers, *Housing in 21st Century Australia: People, Practices and Policies* (Ashgate Publishing, 2015) 39, 53 ('. See also Heather MacDonald et al, 'Rental Discrimination in the Multi-ethnic Metropolis: Evidence from Sydney' (2016) 34(4) *Urban Policy and Research* 373-385; Heather MacDonald, 'A White Face Can Be a Big Help in a Discriminatory Housing Market', *The Conversation* (1 February 2016) at <https://theconversation.com/a-white-face-can-be-a-big-help-in-a-discriminatory-housing-market-52962>.

¹³ Nelson et al (n 12) 45.

¹⁴ Australian Human Rights Commission, *Discussion Paper, African Australians Project – March 2009* (Report, 2009) 18.

¹⁵ Kevin M Dunn, Kathlee Blair, Ana-Maria Bliuc and Alanna Kamp, 'Land and Housing as Crucibles of Racist Nationalism: Asian Australians' Experience' (2019) 56(4) *Geographical Research* 465, 476; Alanna Kamp, Ana-Maria Bliuc, Kathleen Blair and Kevin Dunn, 'Asians out! Not in this suburb. Not in this apartment', *The Conversation* (22 November 2018) at <https://theconversation.com/asians-out-not-in-this-suburb-not-in-this-apartment-103919>.

¹⁶ Carmody (n 11).

¹⁷ Note that 'housing stress' is calculated by the Australian Institute of Health and Welfare by the '30/40' rule. This refers to circumstances where lower income households (earning the lowest 40% of income) spend more than 30% of household income on housing costs (i.e., rent, mortgage payments). See 'Housing Affordability', *Australian Institute of Health and Welfare* (7 August 2020) at <https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>.

¹⁸ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness* (Report, 2019).

¹⁹ *Ibid* 24.

²⁰ 'Understanding the 30:40 indicator of housing affordability stress', *Australian Housing and Urban Research Institute* (23 May 2019) at <https://www.ahuri.edu.au/research/ahuri-briefs/3040-indicator>.

CALD and Indigenous individuals have also reported experiencing ongoing racism throughout their tenancies. For example, a 2018 media article indicated that tenants who do manage to secure housing experience ongoing racism, such as refusals to allow CALD tenants to be present during inspections for potential property buyers on the basis of how ‘dark’ they were, and refusals to break leases where replacement tenants were Muslim.²¹ In addition, evidence suggests that individuals who have experienced racially motivated housing discrimination are often reluctant to make formal complaints about discrimination or tenancy matters.²² For example, the EOCWA’s 2008 inquiry indicated that CALD and Indigenous tenants ‘are reluctant to pursue their right to have urgent maintenance issues attended to. They will accept poor living conditions in order to secure some form of accommodation’.²³

Housing discrimination, including on the basis of race, has led to increased dependence on public housing. This may be because individuals or families are low income, do not have an extended family network to lean on, have a lack of rental history, or are unable to secure housing in the private rental market due to racism. Notably, these issues disproportionately impact upon individuals and families from CALD, Indigenous and refugee backgrounds.²⁴ For example, as at 30 June 2017, approximately 33,300 Indigenous households were in public housing.²⁵

Public housing tenants are often left in situations of inadequate housing for extended periods. As a 2010 study into public housing in Victoria revealed, even where tenants experience overcrowding, ‘you do not give up your apartment, otherwise you may not find something’.²⁶ As will be examined in detail in Question 8 of this submission, other issues with the quality of housing include poor heat/cooling systems, poor ventilation, inadequate sanitation and waste management facilities,²⁷ delays in providing repairs and other general maintenance.

Racial discrimination with respect to public housing has been particularly highlighted during the COVID-19 pandemic. On 4 July 2020 the Victorian Deputy Chief Health Officer issued public health directions to residents at 9 public housing towers in Melbourne in response to an outbreak of COVID-19. These detention directions ‘detained approximately 3,000 Victorians to their homes with immediate effect’.²⁸ This ‘hard lockdown’ of several public housing towers on 4 July 2020 in Melbourne disproportionately impacted on CALD individuals and families, including newly arrived migrants and refugees who occupy the towers. In particular, enforcement of the lockdown by over 500 police officers per shift,²⁹ raised concerns of over-policing of communities who had already long experienced ‘racist

²¹ Carmody (n 11).

²² Nelson et al (n 12) 44.

²³ EOCWA (n 9) 70.

²⁴ See e.g., James Button and Julie Szego, ‘You think that’s racist?’: the generational tension in Melbourne’s high-rise migrant families’, *The Guardian* (12 July 2020) at <https://www.theguardian.com/australia-news/2020/jul/12/you-think-thats-racist-the-generational-tension-in-melbournes-high-rise-migrant-families>. See also, Alistair Sisson, ‘Why public housing is stigmatised and how we can fix it’, *The Conversation* (7 August 2020) at <https://theconversation.com/why-public-housing-is-stigmatised-and-how-we-can-fix-it-142913>.

²⁵ Ibid 33.

²⁶ Surjeet Dhanji, ‘Social or Unsocial? The Linkage Between Accommodation, Health and Well-Being Among Former Horn of Africa and Sudanese Refugees Living in Australia’ (2010) 31(1) *Australasian Review of African Studies* 106, 111.

²⁷ See e.g., Chloe Booker, ‘“Structural Racism”: Fight for Recycling Service in Public Housing Towers’, *The Age* (9 March 2021) at <https://www.theage.com.au/national/victoria/structural-racism-fight-for-recycling-service-in-public-housing-towers-20210309-p5791c.html>.

²⁸ Deborah Glass, *Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020* (Report, 17 December 2020) 12 at <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-detention-and-treatment-of-public-housing-residents-arising-from-a-covid-19-hard-lockdown-in-july-2020/> (‘Ombudsman’s Report’).

²⁹ ‘Victoria coronavirus cases rise by 108 as Daniel Andrews strengthens lockdown at nine public housing estates’, *ABC News* (4 July 2020) at <https://www.abc.net.au/news/2020-07-04/victoria-coronavirus-cases-rise-by-108-lockdown-new-postcodes/12422456>.

and violent police interactions’.³⁰ Indeed the Australian Human Rights Commission Race Discrimination Commissioner Chin Tan highlighted in particular that many people impacted by the hard lockdowns came to Australia ‘fleeing civil unrest in their home countries where they may have had traumatic experiences with government intrusions on their human rights’.³¹ The heavy police presence caused stress, fear, anxiety and re-traumatisation, and served to further stigmatise such individuals.³²

On 9 July 2020 the Deputy Chief Health Officer revoked the detention directions for the 9 towers, but those residents that had been diagnosed with COVID-19 or deemed to be close contacts, were made subject to new public health directions that confined them to their homes. This included all the residents at one of the towers in 33 Alfred Street, North Melbourne. Arrangements for these residents still in lockdown to access outdoor exercise and fresh air, were not trialled till 11 July 2020. The trial involved a fenced-off area of approximately 10sqm, which was built for residents to walk around in. Some residents came downstairs for the first time in days for fresh air, only to be immediately confronted by the sight of the cage and an enormous Police presence. They included some young men who became immediately distressed by what they saw. The cage was removed in the early hours of 12 July 2020 because community advisors and residents reported that the temporary fencing used to create the sectioned off area was like a ‘cage’ or ‘prison yard’.

A lawyer from IMCL spoke to one of the male residents some days later, who was confronted by the Police presence and cage. The resident described a long history of chronic mental health issues that began when he was a teen, and alleged that he had previously been assaulted by Police. Seeing the vast number of Police on the estate brought back the memories of his assaults, and was clearly re-traumatising for him. He said that someone remarked to him that the fence reminded him of a prison. He said that he felt ‘humiliated’ when he saw the cage, when ‘this, this is my home’. Another resident said to the lawyer that: ‘seeing the cage, as a youth worker, was appalling and insane. It feels like to them we are a criminal, and not even human beings’.

(b) Persons with Disability

There is also evidence to suggest that persons with disability are encountering housing discrimination and are ‘more likely to experience housing-related disadvantage compare with people without disabilities’ and are at greater risk of living in insecure, poor quality or unaffordable housing.³³

In Australia, persons with complex support and care needs may qualify for Specialist Disability Accommodation (‘SDA’) under the National Disability Insurance Scheme (‘NDIS’). Only 6% of NDIS participants (an estimated 28,000 people) qualify for SDA.³⁴ The remaining 94% of NDIS participants, and persons with disability who are not covered under the NDIS do not receive any direct funding for

³⁰ Damian Stock, ‘Public Housing Hard Lockdowns’, *Inner Melbourne Community Legal* (5 July 2020) at <https://imcl.org.au/news/media-releases-1/public-housing-hard-lockdown>.

³¹ ‘Calls for Community Support during Melbourne lockdowns’, *Australian Human Rights Commission* (7 July 2020) at <https://humanrights.gov.au/about/news/media-releases/calls-community-support-during-melbourne-lockdowns>.

³² Stock (n 30). See also ‘Victorian Government Must Provide Public Health Response to Pandemic, End Discriminatory Measures and Withdraw Hundreds of Police from Public Housing’, *Human Rights Law Centre* (8 July 2020) at <https://www.hrlc.org.au/news/2020/7/8/victorian-government-must-provide-public-health-response-to-pandemic-end-discriminatory-measures-and-withdraw-hundreds-of-police-from-public-housing>.

³³ Zoe Aitken et al, ‘Precariously Placed: Housing Affordability, Quality and Satisfaction of Australians with Disabilities’ (2019) 34(1) *Disability and Society* 121, 136.

³⁴ National Disability Insurance Agency, *Specialist Disability Accommodation Provider and Investor Brief* (Report, April 2018) 5.

their accommodation'.³⁵ Importantly, as put by the Disability Discrimination Legal Service, the fact that this group does not receive funding for their accommodation is 'not a reflection of their lack of support/care needs...but rather [indicates] that they fail to fall within the complex care and support needs criteria required for SDA funding'.³⁶

As of 2019, there was a national shortfall of more than 9100 SDA places (2900 in Victoria specifically).³⁷ The majority of individuals who cannot access SDA housing are often forced into inappropriate living arrangements, including living with family members who cannot provide adequate support, or living in aged care facilities irrespective of their age.³⁸

Persons with disability seeking to find adequate housing on the private rental market often encounter difficulties locating and securing housing that is accessible to them, and meets their unique needs (i.e., proximity to medical facilities, public transport etc.). Such persons have also reported experiencing discrimination on the basis of their disability, particularly where agents and landlords assume that tenants, due to their disabilities, are more likely to demand costly alterations to the property, will be unreliable with rental payments, or will be 'difficult and demanding tenants' to interact with.³⁹ In Victoria, the VEOHRC's 2012 report highlighted that persons with disability have also encountered difficulties securing rental housing in cases where the person required an assistance animal to live with them, or required adjustments to make properties more accessible.⁴⁰

Private home ownership can also be particularly challenging. The Australian Council of Social Services has for example consistently reported that around 30% of Australians with disabilities 'live below the poverty line'.⁴¹ The barriers to home ownership for persons with disability are also likely being exacerbated by general housing unaffordability in Victoria,⁴² as property prices have continued to increase (even in the face of a global pandemic).⁴³

Persons with disability are twice as likely as persons without disabilities to live in 'unaffordable' housing. Indeed, the latest available data, the 'Household, Income and Labour Dynamics in Australia Survey' conducted in 2011 revealed that 11% of low-income Australians with disabilities were living in financial housing stress in 2011.⁴⁴ It should again be reiterated that where such a considerable proportion of household income is dedicated solely to housing, individuals and families are forced to

³⁵ Disability Discrimination Legal Service, 'Access to housing for Victorians with Disabilities – a growing crisis', Submission to Victorian Department of Premier and Cabinet and Victorian Department of Health and Human Services (26 April 2019) 5.

³⁶ Ibid (emphasis added).

³⁷ Michael Bleby, 'Great opportunity - and uncertainty - over emerging SDA housing sector', *Australian Financial Review* (21 March 2019) at <https://www.afr.com/property/commercial/great-opportunity-and-uncertainty-over-emerging-sda-housing-sector-20190321-p5168m>. See also Summer Foundation and Social Venture Australia, *Specialist Disability Accommodation: Supply in Australia* (Report, March 2019).

³⁸ Disability Discrimination Legal Service (n 35) 6.

³⁹ Ibid 7.

⁴⁰ Victorian Equal Opportunity and Human Rights Commission, *Locked Out* (n 3) 12-13.

⁴¹ Ibid; See also Australian Council of Social Services, *Poverty in Australia* (Final Report, 2018) 25; Australian Council of Social Services, *Poverty in Australia* (Final Report, 2016) 35.

⁴² See e.g., Kate Raynor, Igor Dosen and Caley Otter, *Housing Affordability in Victoria* (Research Paper, 6 December 2017) 1, 7-11.

