

CASTAN  
CENTRE FOR  
HUMAN RIGHTS  
LAW

MONASH  
LAW



## ***The Need for a Rights-based Approach to Housing in Victoria***

*Submission to Engage Victoria's Consultation on the Ten-  
Year Social and Affordable Housing Strategy for Victoria*

### **Prepared by**

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

Andrea Olivares Jones  
Policy Manager, Castan Centre for Human Rights Law

**April 2021**

## I. Introduction

The Castan Centre for Human Rights Law ('Castan Centre') welcomes Engage Victoria's consultation on the Ten-year Social and Affordable Housing Strategy for Victoria.

The Castan Centre, based in the Faculty of Law at Monash University in Australia, is a research centre which aims to use its human rights expertise to create a more just world where human rights are respected and protected, allowing people to pursue their lives in freedom and with dignity. The Castan Centre has conducted extensive research into the intersection of housing and human rights in Australia, including most recently in submissions to the both the federal and Victorian Government enquiries into homelessness, and a recent book chapter on human rights and homelessness, due to be released later this year. It is on the basis of this research, and with a strong focus on international human rights law, that we make this submission.

We recognise that the key objective of the Victorian Government throughout the course of this consultation is to determine **what actions they should take to ensure that they seek, hear and respond to the people who need and use social and affordable housing.** The Castan Centre submits that the best way to guarantee such an outcome is to ensure that policy and law on housing is firmly centred in human rights, as they appear under the *Victorian Charter of Rights and Responsibilities* ('Victorian Charter'),<sup>1</sup> and international human rights legal instruments, including notably the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') which contains within it the right to adequate housing as part of the right to the highest attainable standard of living.<sup>2</sup>

**Part II** of this submission will provide a brief overview of the right to adequate housing, as it appears under ICESCR and has been clarified by the Committee on Economic, Social and Cultural Rights ('CESCR') which oversees implementation of this Covenant. **Part III** of this submission will then seek to address Engage Victoria's questions regarding 'pathways' to housing, 'communities', 'growth' and finally 'partnerships and engagement'.

## 2. RIGHT TO HOUSING

As briefly noted above, the ICESCR provides for a right to adequate housing. Art 11 of the Covenant states in particular the following:

*'States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including...housing and to the continuous improvement of living conditions'.<sup>3</sup>*

It has been made clear by CESCR that this right should be interpreted broadly and should be understood to mean more than just shelter,<sup>4</sup> or 'four walls and a roof'.<sup>5</sup> Instead, the Committee has emphasised that the right to adequate housing seeks to protect a person's ability to 'live somewhere in security, peace and dignity'.<sup>6</sup>

---

<sup>1</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) .

<sup>2</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 933 UNTS 3 (entered into force 3 January 1976) arts 11, 12 .

<sup>3</sup> *Ibid* art 11.

<sup>4</sup> CESCR , *General Comment No 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)* UN Doc E/1992/23 (13 December 1991) [7] ('*General Comment No 4*').

<sup>5</sup> Office of the High Commissioner for Human Rights, *Fact Sheet No 21, The Right to Adequate Housing* (2009) 1-3.

<sup>6</sup> CESCR, *General Comment No 4* (n 4) [7] (emphasis added).

The protections afforded by the right to adequate housing necessarily turn on the meaning 'adequate'. The Committee has recognised that adequacy is broadly determined by social, economic, climatic, ecological and various other factors.<sup>7</sup> They have however made clear that *at a minimum*, adequate housing requires the following qualities, known as the 'minimum core' obligations:<sup>8</sup>

- a) **Security of tenure:** occupants are guaranteed legal protection against forced evictions, harassment and other threats to tenure.
- b) **Availability of services, materials, facilities, infrastructure:** occupants have safe drinking water, adequate sanitation, energy, heating, lighting, food storage and waste disposal.
- c) **Affordability:** cost of housing must not compromise