⁴³ See eg, Noel Towell and Rebecca Krispin, 'House Prices Roar Back to Life as Pandemic Fails to Cure Affordability Crisis', *The Age* (19 February 2021) at <https://www.theage.com.au/business/the-economy/a-bit-saddening-housing-affordability-woes-back-with-a-vengeance-20210219-p573xh.html>.

⁴⁴ Aitken et al (n 33) 136.

reduce spending on other essentials such as food and health.⁴⁵

Due to the complexities of the private housing market, many persons with disability turn to public or community housing.⁴⁶ A 2019 study for example highlighted that persons with disability in Australia are 6 times more likely to live in public housing than persons without disabilities, and 10 times more likely where persons have intellectual and psychological impairments.⁴⁷ For a point of comparison, in the United States persons with disability are twice as likely to live in public housing as those without disabilities.⁴⁸ There are however long waitlists for public housing generally, and especially long wait times for persons with disability. According to the Victorian Auditor-General's latest report (2017) persons with disability, notwithstanding qualifying for 'priority access' for housing, are waiting over 16 months for public housing on average, with many waiting for longer periods.⁴⁹

Persons with disability are particularly at risk of homelessness. There are a number of factors that contribute to the higher incidence of homelessness among persons with disability, including lack of available public housing, or eviction from public housing, the inadequacy of temporary accommodation such as boarding houses to provide for the needs of persons with disability, experiences of neglect or abuse from partners or caregivers, the existence of social phobias, previous experience of homelessness, substance abuse or previous periods of incarceration.⁵⁰ To elaborate on one of these causes, non-government organisation Justice Connect has highlighted that persons with disability sometimes face eviction from housing due to rent arrears or damage to property.⁵¹ Justice Connect notes that such situations often occur where tenants have a 'history of homelessness and overwhelming hardship, including trauma, mental health concerns, substance dependence, disability and family violence'.⁵² Nevertheless, these tenants may face eviction and subsequent homelessness, even where damage was unintentional or due to the nature of their disability or mental health condition.⁵³

(c) Mental Health Consumers

In Australia, persons who experience mental ill health have been found to disproportionately experience housing insecurity and homelessness.⁵⁴ Mental illness can have both direct and indirect impacts on a person's ability to access and sustain tenancies. For example, the Australian Housing and Urban Research Institute ('AHURI') has highlighted that mental ill health can affect a person's ability to complete application forms or pay rent on time (direct) or can reduce their employment stability or their

⁴⁵ AHURI, 'Understanding the 30:40 indicator of housing affordability stress' (n 20).

⁴⁶ Aitken et al (n 33) 124. See also Zoe Aitken and Mellissa Kevnagh, University of Melbourne, 'Why Housing is a Major Public Health Issue for Australians with Disability', *Pursuit* (Blog Post, 12 May 2019) at <https://pursuit.unimelb.edu.au/articles/why-housing-is-a-major-public-health-issue-for-australians-with-disability>.

⁴⁷ Aitken et al (n 33) 136; See also Australian Institute of Health and Welfare, *People with Disability in Australia* (Catalogue No. DIS 72, 02 October 2020) at <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia/contents/housing/living-arrangements>.

⁴⁸ Ibid.

⁴⁹ Disability Discrimination Legal Service (n 35) 8. See Victorian Auditor General, *Managing Victoria's Public Housing* (Report, June 2017) 19 at <https://www.audit.vic.gov.au/sites/default/files/20170621-Public-Housing.pdf>.

⁵⁰ Selina Tually, Andrew Beer and Pauline McLoughlin, AHURI, *Housing Assistance, Social Inclusion and People Living with a Disability*, (Report, 2011) 39-43.

⁵¹ Justice Connect, *Making Public Housing Count: Submission to the Parliamentary Inquiry into the Public Housing Renewal Program* (Report, 2017) 14.

⁵² Ibid.

⁵³ Victorian Council of Social Service, *Protecting Tenancy Rights in Specialist Housing*, Submission to Victorian Government, *Rights in Special Disability Accommodation Review* (June 2017) 12.

⁵⁴ 'Mental Health and Housing: Policy Issue Analysis', *Australian Housing and Urban Research Institute* (19 February 2020) at <https://www.ahuri.edu.au/housing/policy-analysis/mental-health-and-housing>.

ability to live independently (indirect).⁵⁵ The Australian Institute for Health and Welfare has also recognised that people living with mental illness can be ‘isolated, have disrupted family and social networks and sometimes suffer poor physical health’ which can impact on their ability to secure and maintain housing.⁵⁶ Mental illness can also lead to homelessness, or be triggered or exacerbated by homelessness.⁵⁷

According to a 2020 study by AHURI, ‘most people with lived experience of mental ill-health rent in the private sector, yet many struggle with discrimination, insecure tenure and housing affordability’.⁵⁸ A 2008 study by mental health non-profit SANE Australia for example found that of 372 respondents experiencing a range of mental illnesses, 90% reported experiencing discrimination when seeking to obtain private rental accommodation.⁵⁹

Many persons experiencing mental ill health also rely on social housing (i.e. public and community housing) although AHURI notes that the ‘social housing system does not adequately monitor and consider the mental health of its tenants, missing opportunities for early intervention by linking tenants with appropriate supports *before* a crisis eventuates’.⁶⁰ As in the case of persons with disability, individuals with lived experience of serious mental health issues are placed on priority social housing lists. Notwithstanding, individuals have reported experiencing waiting periods of up to 2 years before they were provided with public housing.⁶¹ Further, non-profit organisations Justice Connect and the Federation of Community Legal Centres in Victoria have raised concerns that current housing policies allow mental health consumers to be evicted from social housing for rental arrears and behaviours caused or exacerbated by their illnesses,⁶² which can often lead to persons falling into homelessness.⁶³

Persons with lived experience of mental illness are further particularly at risk of homelessness in Australia.⁶⁴ There are pathways into homelessness for people experiencing mental ill-health, including insecure housing, evictions, and exits from acute mental health services. For example, according to non-profit the Council for Homeless Persons, approximately 25% of inpatients for acute mental health services have experienced homelessness prior to admission, and most are discharged back into such conditions.⁶⁵ Further, according to the Victorian Government, the majority of persons who have experienced homelessness may do so ‘long-term’ and/or through ‘repeated episodes of homelessness’.⁶⁶

⁵⁵ Ibid.

⁵⁶ Australian Institute of Health and Welfare, ‘Clients with a Current Mental Health Issue’, *Specialist Homelessness Services Annual Report* (11 December 2020) at <https://www.aihw.gov.au/reports/hou/322/specialist-homelessness-services-annual-report/contents/clients-with-a-current-mental-health-issue>.

⁵⁷ Ibid. See also Nicola Brackerkertz et al, AHURI, *Trajectories: The Interplay between Housing and Mental Health Pathways* (Report, February 2020) 11 (‘*Interplay between Housing and Mental Health Pathways*’).

⁵⁸ Ibid 13.

⁵⁹ Sane Research, *Housing and Mental Illness* (Research Bulletin, 2008) 1 at https://www.sane.org/images/PDFs/0807_info_rb7_housing.pdf.

⁶⁰ Brackerkertz et al, *Interplay between Housing and Mental Health Pathways 2020* (n 57) 13.

⁶¹ Nicola Brackerkertz, Alex Wilkinson and Jim Davidson, *Housing, Homelessness and Mental Health: Towards Systems Change* (Report, November 2018) 17.

⁶² Federation of Community Legal Centres, Submission to Victorian Parliament, Legislative Council Legal and Social Issues Committee, *Inquiry into Homelessness in Victoria* (March 2020) 22. See also Justice Connect, *Creating a Fairer and Stronger Community for Victorians Experiencing Mental illness, Homelessness & Housing Insecurity*, Submission to Royal Commission into Victoria’s Mental Health System (July 2019) 25.

⁶³ Ibid.

⁶⁴ See e.g., Council to Homeless Persons, Submission No 328 to Victorian Parliament, Legal and Social Issues Committee *Inquiry into Homelessness* (2020) 28.

⁶⁵ Council to Homeless Persons, Submission to Australian Productivity Commission, *Social and Economic Benefits of Improving Mental Health Issues Paper* (April 2019) 5.

⁶⁶ Victorian Government, *Housing and Homelessness: 10-year Mental Health Plan* (Technical Paper, 2015) 1.

(d) Women

Women, particularly those who have experienced family violence, and/or are older women are disproportionately impacted by barriers to adequate housing.

Survivors of Family Violence

As regards the former group, AHURI has emphasised that ‘domestic and family violence is the main reason women and children leave their home’.⁶⁷ Indeed, data from the Australian Institute of Health and Welfare over 2017-2018 indicates that 121,100 individuals who presented to Specialist Homelessness Services (‘SHS’) were escaping these forms of violence.⁶⁸ Women in these situations are often forced into insecure housing (i.e. living with a relative, staying at a refuge or shelter, staying in temporary accommodations, or even sleeping rough).⁶⁹

Women escaping family violence often encounter barriers to both obtaining short-term emergency housing and longer-term stable housing (examined further in Question 8, subsection 8.1.1). Women’s shelters and refuges are often at full capacity and not always able to accommodate all those who need it.⁷⁰ Shortages are particularly acute in regional areas.⁷¹ It should be noted that occupancies in many women’s refuges are time-limited (generally for periods of 6 weeks), and whilst there are reports that shelters avoid asking women to leave where they have no alternative housing options, housing in such situations remains insecure.⁷² Further, in some states and territories in Australia, the process for requesting emergency housing can be cumbersome, such as in New South Wales, where individuals in need of emergency accommodation must re-request this every two days.⁷³

In addition, there is a paucity of longer term housing options for women transitioning out of emergency housing.⁷⁴ As with other groups discussed above, given the shortage of public housing, women escaping family violence are forced to wait for extended periods before they can obtain public housing tenancies.⁷⁵ In Victoria, for example, women who have experienced family violence form a priority group for housing,⁷⁶ but nonetheless have sometimes had to ‘wait years before being offered a social housing property’ according to peak specialist body Domestic Violence Victoria.⁷⁷ Long waiting periods are also experienced in other states such as Queensland.⁷⁸

Women who have experienced family violence also commonly face barriers to obtaining private rentals. According to non-profit Anglicare Victoria, only 3% of private rental properties are affordable for single

⁶⁷ ‘Housing, Homelessness and Domestic Violence’, *Australian Housing and Urban Research Institute* (Policy Brief, 5 March 2020) at <https://www.ahuri.edu.au/housing/policy-analysis/housing-homelessness-and-domestic-and-family-violence>.

⁶⁸ *Ibid*; See also ‘Specialist homelessness services annual report 2017–18’, *Australian Institute of Health and Welfare* (Report, 13 February 2019).

⁶⁹ AHURI, *Housing, Homelessness and Domestic Violence* (n 67).

⁷⁰ Kathleen Flanagan, Hazel Blunden, Kylie Valentine, Jane Henriette, *Housing Outcomes after Domestic and Family Violence* (Report, April 2019) 51 - 54.

⁷¹ *Ibid*.

⁷² *Ibid* 53.

⁷³ *Ibid* 52.

⁷⁴ *Ibid* 55.

⁷⁵ Luke Michael, ‘Victorian family violence victims left homeless after seeking help’, *Probono Australia* (10 March 2020) at <https://probonoaustralia.com.au/news/2020/03/victorian-family-violence-victims-left-homeless-after-seeking-help/>.

⁷⁶ ‘Victorian Housing Register’, *Housing Victoria* (2020) at <https://www.housing.vic.gov.au/victorian-housing-register>.

⁷⁷ Domestic Violence Victoria, Submission No 60 to Australian Parliament, *Inquiry into Homelessness in Australia* (Report, 2019) 11.

⁷⁸ Josh Bavas and Michael McKinnon, ‘Thousands at risk of domestic violence waiting for public housing in Queensland’, *ABC News* (21 November 2019) at <https://www.abc.net.au/news/2019-11-21/thousands-risk-of-domestic-violence-on-public-housing-wait-list/11722150>.

parents on low incomes in 2020.⁷⁹

Recent legislative changes allow people experiencing family violence to more readily avoid liability stemming from the violence of the perpetrator, or to create residential agreements in their own name.⁸⁰ While this reflects an effort to address the economic and housing insecurity created by family violence, it doesn't alter the underlying lack of housing affordability for single parent households in particular. Accordingly, women escaping violence are at risk of cycling in and out of homelessness. This may be due to attempts to 'return to and reconcile with the perpetrator of violence', an inability to find appropriate and adequate short- or longer-term housing, or evictions into homelessness.⁸¹ According to Justice Connect, women who have experienced family violence may face eviction due to rental arrears, and this is often also related to intersecting vulnerabilities such as disability or mental illness.⁸²

Older Women

The United Nations Committee on the Elimination of Discrimination Against Women ('CEDAW Committee') has recognised in their General Recommendation No 27 that older women may face barriers to adequate housing and may be at risk of homelessness.⁸³

In Australia, older women (those aged 55 and over) have been found by the Australian Human Rights Commission to be at a heightened risk of homelessness, with the number of older women experiencing homelessness increasing by 30% between 2011 and 2016.⁸⁴ According to the latest national census in 2016, an estimated 6,866 women were homeless, and a further 5,820 women were living in insecure or marginal housing.⁸⁵ Given the 'hidden' nature of older women's homelessness (that is to say that older women experiencing homelessness typically stay with friends and family, live in overcrowded or inappropriate housing and do not report homelessness) it is likely that these figures under-represent the true extent of the issue.⁸⁶

Issues contributing to the heightened risk of homelessness for older women include the impacts of lifetime structural disadvantage (i.e. lower wages, gendered caring roles, limited superannuation,⁸⁷ limited employment options).⁸⁸ Further risk factors that may increase the likelihood of homelessness for older women include being single or living alone, experiencing family violence, the absence of support networks, experiencing a crisis such as loss of employment, experiencing economic disadvantage of housing stress, or challenges arising from intersecting vulnerabilities such as disability, physical illness or mental illness.⁸⁹

⁷⁹ Anglicare Victoria, *Rental Affordability Snapshot 2020* (Report, 2020) 14.

⁸⁰ *Residential Tenancies Act 1997* (Vic) ss 233A-234.

⁸¹ E Webb et al, University of South Australia, *Impact of Tenancy Laws on Women and Children Escaping Violence* (Report, March 2021) 11.

⁸² Justice Connect, *Keeping Women and Children Housed: Women's Homelessness Prevention Project* (Report, 2018) 8-9.

⁸³ United Nations Committee on the Elimination of Discrimination Against Women ('CEDAW Committee'), *General Recommendation No 27*, UN Doc CEDAW/C/GC/27 (16 December 2010) [48].

⁸⁴ 'Risk of Homelessness in Older Women', *Australian Human Rights Commission* (4 April 2019) at <https://humanrights.gov.au/our-work/age-discrimination/projects/risk-homelessness-older-women>.

⁸⁵ 'Older Australia at a Glance', *Australian Institute for Health and Welfare* (Report, 10 September 2018) at <https://www.aihw.gov.au/reports/older-people/older-australia-at-a-glance/contents/diverse-groups-of-older-australians/people-at-risk-of-homelessness>.

⁸⁶ Australian Human Rights Commission, *Older Women's Risk of Homelessness* (Background Paper, 2019) 8. See also Older Women's Network, *Older Women in Australia: Housing Insecurity and Homelessness* (Report, 2020) 8.

⁸⁷ Note that Australia's superannuation scheme only came into effect in 1992. This means that many older women now approaching retirement have only been able to accrue superannuation for part of their working life. See Australian Human Rights Commission, *Older Women's Risk of Homelessness* (n 86) 11.

⁸⁸ Victorian Parliament, Legal and Social Issues Committee, *Inquiry into Homelessness in Victoria* (Final Report 2021) 55-56 ('*LSIC Final Report 2021*').

⁸⁹ Australian Human Rights Commission (n 86) 10.

Older women face barriers to obtaining housing through the private housing market due to economic disadvantage, which impacts upon their ability to ‘achieve home ownership and financial security’.⁹⁰ This is exacerbated by the general lack of affordable housing across Australia.⁹¹ Rentals are also increasingly unaffordable for low income individuals, accounting for 60% of income or more for people on the age pension in metropolitan areas such as Melbourne in Victoria, and Sydney in New South Wales.⁹²

⁹⁰ Ibid 11.

⁹¹ Ibid 12.

⁹² Ibid.

Q8. DISCRIMINATION - ADEQUATE HOUSING

Discrimination in housing can affect various dimensions of the right to adequate housing and other human rights. Could you provide more details regarding the specific areas in which housing discrimination is experienced? Below are examples of various forms of discrimination that can be experienced in relation to different dimensions of the right to adequate housing:

8.1 Accessibility

8.1.1 Overview

As the Committee on Economic, Social and Cultural Rights ('CESCR') has specified in General Comment No. 4, accessibility is a core element of the right to adequate housing.⁹³ This includes specifically, 'full and sustainable access to adequate housing resources' for the groups vulnerable to discrimination discussed in section 7 above.⁹⁴ As the examples of discrimination on the basis on protected attributes set out in that section of our submission illustrates, there are various ways in which individuals, groups and communities in Victoria are not afforded such 'full and sustainable access'.

Our answer to question 8.1 of the Special Rapporteur's questionnaire is divided into two parts. Firstly, we consider access in terms of initial access to emergency housing, social housing and private housing, including a consideration of the impact of COVID-19 on accessing housing. Notably this first part also touches on issues of *availability* and *affordability* of housing.⁹⁵ Secondly, we consider access issues as they occur *after* a person has obtained housing, such as lack of accessible and appropriate housing for persons with specific housing needs, such as older persons and persons with disability.

(a) General accessibility - housing shortage

Access to emergency housing

There is a shortage of emergency housing for persons and groups experiencing housing discrimination in Victoria, notably persons living in homelessness and persons fleeing family violence.⁹⁶ There is often a connection between the two, as family violence (discussed in Question 7, subsection 7.1.1 above) is one of the primary drivers of homelessness in Australia.⁹⁷ In IMCL's experience, one factor contributing to this is that a person fleeing family violence may do so at short notice and without a pre-existing housing waitlist application. Social housing is often therefore an unlikely solution to such individuals' immediate housing needs. For low-income individuals fleeing family violence, barriers to obtaining affordable private accommodation often leave them reliant upon already scarce access to temporary emergency housing and specialist homelessness support services.⁹⁸ Of those who sought assistance from Specialist Homelessness Services in 2019-2020, 41% were experiencing family violence.⁹⁹

⁹³ United Nations Committee for Economic, Social and Cultural Rights ('CESCR'), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 6th sess, UN Doc E/1992/23 (13 December 1991) 4 [8(e)].

⁹⁴ Ibid.

⁹⁵ Ibid 3-4 [8(b)]-[8(c)], [8(f)].

⁹⁶ See, e.g., Luke Henriques-Gomes, 'Homeless in Melbourne – the crisis an election can't cloak', *The Guardian* (19 November 2018) at <https://www.theguardian.com/australia-news/2018/nov/19/homeless-in-melbourne-the-crisis-an-election-cant-cloak>.

⁹⁷ See eg, Victoria State Government, *Victoria's homelessness and rough sleeping action plan* (Action Plan, 2020) 7.

⁹⁸ Inner Melbourne Community Legal, Submission No. 202 to Victorian Parliament Legislative Council Legal and Social Issues Committee, *Inquiry Into Homelessness in Victoria* (31 January 2020) 18-21.

⁹⁹ Australian Institute of Health and Welfare, *Specialist homelessness services annual report* (Report, 2020) 13.

After leaving a violent relationship, it is often far harder for women to secure stable housing, maintain safety and find employment. This hardship is exacerbated if they do not have a rental history, identification documents, personal belongings or access to finances when they flee their homes to escape violence.¹⁰⁰ Further, it has been found that the longer-term impacts of family violence, such as mental illness, financial hardship or isolation from family and friends, can ultimately make all future living arrangements precarious for women.¹⁰¹

Due to the various barriers to accessing adequate housing, shortage of emergency housing, and lack of available, affordable and sustainable alternative housing options, and the heightened risk of homelessness, victims of family violence may be unable to escape violence and may be forced to return to a violent partner.¹⁰² Based on conversations with clients, IMCL has observed that clients feel additional pressure to remain in a violent home in order to ensure that the children can stay in local schools.

The enduring failures of the housing system in Victoria, including in particular the failure to appropriately invest in social housing, have led to unacceptable and unsafe consequences for women and children who have experienced family violence. AHURI has for example found that while women and children may have access to emergency assistance, without substantial increase in public and community housing there are few secure long-term housing pathways available for women to transition out of emergency housing.¹⁰³ Further, reliance on the private rental market may provide short-term relief but for many is simply unaffordable and not sustainable.¹⁰⁴

The above discussion of the scarcity of both social housing and emergency housing in Victoria demonstrates the connection and vicious cycle of deprivation that face persons at risk of or experiencing housing discrimination.

Access to social housing

As with emergency housing, there is a significant shortage of adequate social housing in Victoria. Rather than seeing improvements, there has been a move in the wrong direction. This was confirmed in 2019 by the Australian Productivity Commission which underlined in a report that Victoria has fewer social housing options available than ten years ago.¹⁰⁵ The demand for social housing significantly exceeds the available and scarce housing stock.¹⁰⁶ Indeed, estimates on the Victorian Government's Housing Register suggest that applicants for social housing almost reach 50,000.¹⁰⁷ More than half of these applicants qualify for what is termed 'priority' access. This includes some groups at risk of housing discrimination as discussed in section 7 above, such as persons with disabilities or other 'significant support needs', persons who have fled family violence, persons experiencing homelessness and others considered to have 'special housing needs'.¹⁰⁸

¹⁰⁰ Inner Melbourne Community Legal (n 98) 18.

¹⁰¹ Lucy Adams, Patrick Warner and Antoinette Russo, Justice Connect, *Women's Homelessness Prevention Project – Keeping Women and Children Housed: Twelve Month Project Report* (Report, 2015) 5.

¹⁰² *Royal Commission into Family Violence* (Report and Recommendations, March 2016) 38.

¹⁰³ Flanagan et al (n 70) 73.

¹⁰⁴ Ibid; *LSIC Final Report 2021* (n 88) 98.

¹⁰⁵ 'Report on Government Services 2019: Housing and Homelessness', *Australian Government Productivity Commission* (27 June 2019) at www.pc.gov.au/research/ongoing/report-on-government-services/2019/archive/housing-and-homelessness.

¹⁰⁶ Victoria State Government, *Victoria's Social Housing Supply Requirements to 2036* (Report, March 2017) 2.

¹⁰⁷ 'Victorian Housing Register', *HousingVic* (2021) at <https://www.housing.vic.gov.au/victorian-housing-register>.

¹⁰⁸ Ibid.

Evidence indicates that the scarcity of social housing in Victoria is partly due to privatisation of public housing which has happened at a particularly rapid rate in Victoria as compared to other states and territories.¹⁰⁹

Access to Private Housing

Access to private housing relates closely to the issue of *affordability*, another core element of the right to adequate housing which is discussed in more detail under subsection 8.3 below).

Post-pandemic shortage of adequate housing

The COVID-19 pandemic has catalysed important action to address the housing shortage. For example, the Victorian Government did well to temporarily house some 2,000 persons experiencing homelessness in hotel accommodation,¹¹⁰ and dedicated \$6 million to support organisations providing services for persons experiencing homelessness.¹¹¹ It should be noted however that unlike in other states in Australia, in Victoria individuals were asked to contribute to the cost of their stay in hotel accommodation.¹¹² As the state prepares for the remainder of the pandemic (and a transition into a post-pandemic era) there are however concerns that these support programs will come to an abrupt end without sustainable alternative measures.

For example, the Victorian Government is currently developing ‘exit plans’ for persons housed in temporary hotel accommodation during the height of the COVID-19 pandemic in Victoria. Media reports however indicate that individuals leaving temporary hotel accommodation are not being provided with adequate longer-term housing options and are being pushed into homelessness¹¹³ inappropriate and inadequate accommodation such as private rooming houses.¹¹⁴

Rooming houses are buildings where 4 or more people live in privately rented rooms, some of which may be shared, and ‘share kitchens, bathrooms, laundries and other common areas’.¹¹⁵ Rooming houses are often forms of crisis accommodation for those unable to afford other alternatives, and are intended to be short term and transitory housing options.¹¹⁶ However, ‘due to the severe shortage of public housing and lack of affordable rental housing’ residents often occupy rooming houses for longer periods, on average 2 and a half years.¹¹⁷ A high proportion of residents in rooming houses have

¹⁰⁹ 100,000 Victorian Waiting for a home in 2020’, *Victorian Public Tenants Association* (12 November 2019) at www.vpta.org.au/100000-waiting-for-a-home-in-2020; see also Duncan Rouch, Submission No 37 to House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into Homelessness in Australia* (12 June 2020) 33.

¹¹⁰ ‘Homes For Homeless Victorians During Pandemic And Beyond’, *Premier of Victoria* (Press release, 28 July 2020) at <https://www.premier.vic.gov.au/homes-homeless-victorians-during-pandemic-and-beyond>.

¹¹¹ ‘More Homelessness And Public Housing Support In COVID-19 Fight’, *Premier of Victoria* (18 March 2020) at <https://www.premier.vic.gov.au/more-homelessness-and-public-housing-support-covid-19-fight>.

¹¹² Matilda Bosely, ‘Fears for Melbourne’s Homeless Forced out of COVID Hotel Accommodation’, *The Guardian* (2 December 2020) at <https://www.theguardian.com/australia-news/2020/dec/02/fears-for-melbournes-homeless-forced-out-of-covid-hotel-accommodation>. See also Matilda Bosely and Luke Henriques-Gomes, ‘It sucks’: homeless Victorians asked to help pay for lockdown hotels’, *The Guardian* (28 May 2020) at <https://www.theguardian.com/australia-news/2020/may/28/it-sucks-homeless-victorians-asked-to-help-pay-for-lockdown-hotels>.

¹¹³ H Pawson et al, *COVID-19: Rental Housing and Homelessness Impacts – An Initial Analysis* (Report, 2021) 123; Luke Henriques-Gomes, ‘Significant proportion’ of rough sleepers in Australia given shelter during Covid now homeless’, *The Guardian* (11 February 2021) at <https://www.theguardian.com/australia-news/2021/feb/11/significant-proportion-of-rough-sleepers-given-shelter-during-covid-now-homeless>.

¹¹⁴ Jewel Topsfield, ‘Homeless people stuck in ‘unsuitable, sometimes dangerous’ accommodation’, *The Age* (4 March 2021) at theage.com.au/national/victoria/homeless-people-stuck-in-unsuitable-sometimes-dangerous-accommodation-20210304-p577ql.html.

¹¹⁵ ‘Rooming House Rental Agreements’, *Consumer Affairs Victoria* (28 March 2021) at <https://www.consumer.vic.gov.au/housing/renting/starting-and-changing-rental-agreements/different-rental-agreements/rooming-house-agreements>.

¹¹⁶ Peninsula Community Legal Centre, *Open the Door! Resident’s View of Life in a Rooming House* (Report, May 2020) 3 at <https://pclc.org.au/wp-content/uploads/2020/09/Open-the-Door-The-Residents-View-of-life-in-a-Rooming-House.pdf>.

¹¹⁷ *Ibid.*

complex needs, including mental health concerns, substance dependence issues, and histories of family violence.¹¹⁸

Rooming houses have been extensively criticised as being ‘unsafe’ and in extremely poor condition.¹¹⁹ For example, a study conducted by community legal centre the Peninsula Community Legal Centre, revealed that residents of rooming houses have reported:

‘...broken locks, broken doors and windows, a lack of working smoke alarms and dirty or unusable shared facilities such as toilets, showers and kitchens. [Residents] also complained about mould, pests, a lack of heating, and non-working power points, stoves and toilets. The lack of adequate hygiene in crowded shared living conditions has become an even more acute concern since the advent of COVID-19, with residents routinely reporting filthy conditions...repairs are [also] left unattended for lengthy periods and are not carried out by qualified personnel.’

Residents have also reported concerns about drug use and related behaviours, including conflict, violence and noise.¹²⁰ Many residents have indicated high levels of stress and anxiety, and have felt reluctant to complain ‘for fear of retaliatory action by the operator’.¹²¹

Recent media reports indicate that individuals being ‘exited’ out of temporary hotel accommodation are often being offered rooming houses as alternative accommodation. Where persons decline to transfer to such environments, for example due to concerns about the living conditions or prevalence of drug use in rooming houses, they are nevertheless being ejected from hotels and face potential homelessness.¹²²

Meanwhile, to address overcrowding of public housing units during COVID-19 lockdown, the Victoria State Government implemented the ‘Tower Relocation Program’. Under the scheme, the Director of Housing head-leases from a private owner for two years, and sub-leases to a public housing tenant on the same terms of a public housing lease.¹²³ While the scheme enables families to obtain more suitable and safe accommodation temporarily, the housing offers are most often outside individuals’ and families’ local communities, which can lead to dislocation from vital support networks and schools. Moreover, there is uncertainty about the availability of suitable long-term housing for public housing tenants after the two-year tenancy period ends, as the stock is privately owned. Many families have faced an invidious decision to either remain in unsafe public housing towers following the harsh public housing lockdown in July 2020 or to relocate, compromise their security of tenure and face further dislocation from their communities in the future.

Case Study: Sahra*

Sahra is a single mother of seven children who was living in a two-bedroom high-rise flat that was subject to the hard lockdown. Sahra had experienced ongoing problems with mould at the property due to the severe overcrowding. This had been reported to the Department of Families, Fairness and

¹¹⁸ Ibid.

¹¹⁹ Matilda Boseley, ‘Fears for Melbourne’s homeless forced out of Covid hotel accommodation’, *The Guardian* (2 December 2020) at <https://www.theguardian.com/australia-news/2020/dec/02/fears-for-melbournes-homeless-forced-out-of-covid-hotel-accommodation>. See also Mary Gearin, ‘Victoria’s housing agencies to boycott worst-rated rentals amid conditions ‘I wouldn’t let my dog live in’’, *ABC News* (1 March 2020) at <https://www.abc.net.au/news/2020-03-01/worst-housing-providers-boycotted-by-melbourne-homelessness-age/12008182>.

¹²⁰ Peninsula Community Legal Centre (n 116) 4.

¹²¹ Ibid.

¹²² Boseley, *Fears for Melbourne’s homeless forced out of Covid hotel accommodation* (n 119).

¹²³ ‘A New Lease on Public Housing’, *Premier of Victoria* (Press release, 30 August 2020) at <https://www.premier.vic.gov.au/new-lease-public-housing>.

Housing for a number of years; in 2017 tradespeople had attended and painted over the mould but it had come straight back. Tradespeople periodically attended and re-painted, but they were unable to properly deal with the mould caused by overcrowding.

Sahra and her children have respiratory issues and allergies that her doctor attributed to living in a mouldy environment. Sahra contracted COVID-19 during the hard-lockdown. She found it impossible to self-isolate in this period, and described the inability of herself and her children to leave the overcrowded flat as very traumatic.

In February 2021, Sahra was moved to a new home as part of the private rental relocation program. Although she was very relieved to no longer be living in the overcrowded and mouldy flat, she is concerned at her security of tenure when the Director of Housing's two-year lease with the private owner expires.

(b) Lack of accessibility for persons who have obtained housing

Many older people or those living with disability require accommodation that is better suited to their needs. Discrimination can occur both in finding suitable housing, and when seeking modification of existing housing.

When individuals and families on the Victorian Housing Register Waiting List are finally offered housing, it is largely a matter of chance whether they end up in public or community managed housing. For people with a disability or who develop a disability, the distinction between public or community housing can make a substantial difference to their living standards. Renters in public housing who need their home modified to accommodate their disability will have a *right* to those modifications pursuant to Director of Housing Guidelines.¹²⁴ Conversely, those living in community housing generally cannot require their landlord to pay for disability modifications. Further, increasingly, community housing providers have required modifications to be paid for by the renter or through the NDIS. As highlighted in Question 7 (subsection 7.1.1) not all persons with disability qualify for the NDIS, often leaving them without any means to carry out necessary modifications.

In addition, where a home does not adequately meet the needs of a person living with a disability, the opportunity to transfer to new or more appropriate housing is limited. This is often determined by the specific policies of a particular community housing provider, and is subject to the availability of stock held by that particular provider. As made clear above, the shortage of social housing stock in general means that community housing providers often simply not have alternative housing available for individuals to transfer to. As a result, residents with disabilities are forced to either tolerate unsuitable accommodation, try to find adequate private housing, or face homelessness.

Additionally, people who are older or require accessible housing, may face discrimination when trying to enter community housing. A report by Housing for the Aged Action Group ('HAAG') has found older people may be discriminated against by community housing providers on the basis of the type of welfare payment they are entitled to.¹²⁵ To explain, community housing providers receive a proportion (30%) of the renters' income as rent. HAAG's report found that some providers preferred to offer housing to individuals on disability support or age pension, who receive higher amounts of income

¹²⁴ Housing Victoria, [Making modifications and alterations to your home | Housing.vic.gov.au](https://www.housing.vic.gov.au/making-modifications-and-alterations-to-your-home) 06/04/2021

¹²⁵ C Hurren, Housing for the Aged Action Group, *Public and Community Housing: Comparing the rights and experiences of older tenants in Victoria* (Report, November 2020) 17-18.

support than those on other unemployment benefits such as the ‘JobSeeker’ payments.¹²⁶ This was irrespective of the personal needs of tenants, some of whom were in ‘really urgent’ situations.¹²⁷

The report also found community housing providers may discriminate on the basis of disabilities, reportedly in order to avoid making modifications to property. One housing support worker reported to HAAG that:

*‘I’ve had workers from community housing providers that say they have filtered for clients that have no special accommodation requirements at all. So they filtered anyone that has any requirements, so that would include – even if their property has no stairs – ...[clients that] ‘can’t manage a flight of stairs’, even with properties with lift access...they think that if they filter any modifications it just means we’ll get people who are able to manage any property and they won’t get any issues.’*¹²⁸

HAAG’s report notes that the above type of discrimination on the basis of personal attribute is unlawful:

*‘Under section 52 of the Equal Opportunity Act 2010, it is unlawful to discriminate against a housing applicant by refusing accommodation or processing an application differently, based on the applicant’s personal characteristics. The practice of eliminating applicants based on physical attributes (where the property on offer is suitable) undermines the rights of prospective tenants to fair and equitable housing allocation, based on the applicant’s needs, priority category, housing availability and suitability, as per the Housing Act 1983 (Vic)’.*¹²⁹

The issue therefore becomes whether the discrimination on this basis can be evidenced. This is particularly difficult when decision making processes for housing applicants are not transparent and accountable. In practice, HAAG has found many clients go on to downplay their disability or housing needs in order to increase their chances of finding a house.¹³⁰

Case Study: Jonathon*

Jonathan uses a wheelchair. His occupational therapist recommended alterations be made to his home to assist him to access high cupboards and open the heavy fire door he uses to enter and exit his flat. Although his community housing provider is one specially targeted at assisting people with disabilities, it refused Jonathon’s request, insisting modifications must be paid for through NDIS. Jonathon does not receive NDIS support (there is some hope he might recover and without a permanent disability he does not qualify for NDIS).

Jonathan continues to live in the house unmodified; everyday tasks for him are unnecessarily difficult, but he has no housing alternative. Because he is not currently homeless, Jonathan is no longer on the priority wait list of the Victorian Housing Register. He would not be able to secure or afford alternative housing in the private market.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid 22.

¹²⁹ Ibid.

¹³⁰ Ibid 23.

8.2 Habitability

Habitability as another core aspect of the right to adequate housing requires both adequate physical safety and protection from the elements and other health risks, as well as sufficient space for resident(s).¹³¹ We note in this regard the Guidelines on Housing and Health by the World Health Organization which underlines the importance of improved housing conditions.¹³²

This subsection of our submission presents various evidence of instances which suggest habitability conditions in Victoria which do not comply with the obligations in respect of the right to adequate housing, as well as the WHO Guidelines. This includes overcrowded living conditions in public housing, as well as poor conditions and housing maintenance.

(a) Overcrowding

Public housing tenants often have growing families that make it necessary to transfer to larger homes. Such needs are frequently unable to be accommodated by the vastly inadequate public housing stock available. In IMCL's experience, it is most often CALD tenants with larger families who experience overcrowding, and who are also less likely to have alternate housing options. The consequences of overcrowding in public housing are issues such as mould and the health problems that arise from it, such as respiratory illness and eczema. Where mould becomes established in a home, the maintenance approach of the Director of Housing is simply to clean and paint over the mould, even where tradespeople acknowledge that the source of the mould is the number of people living in a small space, and that their repairs will not remedy the source of the problem.

(b) Poor Conditions and Housing Maintenance

IMCL often observes a prevalence of delays for repairs in public and community housing. Requested repairs are often undertaken reluctantly and in the most immediately cost-effective way, even though the approach may not provide an adequate solution to the problem and can ultimately lead to more substantial and costly repairs being required. Tenants often have to persistently request repairs in order for them to occur, with legal action even being necessary in some instances.

Case Study: Ryan*

Ryan is a single dad who cares for his four children. Every time it rained, a defect in his community housing meant that the house was flooded, leaving it damp and mouldy. The problem was addressed with repeated repairs, though these were unable to remedy the structural problem that was the source of the leak.

It took four years for his community housing provider to finally find an alternative home for Ryan, and this was only possible because he accepted a much smaller home away from the city centre. During that time, even though his home was barely liveable (one room entirely unable to be used), there was nothing Ryan could do for his family.

He could go back on to the Victorian Housing Register wait list, but because he had a home – no matter how inappropriate it was – he would not have been on the priority list.

Other factors that can affect tenant health and that are common throughout social housing are the lack of ventilation in homes, inadequate heating and no air-conditioning - the latter being of ever-increasing concern as our climate changes. These problems often place tenants at greater risk of infection and

¹³¹ CESCR (n 93) 3 [8(d)].

¹³² World Health Organization, *WHO Housing and Health Guidelines* (2018).

disease. The cost saving approach to dealing with repairs, outlined above, often results in adverse health impacts for tenants.

Case Study: Sofia*

Sofia is a single mother of two who lives in an inner-city public housing tower. In 2018, the flat above Sofia's property seriously flooded. This in turn led to seriously flooding in Sofia's property, and consequently electrical issues. The property was initially unsafe – tradespeople turned off the electricity for a number of days and then only restored one light for a number of weeks. The flat became damp and mouldy and required extensive repair works (replacement of kitchen bench and doors, re-plastering, re-carpeting and painting) that took more than a year to complete.

Sofia repeatedly asked to be transferred to a different property while the works were being undertaken but was denied this request on the basis that it would be "too expensive" to relocate her.

Sofia was injured after she slipped on a water leak in this period. She also suffered much stress and says that her children's capacity to focus on school and homework was severely compromised. Sofia is now being assisted by IMCL to make a compensation claim.

The inadequacy of vacant public housing stock significantly inhibits timely transfers to alternate housing when it is required. This can result in those experiencing family violence or gender-based violence being unable to avoid unsafe situations, even though such situations are apparent to both the tenants and the Director of Housing.

Case Study: Ayah*

Ayah is a single mother of three who lives in an inner-city public housing tower. She is from a refugee background. Ayah has mobility issues that make it difficult to use her bathroom or to climb any steps. She had previously sought a transfer out of the tower to a property more suited to her needs.

At the end of 2017, Ayah's teenage daughter was sexually assaulted in the lift of the high-rise by a man who lives on the same floor. This left her daughter traumatized and unable to use the lift or come and go from the building confidently. Although her daughter obtained a personal safety intervention order preventing the man from coming close to her, she would still see him regularly. Ayah sought a priority transfer to another property.

The Director of Housing agreed to do this, however no suitable properties were available, and Ayah and her children continue to wait for an offer of transfer to an alternate suitable property. Her daughter continues to experience trauma as a result of the sexual assault, particularly while she sees the man that assaulted her while waiting for a transfer.

8.3 Affordability

The cost of housing must not result in a compromise of residents' enjoyment of other basic needs.¹³³ According to the CESCR, this generally requires that 'the percentage of housing-related costs' be 'commensurate with income levels'.¹³⁴

¹³³ Ibid 3 [8(c)].

¹³⁴ Ibid.

8.3.1 An ongoing affordability crisis

Housing affordability has been a long-standing issue in Victoria.¹³⁵ The Victorian Parliament in 2017 acknowledged that a mere 2.8% of the State's rental properties were 'affordable' for persons with low incomes and dependent upon income support measures.¹³⁶ Further, the Housing Taskforce of the Royal Commission into Family Violence that same year found that 3200 properties needed to be built each year to meet current demand by 2036.¹³⁷

There are numerous contributing factors for housing unaffordability, including that tax benefits incentivise private ownership of property as *investments* for profit,¹³⁸ without providing for a responsibility to offer stable, comfortable and affordable housing for tenants. This means that a large proportion of housing markets are owned by wealthy investors, making it difficult for lower-income households to afford their own homes.¹³⁹ In addition, the prevalence of expensive rental properties has created considerable financial strain for populations, particularly for low-income individuals and families.¹⁴⁰

The lack of affordable private housing puts more pressure on public and community housing, which as noted in Question 8 subsection 8.1 above, is scarce in Victoria. Anglicare Australia publishes a yearly snapshot of rental affordability.¹⁴¹ In 2020, the study found that rental properties in metropolitan Melbourne were not affordable for a single person on a minimum wage or to families on welfare.¹⁴² As noted above, housing waitlists are very long due to the scarcity of social housing. It is worth recapping here that the Victorian Housing Register waitlist for social housing comprised 50,145 applications in 2019, representing almost 100,000 people¹⁴³ including 25,000 children.¹⁴⁴ Notably, while COVID-19 support measures, such as the moratorium on evictions and temporary increase in welfare payments (i.e. JobSeeker supplement) were intended to ease housing concerns, the waitlist for social housing still grew by over 1000 applications between September and December 2020.¹⁴⁵

8.3.2 Victoria's 'Big Housing Build'

In 2020, the Victorian State Government announced the 'Big Housing Build', which has a stated aim of addressing the shortage of affordable housing evident in the ever-growing social housing waitlist.¹⁴⁶

¹³⁵ Parliament of Australia, 'Housing affordability in Australia' (Web Page) at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook45p/HousingAffordability; 'OECD.Stat: Analytical house prices indicators', *Organisation for Economic Co-operation and Development* (Web Page) at https://stats.oecd.org/Index.aspx?DataSetCode=HOUSE_PRICES#.

¹³⁶ Parliament of Victoria, 'Housing Affordability in Victoria' (Research Report, No.6, December 2017) 13.

¹³⁷ Victoria State Government Family Violence Housing Assistance Implementation Taskforce, *Victoria's Social Housing Supply Requirements to 2036* (Publication, May 2017) 3.

¹³⁸ Hal Pawson, Judith Yates and Vivienne Milligan, 'Australia's housing system needs a big shake-up: here's how we can crack this', *The Conversation* (17 February 2020) at <https://theconversation.com/australias-housing-system-needs-a-big-shake-up-heres-how-we-can-crack-this-130291>.

¹³⁹ Australian Institute of Health and Welfare, *Australia's welfare 2019 in brief* (Report, 2019) 31 12.

¹⁴⁰ Alan Morris, Hal Pawson, Kath Hulse and Violet Xia 'Private renters are doing it tough in outer suburbs of Sydney and Melbourne', *The Conversation* (31 July 2019) at <https://theconversation.com/private-renters-are-doing-it-tough-in-outer-suburbs-of-sydney-and-melbourne-120427>.

¹⁴¹ See e.g., Anglicare Victoria, *Rental Affordability Snapshot 2020: Anglicare Victoria– Victorian rental market* (Report, 2020).

¹⁴² *Ibid* Appendix 1.

¹⁴³ Victorian Public Tenants Association, '100,000 Victorians Waiting for a Home in 2020', Victorian Public Tenants Association (Web Page, 12 November 2019) at www.vpta.org.au/100000-waiting-for-a-home-in-2020/.

¹⁴⁴ Victorian Parliament Legal and Social Issues Committee, *Inquiry into the Public Housing Renewal Program* (2018).

¹⁴⁵ Housing Victoria, 'Victorian Housing Register and Transfer List' at www.housing.vic.gov.au/victorian-housing-register.

¹⁴⁶ Victoria State Government, *Victoria's Big Housing Build* (Report, 2020) 5.

The funding package entails a commitment to increase social housing stocks by 10%, or 12,000 new ‘affordable’ homes.¹⁴⁷

Efforts to address the housing affordability crisis and to make up for decades of under investment are encouraging. However, there remains concern that this package is not sufficiently targeted enough to those most in need. An independent assessment of the program highlights that the funding package will not do enough to address the housing needs of the lowest socio-economic groups.¹⁴⁸ It suggests that 8,000 of the new homes will be ‘private affordable homes’, although no definition is provided for ‘affordable’.¹⁴⁹ Accordingly these homes may still be unaffordable to low-income individuals and families, such as those in receipt of a government pension, and single income households with children. 6,000 homes will be community housing units available to those most in need, and who comprise the Victorian Housing Register waitlist.¹⁵⁰ Notably however, community housing currently takes fewer of those in critical need of housing than public housing does.¹⁵¹ Further, the package includes no growth in public housing, only the funding the renewal (rebuilding) of 1000 public housing homes. This strategy will result in those in most need of support becoming increasingly dependent on not-for-profit community organisations to provide housing, rather than the State Government, and without the same security and protections.

Building affordable and community housing should address some of the shortage in housing for people experiencing or at risk of homelessness. However, without the corresponding tenant protections and accountability mechanisms, residents in community housing may face discrimination and lesser rights than people in similar situation who reside in public housing.

Furthermore, growth in community housing on its own, will not be sufficient to meet the current and growing needs of the Victorian community. Victoria has been spending half the amount on public and community housing as all other states in Australia.¹⁵² To make up this shortfall will require the growth of both publicly funded and managed housing and community housing.

8.4 Security of Tenure

Legal security of tenure is an important element of the right to adequate housing.¹⁵³ As this submission illustrates, tenure in Victoria takes many forms, all of which present separate and overlapping issues. While there are various situations that raise issues related to security of tenure, our submission focuses specifically on the issue of access to secure, long-term housing through both a shortage of long-term public housing and a shift toward community housing without safeguards enjoyed by public housing tenants. We also focus on specific challenges faced by persons with mental health conditions.

8.4.1 (In)security of tenure

Public housing is the option of last resort for many Victorians experiencing financial disadvantage, marginalisation and chronic mental and physical health issues. For many of IMCL’s clients, public housing has provided security and safety following backgrounds of homelessness, family violence and

¹⁴⁷ Ibid.

¹⁴⁸ Libby Porter and David Kelly, RMIT University, *Does the Big Housing Build address the housing crisis in Victoria?* (Report, 2020).

¹⁴⁹ Ibid 4.

¹⁵⁰ Ibid 3.

¹⁵¹ ‘Report on Government Services 2021: Housing and Homelessness’, *Australian Government Productivity Commission* (2021) Tables 18A.15, 18A.17 at www.pc.gov.au/research/ongoing/report-on-government-services#:~:text=The%20annual%20Report%20on%20Government,January%20and%20202%20February%202021.

¹⁵² Ibid Table 18A.1.

¹⁵³ CESCR (n 93) 3 [8(a)]. See Kevin Bell, ‘Protecting public housing tenants in Australia from forced evictions: the importance of the human right to adequate housing and home’ (Costello Lecture, Monash University, 18 September 2012).

trauma. For those experiencing mental ill health, having a stable home is a crucial step in the path to recovery and in enabling them to manage their illnesses on an ongoing basis. Unfortunately, the supply of long-term public housing is vastly inadequate to meet demand. Moreover, the shift towards community housing, rather than public housing, represents an erosion of the security of tenure enjoyed by public housing tenants.

West Heidelberg Community Legal Centre took a sample of people who attended Victorian Civil and Administrative Tribunal in relation to tenancy matters. Those in public housing were more likely to have physical or mental health issues than those in private rentals. Almost all (87%) required ongoing intervention and social worker support¹⁵⁴ which further demonstrates that public housing is increasingly limited to the most marginalised and disadvantaged in the community. Despite this, the strongest predictor of whether a person would maintain their tenancy, or not, was whether they were in public housing.¹⁵⁵ Those in community housing, were only marginally more likely than private tenants to sustain their tenancy.¹⁵⁶

8.4.2 Tenure for persons with mental health conditions

For people with mental health conditions, sustaining tenancies can be more challenging.¹⁵⁷ This can be amplified when organisations established to house people experiencing housing discrimination, themselves discriminate against tenants. IMCL regularly encounters community housing organisations obtaining open-ended compliance orders at the Victorian Civil and Administrative Tribunal ('VCAT') as a mechanism for trying to manage tenant behaviour. A compliance order is a provision in the *Residential Tenancies Act 1997* (Vic) put in place after a breach of tenant duty occurs.¹⁵⁸ The tenant behaviour subject to these compliance orders often occurs as a direct consequence of a mental health episode, which in turn may be the result of life crises such as family violence. Since 1 January 2018, more than one third of eviction matters IMCL has assisted with for community housing tenants have been as a result of alleged compliance (behaviour) issues arising from mental ill health. There needs to be recognition and positive steps to assist those experiencing mental illness to maintain housing, and a higher standard of responsibility must be taken by housing providers who are receiving government support to house people experiencing poor mental health.

Case Study: Michael*

Michael acquired a brain injury in a workplace accident at the age of 16 and became homeless at that time. The ABI arrested his psychosocial development and resulted in an impulse control disorder. After more than 30 years of homelessness, Michael was housed by a community housing organisation in a home surrounded by privately owned houses. Though Michael has substantial approved NDIS funding, he has not been offered a suitable Specialist Disability Accommodation home.

The presentation of Michael's disability is a propensity to have short shouting outbursts at himself and others. After numerous complaints of nuisance by his neighbours, Michael's community housing landlord took successful steps to evict him from the rented premises, without offering alternatives to eviction, such as more supported living in the home or a relocation to alternate accommodation with

¹⁵⁴ S Price and B Millard, West Heidelberg Community Legal and Banyule Community Health (2018) *Improving housing and health outcomes: understanding and addressing barriers to VCAT attendance* (Report, 2018) 35.

¹⁵⁵ Ibid 3.

¹⁵⁶ Ibid 36.

¹⁵⁷ Federation of Community Legal Centres, Submission 362 to Victorian Parliament Legislative Council Legal and Social Issues Committee, *Inquiry into Homelessness in Victoria* (March 2020) 22. See also Justice Connect, Submission to *Royal Commission into Victoria's Mental Health System* (July 2019) 25.

¹⁵⁸ *Residential Tenancies Act 1997* (Vic) s 208.

less proximity to neighbours. If Michael were a private tenant, or a homeowner, the behaviours he displays would not be a basis for his eviction.

8.5 Availability of services, materials, facilities and infrastructure

Availability of basic services and other aspects necessary for adequate living conditions such as materials, facilities and infrastructure also form part of the right to adequate housing.¹⁵⁹ In this subsection, we focus on an example of the lack of available and safe sanitation facilities for public housing residents during the public housing tower COVID-19 lockdown which took place in July 2020.

8.5.1 Availability of basic services

Issues in relation to availability of basic services, such as schools and work, have been covered under Question 8, subsection 8.6 ('Location') below and will not be covered under this subsection.

8.5.2 Availability of safe sanitation facilities

The limited availability of sanitation facilities in public housing was particularly highlighted during the COVID-19 public housing lockdown in Melbourne (see Question 7). Note that this particular discussion is drawn from IMCL's experience advocating for clients who were under lockdown in the towers in July 2020 (see IMCL Submission to the Victorian Ombudsman, Question 29, for further detail).

During the lockdown, individuals and families within the towers were denied access to shared laundry facilities to reduce the risk of infection spreading throughout the towers. Numerous apartments within the towers had no laundry or cleaning facilities of their own to use in substitute. Residents that did not have access to laundry facilities in their own homes, could not then leave their homes to wash clothes and linens. In addition, the Victorian Government struggled to provide basic goods and materials to residents, including food, nappies and cleaning supplies. When the Department of Health was able to arrange provision of laundry services together with food and other supplies, there was a lack of suitable infrastructure in the buildings to facilitate food, supplies and laundry services being effectively distributed through the towers. Laundry services were extremely limited, with residents only able to send 8 items to be washed per household. For large families living in the towers, this was simply not enough. Along with these basic logistical problems, some residents did not know how to access laundry and other services because any information from the Department was not adequately translated or available in the residents' diverse languages.

8.6 Location

Location is another important element of adequate housing.¹⁶⁰ Adequate housing must be located in an area which allows residents to access basic services, such as schools, work and healthcare.¹⁶¹

In Victoria, persons reliant on social housing often do not have much choice in terms of the location of their accommodation. Though particular preferred areas may be nominated by a prospective tenant when seeking housing via the Victorian Housing Register waitlist, in practice an insistence on being housed in a particular location could limit the ability for offers to be made. IMCL clients who are seeking to be housed urgently are often faced with no choice but to accept an offer of housing in an area

¹⁵⁹ CESCR (n 93) 3 [8(b)].

¹⁶⁰ Ibid 4 [8(f)].

¹⁶¹ Ibid 4 [8(f)].

they would prefer not to live in. In some instances, public tenants may be faced with no alternative other than to relocate away from their children's schools and their community, contrary to the core aspect of the right to adequate housing which requires that residents must have access to schools and other services as noted above.

Location and accessibility are often closely interlinked. A failure to account for access to basic services may have adverse consequences on residents which may also be discriminatory against certain groups of residents. In Victoria, public housing was previously concentrated in inner-city areas, with close access to schools, employment and services. New public housing is generally built or acquired in outer-suburban areas, and the recent redevelopment of inner-city estates known as the Public Housing Renewal Program has further accelerated this trend.

The result is limited availability of vacant housing stock in the inner city, in particular, homes that cater for larger families. The effect of these shortages is disproportionately experienced by women with children and CALD renters, who tend to live in bigger families. IMCL noted that it was most often women with children and CALD families who sought the assistance of community legal services when they were forced to move to non-preferred areas as part of the Public Housing Renewal Program. Those who have no choice but to accept relocation to outer-suburban areas experience a range of disadvantages as a result: increased travel times, disrupted schooling, fewer amenities and the fracturing of their support networks and communities.

Case Study: Yasmin*

Yasmin is a single mother of four. She and her children have a range of disabilities and mental health issues stemming from experiences of extreme family violence. She is from a refugee background. Living on an inner-city public housing estate, Yasmin had found a community that she felt safe with and supported by.

The estate was part of the Public Housing Renewal Program that moved all tenants out of chosen sites in order to redevelop the land for private and community housing. Although Yasmin's children attended the local schools and she had social and health support networks in the area, no suitable alternate property in that or nearby suburbs was offered to the family. Yasmin was compelled to move to an entirely different area or face homelessness.

As with many public housing tenants in large families who tend to be CALD, an inadequate supply of large public homes in the inner city has resulted in those families being forced to move much further out of the city when sites are redeveloped. Though Yasmin has a right to relocate back to the estate she was moved from when the redevelopment is eventually complete, she expects that the community she was part of will be reluctant to return, especially when children have already been forced to change schools and families have re-settled.

As Yasmin's case study above illustrates, public housing tenants who are relocated to outer suburban areas face greater barriers in relation to accessing schools and services. In Yasmin's case, her older children had been attending a sought-after inner city high school that she hoped her younger children would also attend in the future. After the family was relocated, her younger children lost the right to attend that school, and her older children were required to justify their ongoing enrolment there as they were no longer living in its catchment.

8.7 Cultural Adequacy

Finally, cultural adequacy is a core element of the right to adequate housing which should be guaranteed

in the construction, planning and development of housing.¹⁶² This subsection will focus in particular on the lack of culturally adequate responses during the COVID-19 public housing lockdown.

8.7.1 Lack of culturally appropriate responses during the public housing lockdown

A defining feature caused by the immediacy of the July 2020 lockdown was the absence of plain English or translated material explaining the public health directions and why they had been imposed. Some residents reported that they were unclear on reasons, the nature, and even the length of the hard lockdown for as long as 18 hours after it began, with police officers not able to provide clear information.¹⁶³ This meant that many of these residents were forced to confront heavy police presence and limitations on their freedom to leave their own homes without adequate explanation, which as highlighted in Question 7 was highly distressing and potentially re-traumatising.¹⁶⁴ Phone calls were reportedly made to residents, but these consisted only of the callers reading verbatim scripts of the English letters that had been distributed to residents, without the assistance of interpreters. Further, announcements made over public announcement systems were only made in English, and were not able to be understood by many of the residents of the towers.

Written materials explaining the lockdown in a few ‘community languages’ were not distributed until 5 to 6 days after the lockdown started,¹⁶⁵ and for some residents they did not receive any information that was accessible or in language so that they could understand what was happening. The Victorian Ombudsman in her investigation into the lockdown at 33 Alfred Street, noted that ‘information concerning the lockdown could have been made more readily accessible to culturally and linguistically diverse residents had further time been allocated towards preparing for the intervention.’¹⁶⁶ In the absence of appropriately tailored, translated or formatted information, however, volunteer community members felt like they had no choice but to take the matter into their own hands, and they did so for the entirety of the enforced lockdown.

Throughout the lockdown residents complained about lack of access to culturally appropriate food.¹⁶⁷ While public authorities had sought to organise food for the residents, they failed to appropriately effectively communicate with residents to determine their needs.¹⁶⁸ Residents therefore experienced long delays waiting for food for themselves and their families (reportedly up to 8 hours), and when it did arrive it was often missing key staple items (i.e. bread and milk), and was often not culturally appropriate (i.e. not Halaal).¹⁶⁹ Further, public authorities failed to communicate how food would be delivered, and resorted to leaving food on the floor outside residents’ apartments without notice.¹⁷⁰ Some of the food provided was also reportedly expired.¹⁷¹

¹⁶² Ibid 4 [8(g)].

¹⁶³ Yara Murray-Atfield, ‘Melbourne public housing tower resident says community is being ‘treated like criminals’ amid coronavirus lockdown’, ABC News (5 July 2020) at <https://www.abc.net.au/news/2020-07-05/coronavirus-lockdown-melbourne-public-housing-residents-speak/12423170>.

¹⁶⁴ Ibid.

¹⁶⁵ Glass, *Ombudsman’s Report* (n 28) 17.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid 137, [94].

¹⁶⁸ Castan Centre COVID report.

¹⁶⁹ Matilda Bosley, ‘Residents in Melbourne Covid-19 tower lockdown say food supplies have been inadequate’, The Guardian (online, 6 July 2020) at <https://www.theguardian.com/world/2020/jul/06/residents-melbourne-covid-19-tower-lockdown-food-supplies-inadequate>.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

Q9. DISCRIMINATION - LAW AND POLICY

Are there any particular current laws, policies or practices in your country, region or town/community that contribute to or exacerbate discrimination in relation to the right to adequate housing?

9.1 Law

9.1.1 Absence of a national Charter of Rights

Despite being a party to the seven major human rights treaties,¹⁷² Australia currently has no national level Charter of Human Rights.¹⁷³ This is firstly problematic because while all levels of government are responsible for ensuring the enjoyment of rights across the state, the ‘ultimate *responsibility* [for this] lies with the federal government, even when the means for protecting such rights fall under the jurisdiction of Australia’s states and territories’.¹⁷⁴ This responsibility is reflected in Article 28 of ICESCR, which states that ‘the provisions of the present Covenant shall extend to all parts of federal states without limitation or exception’.¹⁷⁵ By leaving human rights protections to its states and territories, and failing to ensure that human rights are respected, protected and fulfilled across Australian jurisdictions, the federal government has failed to deliver on this very responsibility.

In addition, Article 2(1) of ICESCR requires Australia to ‘take steps...to the maximum of its available resources...with a view to achieving progressively the full realisation of rights recognised by the Covenant *by all appropriate means, including particularly the adoption of legislative measures*’.¹⁷⁶ In particular, as the CESCR has made clear, Australia has an obligation to move ‘as expeditiously and effectively as possible towards the full realisation of all rights in the Covenant’.¹⁷⁷ Further, Australia has a ‘non-derogable’ obligation to ensure that the ‘minimum essential standards’ (see Question 8) of each right are met.¹⁷⁸ Australia’s failure to enact a national level Chart of Rights however has left many core human rights, including the right to adequate housing, improperly ‘safeguarded’ at a federal level.¹⁷⁹

Broadly speaking, the existing legislation at both federal and state/territory levels is ineffective in addressing key issues such as housing discrimination and barriers to enjoyment of the right to adequate

¹⁷² Australia is a party to *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (‘ICCPR’); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) (‘ICESCR’); *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) (‘ICERD’); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, UNTS 1249 (entered into force 3 September 1981) (‘CEDAW’); *UN Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (‘UNCRC’); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) (‘CRPD’); and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (‘CAT’).

¹⁷³ ‘Australia’s Human Rights Framework’, *Victorian Human Rights and Equal Opportunity Commission* (2020) at <https://www.humanrights.vic.gov.au/legal-and-policy/australias-human-rights-framework/>.

¹⁷⁴ James Farrell, ‘The Road Home: Australians’ Right to Adequate Housing’ (2009) 34(4) *Alternative Law Journal* 227, 228; Dianne Otto and David Wiseman, ‘In Search of “Effective Remedies” Applying the International Covenant on Economic, Social and Cultural Rights to Australia (2001) 7(1) *Australian Journal of Human Rights* 5, 14; Rowan McRae and Dan Nicholson, ‘No Place Like Home: Homelessness in Australia and the Right to Adequate Housing’ (2004) 10(2) *Australian Journal of Human Rights* 27, 45.

¹⁷⁵ *Ibid*; ICESCR (n 172) art 28.

¹⁷⁶ ICESCR (n 172) art 2(1).

¹⁷⁷ CESCR, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, 25th sess, Agenda Item 5, UN Doc E/C.12/2001/10 (10 May 2001) [18].

¹⁷⁸ *Ibid* [15]-[18].

¹⁷⁹ *Ibid*.

housing.¹⁸⁰ There is no national Charter of Rights, and the right to adequate housing is not included in any of the three existing state/territory level charters.¹⁸¹ The right to adequate housing is further not constitutionally entrenched,¹⁸² nor is the right to housing effectively protected under any other legislation, federal or otherwise.¹⁸³ Common law also fails to adequately protect the right to housing (and various other rights).¹⁸⁴ Academics have raised concerns that this has led to federal and state parliaments being ‘routinely prepared to breach rights’.¹⁸⁵

This has had a considerable impact on the rights of individuals and families seeking housing in Australia. For example, as put by the Australian Human Rights Commission, the absence of a right to housing means that ‘federal politicians and public servants don’t have to consider the rights of people who are homeless or at risk of becoming homeless when developing and implementing new laws and policies on issues like public housing, health and social security’.¹⁸⁶ This has led to widespread homelessness, a ‘spiralling housing affordability crisis’ and limited security of tenure, in particular for low income households.¹⁸⁷ A recent example of the decision to impose a hard lockdown on public housing towers in Melbourne in response to COVID-19, which has been discussed at length above. In turn, this has also impacted upon the physical and mental wellbeing of persons experiencing housing discrimination or barriers to enjoyment of the right to adequate housing.¹⁸⁸

The creation of a national Charter of Rights however could make a significant difference to the respect, protection of and promotion of human rights in Australia. Broadly speaking, a national Charter of Rights ‘would enshrine into law the rights and freedoms of all Australians. It would be a national statement of the inherent worth of all humans, affirming the democratic values of freedom, respect, equality and dignity’.¹⁸⁹ Such a Charter would ‘clarif[y] the rights held by individuals in Australia’ and encourage the Australian community to become more rights aware.¹⁹⁰ The VEOHRC has also emphasised that such a Charter could (and indeed should) ‘place an obligation on government organisations to act in compatibility with human rights and take such rights into account when making decisions’. A national Charter could also help address violations of rights by ensuring that individuals would have appropriate avenues to make complaints and seek compensation and remedies.¹⁹¹

As regards the right to adequate housing specifically, the creation of a national Charter of Rights that expressly includes the right to adequate housing could ensure that federal Parliament considers whether laws and policies on emergency, social and private housing, as well as homelessness are compatible

¹⁸⁰ See e.g., Farrell (n 174) 229; Zak Vidor Staub, ‘Five Reasons Why Australia Should Adopt a Statutory National Bill of Rights’, *University of New South Wales, Australian Human Rights Institute* (5 October 2019) at <https://www.humanrights.unsw.edu.au/news/five-reasons-why-australia-should-adopt-statutory-national-bill-rights>.

¹⁸¹ There is presently no right to adequate housing in either the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic), Queensland *Human Rights Act 2019* (Qld) or the Australian Capital Territory *Human Rights Act 2004* (ACT).

¹⁸² Otto and Wiseman (n 174) 31 - 32.

¹⁸³ Jim McGinty, ‘A Human Rights Act for Australia’ (2010) 12 *University of Notre Dame Australia Law Review* 1, 2, 6-12. See also ‘Housing Should be a Human Rights’, *Justice Connect* (16 March 2021) at <https://justiceconnect.org.au/housing-should-be-a-human-right/>.

¹⁸⁴ *Ibid* 14.

¹⁸⁵ Clare Morgan, ‘A Charter of Rights for Australia ‘More Urgent than Ever’, *University of New South Wales* (2 August 2017) at <https://newsroom.unsw.edu.au/news/business-law/charter-rights-australia-more-urgent-ever>.

¹⁸⁶ Australian Human Rights Commission, *Homelessness and Housing* (Brief, 22 October 2020) at https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_homeless.pdf.

¹⁸⁷ Alan Morris, ‘The Lack of a Right to Housing and its Implications in Australia’ (2010) 65 *Journal of Australian Political Economy* 28, 37.

¹⁸⁸ See eg, *Ibid* 41-46.

¹⁸⁹ Victorian Equal Opportunity and Human Rights Commission, Submission to Australian Human Rights Commission, *Free and Equal: An Australian Conversation on Human Rights* (Report, 2019) 3.

¹⁹⁰ Staub (n 180).

¹⁹¹ *Ibid* 4.

with Australia's obligations under international human rights law.¹⁹² It could further obligate public authorities to take the right into due consideration when making housing-related decisions and delivering housing and homelessness services.¹⁹³ Finally, the inclusion of a right to adequate housing in a national-level Charter could provide persons who have experienced violations of the right with enforceable remedies for the breach and subsequent harms.¹⁹⁴

9.1.2 Limitations of the Victorian Charter of Human Rights and Responsibilities

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Victorian Charter') also fails to provide sufficient protection for the right to adequate housing. In order to understand its shortcomings, a brief overview of the Charter and its operation with respect to housing is necessary.

The Charter protects 20 human rights, derived from the ICCPR, at the state level, and requires state and local government bodies, as well as 'public authorities' to act consistently with these rights in decision-making.¹⁹⁵ Whether community housing providers constitute such public authorities is yet to be confirmed by the Victorian Supreme Court, but substantial arguments have been put forward in favour of such an interpretation.¹⁹⁶ The Charter further requires lawmakers to include a 'Statement of Compatibility' with human rights when proposing new laws.¹⁹⁷ The Charter does not however empower courts to declare legislation that is inconsistent with human rights to be invalid.¹⁹⁸ Courts are however required to *interpret* legislation in a way that is compatible with the rights listed in the Charter.¹⁹⁹ Notably, the Charter does not 'create a freestanding cause of action or provide freestanding remedy for individuals when public authorities act unlawfully, nor does it entitle any person to an award of damages because of a breach of the Charter'.²⁰⁰ Rather, individuals who have experienced a violation of the rights under the Charter must 'piggy-back' their claims onto a separate, pre-existing claim to relief of remedy under other grounds.²⁰¹

The right to adequate housing, as it exists under ICESCR, is not included in the Victorian Charter, nor are many other economic, social and cultural rights.²⁰² There has however been an argument that the right to housing is at least partially protected under the 'right to home' which *is* included in the Charter. Under section 13, 'a person has the right...not to have his or her privacy, family, *home* or correspondence unlawfully or arbitrarily interfered with.'²⁰³ Justice Bell in the case of *Kracke* held that Charter rights are interpreted 'broadly and purposively', by reference to the fundamental values protected by the right.²⁰⁴ Certain interferences with home have therefore fallen within the ambit of section 13. Unjustified evictions for example have been found to constitute 'arbitrary interference' with the right

¹⁹² Australian Human Rights Commission, *Homelessness and Housing* (n 186) 3.

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

¹⁹⁵ Victorian Parliament, Legal and Social Issues Committee ('LSIC'), *Inquiry into Homelessness in Victoria* (Final Report, 2021) 196. See *Charter of Human Rights and Responsibilities Act 2006* (Vic) pt 3 div 4, s38(1) ('Victorian Charter').

¹⁹⁶ Human Rights Law Centre, *Protecting human rights for Victorians who are homeless or at risk of homelessness using Victoria's Human Rights Charter: Your advocacy guide* (Report, 2018) 2. See e.g., cases which consider whether community housing providers fall within the ambit of the Charter: *Goode v Common Equity Housing Limited (Human Rights)* [2016] VCAT 93; *Metro West Housing Services Ltd v Sudi* [2009] VCAT 2025.

¹⁹⁷ *Victorian Charter* (n 195) pt 3 div 1.

¹⁹⁸ Bill Swannie, 'The Right to Home Under The Victorian Charter' (2010) 35(2) *Alternative Law Journal* 83.

¹⁹⁹ *Victorian Charter* (n 195) pt 3 div 3.

²⁰⁰ Julie Debeljak, 'Inquiry into the Charter of Human Rights and Responsibilities', Submission to the Victorian Parliament Scrutiny of Acts and Regulations Committee (11 June 2011) 6-7; See *Victorian Charter* (n 195) s 39.

²⁰¹ Debeljak (n 200) 7.

²⁰² *Ibid* s 32(1).

²⁰³ *Ibid* s 13 (emphasis added).

²⁰⁴ Swannie (n 198) 84. See *Kracke v Mental Health Review Board and Ors* [2009] VCAT 646, [34]-[35], [110].

to home.²⁰⁵ Unfortunately however, the Charter does not create a basis for resisting eviction on this ground.²⁰⁶ Therefore, while Section 13 does *contribute* to the right to housing, it does not provide the same level of protection (nor require the satisfaction of the minimum core requirements of housing) as the right to adequate housing does under international law.²⁰⁷

There are numerous reasons why the addition of a right to adequate housing is necessary in Victoria. Firstly, doing so would have an important symbolic impact, demonstrating to the Victorian people that the right to adequate housing is so important that it *ought* to be enshrined in law' at a domestic level.²⁰⁸ This would be a critical first step in transforming existing cultural and societal perceptions of housing and homelessness that are prevalent in communities across the state, and indeed across Australia more broadly. These perceptions conceptualise housing as a commodity rather than a right, have fuelled the ongoing housing crisis, perpetuated housing discrimination and entrenched damaging stereotypes about persons experiencing housing insecurity and homelessness.²⁰⁹ The inclusion of a right to adequate housing would serve to catalyse a reconceptualisation of housing as a duty that is *owed* by the state, and homelessness as a condition of injustice rather than one of is the fault of the individual.

The inclusion of a right to adequate housing in the Charter would also require the Victorian Government to recognise that housing is more than just four walls and a roof. Rather, *adequate* housing must, at a minimum, include security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.²¹⁰ The flow on effect of this would be, as put by the Victorian Legislative Council Legal and Social Issues Committee, that 'the addition of the right to housing to the Charter... would contribute to the consideration of the right to housing in future policy and legislative decisions'.²¹¹ This is powerful because housing legislation and policy is at the very heart of housing issues in Victoria, including the unaffordability of private housing, the shortages in public housing, the poor quality and maintenance of existing public housing and the lack of adequate resources to house persons in need of secure housing.²¹² The inclusion of a right to adequate housing would also have the effect of obligating the Victorian Government to end homelessness.²¹³

Public authorities, of which the Director of Housing is one, would also be bound to recognise the importance of *adequate* housing, and would have a clear responsibility to ensure that public housing is accessible and affordable, that housing facilities and conditions are adequate and are properly maintained, and that housing is fulfilling the fundamental needs of occupants, including marginalised groups.²¹⁴ This would require authorities to actively address issues such as the long waitlists for public

²⁰⁵ See e.g., *Homeground Services v Mohamed (Residential Tenancies)* [2009] VCAT 113.

²⁰⁶ Castan Centre for Human Rights Law, 'The Need for a Rights-based Approach to Housing in Victoria', Submission to Engage Victoria, *Consultation on the Ten-Year Social and Affordable Housing Strategy for Victoria* (April 2021) 4 ('Submission to Engage Victoria').

²⁰⁷ *Ibid.*

²⁰⁸ Evidence to Legislative Council Legal and Social Issues Committee, Victorian Parliament, 2 July 2020, 26-7 (Professor the Hon. Kevin Bell, Director, Castan Centre for Human Rights Law) ('Evidence to Legislative Council') (emphasis added).

²⁰⁹ Castan Centre for Human Rights Law (n 206) 7. See e.g., Emily Nicol, 'What do Australians really think of homeless people?', *SBS News* (11 July 2018) at <https://www.sbs.com.au/topics/voices/culture/article/2017/05/26/what-do-australians-really-think-homeless-people>; Deb Batterham et al, *Public Perceptions of Homelessness – a Literature Review* (Report, May 2020); Neha Swami, 'The Grim Cycle of Homelessness and Unemployment', *University of Melbourne: Pursuit* (Blog, 18 February 2018) at <https://pursuit.unimelb.edu.au/articles/the-grim-cycle-of-homelessness-and-unemployment>.

²¹⁰ CESCR (n 93) 4 [8(g)].

²¹¹ *LSIC Final Report 2021* (n 88) 197.

²¹² Castan Centre for Human Rights Law, *Submission to Engage Victoria* (n 206). See eg, David Kelly, Kate Shaw and Libby Porter, 'Shh! Don't mention the public housing shortage. But no serious action on homelessness can ignore it', *The Conversation* (10 October 2019) at <https://theconversation.com/shh-dont-mention-the-public-housing-shortage-but-no-serious-action-on-homelessness-can-ignore-it-124875>.

²¹³ Bell, Evidence to Legislative Council (n 208) 26–7.

²¹⁴ Castan Centre for Human Rights Law, *Submission to Engage Victoria* (n 206) 6-7.

housing,²¹⁵ overcrowding,²¹⁶ poor ventilation, heating and cooling, and sanitation facilities,²¹⁷ and the absence of culturally appropriate services for public housing tenants.²¹⁸

Additionally, the quasi-public nature of community housing providers mean that they can operate in the grey area of the Charter, in relation to whether they are public authorities. The definition of ‘public authorities’ include entities that carry out ‘functions of a public nature’,²¹⁹ and according to the legislation second reading speech this should be interpreted ‘broadly’.²²⁰ Case law generally recognises community housing providers as public authorities with responsibilities under the Charter,²²¹ however there is some uncertainty following the decision *Durney v Unison Housing*.²²² The policy shift from publicly funded and publicly managed housing towards non-for-profit outsourcing of housing for those on the Victorian Housing Register, should not result in a poorer outcome for tenants. To assist in ensuring tenants are not worse off, community housing providers should be prescribed as public authorities under the Charter.

Further changes to the Charter are also necessary, including in particular the absence of a freestanding cause of action for remedy. Detailed discussion of these other recommended changes is however beyond the scope of the present submission.

9.2 Policy

(a) Absence of a national-level and human rights-based housing strategy (CC)

The United Nations has recommended the implementation of rights-based national housing strategies to address housing discrimination and barriers to the enjoyment of the right to adequate housing.²²³ Australia does not yet however have such a strategy in place.

Australia does presently have a National Housing and Homelessness Agreement (‘NHHA’), under which the Commonwealth provides an estimated \$1.5 billion per year in funding to Australian states and territories for the development of strategies to enable access to ‘affordable, safe and sustainable housing’.²²⁴ The NHHA creates obligations for states and territories to develop housing and homelessness strategies that address specific criteria (i.e. targets for supply, renewal of public housing

²¹⁵ Luke Henriques-Gomes, ‘Decades of Neglect: Victoria has Built Less than 10% of its Public Housing Pledge as Waiting List Swells’, *The Guardian* (26 October 2020) at <https://www.theguardian.com/australia-news/2020/oct/26/decades-of-neglect-victoria-has-built-less-than-10-of-its-public-housing-pledge-as-waiting-list-swells>.

²¹⁶ *Ibid.*

²¹⁷ Bridget Tehan, ‘Extreme Heat and Vulnerable Victorian Households’, *Victorian Council for Social Service* (11 January 2016) at <https://vcoss.org.au/analysis/2016/01/extreme-heat-and-vulnerable-victorian-households-2/>.

²¹⁸ Glass, *Ombudsman’s Report* (n 28) 137.

²¹⁹ *Victorian Charter* (n 195) s 4.

²²⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 4 May 2006, 1293 (Rob Hulls).

²²¹ See e.g., *Goode v Common Equity Housing Limited (Human Rights)* [2016] VCAT 93; *Metro West v Sudi (Residential Tenancies)* [2009] VCAT 2025.

²²² *Durney v Unison Housing* [2019] VSC 6.

²²³ Leilani Farha, Special Rapporteur, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, 37th sess, Agenda Item 3, UN Doc A/HRC/37/53 (15 January 2018) [7].

²²⁴ Note: this includes \$125 million per year dedicated to homelessness services between 2019-2020, which is then matched by state and territory funds. See ‘Housing Assistance in Australia 2020’, *Australian Institute of Health and Welfare* (Web Report) at <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2020/contents/summary>; *National Housing and Homelessness Agreement 2018* pt 2, cl 14, 15; Australia Department of Social Services, ‘National Housing and Homelessness Agreement’ (12 December 2019) at <https://www.dss.gov.au/housing-support-programs-services-homelessness/national-housing-and-homelessness-agreement>.

stock, support for frontline homelessness services etc.).²²⁵ States and territories are required to collect data with respect to these strategies and report back to the federal government.²²⁶

The NHHA has stated various objectives of the framework which the state and territory housing strategies are expected to work towards. These include effective assistance for low-income households and persons experiencing homelessness; affordable housing for low to moderate income households; effective homelessness services; improved housing outcomes for Indigenous Australians; a housing market that is responsive to local conditions; and greater transparency and accountability in respect of housing and homelessness strategies, resourcing and outcomes.²²⁷ It is important to note however that achievement of the above is not a precondition of receiving funding from the federal government.²²⁸

The NHHA has also specified ‘priority homelessness cohorts’, which homelessness strategies must address. These are women and children affected by family violence; children and young people; Indigenous Australians; people experiencing repeat homelessness; people exiting institutions and care into homelessness; and older persons.²²⁹

The NHHA has however been criticised for a number of reasons. Firstly, critics have condemned the agreement for being insufficiently resourced to realistically achieve its set objective to facilitate ‘affordable, safe and sustainable housing’.²³⁰ In addition, the agreement has been criticised for failing to incorporate relevant policies on issues that affect housing, including taxes on housing investment and income support for renters.²³¹ As a result, housing issues persist, including homelessness which was on the increase up until the COVID-19 pandemic,²³² was temporarily reduced in 2020, and is now set to rise again.²³³

A rights-based national level housing strategy is therefore needed as a matter of priority, as recommended by former UN Special Rapporteur on the Right to Adequate Housing, Ms. Leilani Farha.²³⁴

Such a strategy must be grounded in a legal basis for the right to adequate housing (which provides avenues for effective remedies),²³⁵ and conform with the legal standards provided under international law (i.e. fulfilling the right immediately, or progressively realising the right in a reasonable timeframe).²³⁶ A national strategy must also prioritise those most in need, including racial and ethnic minorities, migrants, Indigenous peoples, persons with disability, women, children and youth, older persons, LGTBIQA+ persons and persons experiencing homelessness.²³⁷ It further should ensure the

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ *National Housing and Homelessness Agreement 2018* pt 2, cl 15.

²²⁸ Ibid pt 4, cl 16.

²²⁹ Ibid sch B, cl B2.

²³⁰ Vivienne Milligan, ‘The new national housing agreement won’t achieve its goals without enough funding’, *The Conversation* (17 July 2018) at <https://theconversation.com/the-new-national-housing-agreement-wont-achieve-its-goals-without-enough-funding-99936>.

²³¹ Ibid.

²³² Flint Duxfield and Angela Lavoipierre, ‘We’re spending billions on the housing crisis — so why is homelessness in Australia getting worse?’, *ABC News* (25 May 2018) at <https://www.abc.net.au/news/2018-05-25/why-is-homelessness-in-australia-getting-worse/9798716>.

²³³ Jewel Topsfield, ‘Homelessness set to rise as COVID-19 help scaled back’, *The Sydney Morning Herald* (16 October 2020) at <https://www.smh.com.au/national/homelessness-set-to-rise-as-covid-19-help-scaled-back-20201015-p565ai.html>.

²³⁴ Farha (n 223)

²³⁵ Ibid [16].

²³⁶ Ibid [17].

²³⁷ Ibid [36].

rights-based participation of affected persons in ‘every stage’ of the strategy, including design, development, implementation, monitoring and evaluation.²³⁸

Further, a national housing strategy should be ‘comprehensive’, that is to say it should allocate reasonable and adequate resources to fulfilling the right to housing,²³⁹ and should operate to goals and timelines that are reasonable, achievable and contribute to the most expeditious fulfilment of the right to adequate housing possible.²⁴⁰ A national housing strategy must also involve the ‘whole of government’,²⁴¹ as well as the private sector, including landlords, property developers, construction companies and others to promote awareness of the human right to adequate housing.²⁴² A national strategy *must* also provide for accountability and monitoring,²⁴³ and ensure access to remedies where violations of the right to housing are found.²⁴⁴ Finally, Australia should also take steps to assist other states in the international community to similarly implement effective housing strategies and respect, protect and fulfil the right to adequate housing under international law.²⁴⁵

Academics have made clear that it is the federal government who must initiate this, not state/territory governments, as the Commonwealth and its agencies ‘control the key instruments driving housing outcomes, especially tax and social security settings, as well as financial regulation’.²⁴⁶ This would go a long way to address some of the criticisms that the federal government has failed to show leadership with respect to housing and homelessness.²⁴⁷

(f) *Shift to community housing (and historic under investment in housing)*

Victoria invests \$101 per person in social housing, which is \$60 less than the national average.²⁴⁸ This has been a significant improvement on recent years where Victoria has invested half as much as the national average.²⁴⁹ While the trend towards increasing spending is encouraging, as we will outline, the prioritisation and how this spending has increased could better focus on alleviating discrimination and improve tenant outcomes.

Additionally, there are many years of under investment to make up for. The consequence of years of under investment is both a shortfall in housing stock and an increasingly aged public housing stock that has been poorly maintained.²⁵⁰ The burden of this under investment disproportionately falls on those who have been marginalised and experience discrimination.

²³⁸ Ibid [61]-[62].

²³⁹ Ibid [73].

²⁴⁰ Ibid [89]-[90].

²⁴¹ Ibid [6], [48], [53]-[55].

²⁴² Ibid [118]-[121].

²⁴³ Ibid [101]-[105].

²⁴⁴ Ibid [110].

²⁴⁵ Ibid [131].

²⁴⁶ Hal Pawson, Judith Yates and Vivienne Milligan, ‘Australia’s housing system needs a big shake-up: here’s how we can crack this’, *The Conversation* (17 February 2020) at <https://theconversation.com/australias-housing-system-needs-a-big-shake-up-heres-how-we-can-crack-this-130291>.

²⁴⁷ See eg, Julie Lawson et al, ‘Australia’s social housing policy needs stronger leadership and an investment overhaul’, *The Conversation* (26 June 2019) at <https://theconversation.com/australias-social-housing-policy-needs-stronger-leadership-and-an-investment-overhaul-119097>; Jessica Sier, ‘Federal budget fails to address Australia’s housing shortage and homelessness, experts say’, *The Guardian* (14 May 2021) at <https://www.theguardian.com/australia-news/2021/may/14/federal-budget-fails-to-address-australias-housing-shortage-and-homelessness-experts-say>.

²⁴⁸ Australian Government Productivity Commission, ‘Report on Government Services 2021’ (January 2021) Table 18A.1

²⁴⁹ Ibid.

²⁵⁰ Victoria’s Auditor General, ‘Managing Victoria’s Public Housing’ (Victorian Government Printers, 2017) 42.

The crisis in housing comes as part of a shift in housing policy away from direct investment in building and managing public housing, to funding community organisations to do so on a not-for-profit basis. The majority of this has occurred by way of the sale of public land and transferral of management of public housing stock. From 2006-2016 community housing grew by 81 per cent, while public housing decreased by almost 600 homes.²⁵¹

However, the true data and cost analysis and the impact on tenant outcomes of this shift has not been adequately evaluated. The Victorian Auditor General's Office noted that with the increased focus on community housing, more work needs to be done on understanding the full cost implication of community housing taking on more critical-need applicants.²⁵²

The State Government's Big Housing Build funding package is a welcome recognition of the need to address housing affordability. However, recent modelling suggests that the approach does not deliver a good return on its investment. It found that the overall cost of the package of \$2.14b will deliver only 5200 new homes, once the redevelopment of pre-existing public housing stock is taken into account. The cost per dwelling under the Government's plan is therefore \$411,538. In contrast, direct capital investment by the government to build public housing on land already held by it would incur a cost of \$300,000 per dwelling and create approximately 7,100 new homes, ultimately retained as a public asset.²⁵³ The strengthening of the public housing sector by way of direct investment would not only deliver more cost-effective housing, but it would also protect the rights and security of tenure of those occupying the homes. IMCL considers that this underlines the need to re-prioritise direct government spending on public housing rather than the approach of subsidising private and community housing developments.

The shift to community housing provision of social housing underpins State Government policy in regard to both the redevelopment and sale of inner-city public housing estates (the Public Housing Renewal Program) and funding investment (the Big Housing Build). This is a source of concern, as the rights of tenants and residents in community housing managed homes fall short of those of public housing tenants. The policies, guidelines and procedures of the Director of Housing for public housing – as well as the mechanisms for internal appeal of these protocols – create a more protective context for tenant rights than the policies and guidelines of community housing organisations. Further, while the Director of Housing is bound by the Charter of Human Rights and Responsibilities, it remains legally unsettled whether community housing providers are similarly bound. Accordingly, the policy shift of social housing from public to community management effectively erodes the rights of tenants. The Government's use of the term social housing (to mean both public and community housing) blurs this important distinction.

²⁵¹ Ibid 17.

²⁵² Ibid viii.

²⁵³ Porter and Kelly (n 148).

Q29. DATA ON DISCRIMINATION IN HOUSING

Can you kindly share any studies or surveys by local, regional or national Governments or by other institutions to understand better housing disparities, housing discrimination and spatial segregation and how it can be addressed (e.g. title and link, or kindly submit document).

29.1 Suggested Further Readings

Castan Centre for Human Rights Law

- Castan Centre for Human Rights Law, '[The Need for a Rights-based Approach to Housing in Victoria](#)', Submission to Engage Victoria, *Consultation on the Ten Year Social and Affordable Housing Strategy for Victoria* (2021)
- Castan Centre for Human Rights Law, '[Ensuring Human Rights by Ending Homelessness: A Framework for Understanding the Human Rights Implications of Homelessness](#)', Submission to Victorian Parliament Legislative Council, *Inquiry into Homelessness* (2020)
- Castan Centre for Human Rights Law, '[Part V: Public Housing Residents and the Homeless](#)', Submission to Victorian Parliament Public Accounts and Estimates Committee, *Inquiry into the Victorian Government's Response to the COVID-19 Pandemic* (2020)
- Castan Centre for Human Rights Law, '[The Rights of Homeless Persons: A Framework for Understanding Australia's Human Rights Obligations](#)', Submission to the Australian Parliament House of Representatives, Standing Committee on Social Policy and Legal Affairs, *Inquiry into Homelessness in Australia* (2020)
- Professor the Honourable Kevin H Bell, '[COVID19 and Human Rights in Australia: Part 3](#)', *Castan Centre for Human Rights Law* (2020)
- Professor the Honourable Kevin H Bell and Professor Jean Allain, '[Homelessness and Human Rights in Australia](#)' in *Critical Perspectives on Human Rights Law in Australia Volume 2* (Thomson Reuters, forthcoming)

Inner Melbourne Community Legal

- *IMCL Submission to the Victorian Ombudsman Investigation into the Treatment of People and Conditions of Public Housing Lockdown* (Submission, 29 August 2020)
- *IMCL 10 year Social and Affordable Housing Strategy submission* (Submission, April 2021)
- *IMCL Submission into the Parliamentary Inquiry into Homelessness in Victoria* (Submission, January 2021)

Other Materials

- Victorian Ombudsman, [Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020](#) (Report, December 2020)

Q30. DATA ON COMPLAINTS AND RESOLUTION

Can you provide information and statistics related to complaints related to housing discrimination, how they have been investigated and settled, and information on cases in which private or public actors have been compelled successfully to end such discrimination or been fined or sanctioned for non-compliance?

30.1 Suggested Further Readings

- West Heidelberg Community Legal, *Social Housing and Tenants' Rights – Preliminary Research Report* (Report, October 2020) (attached).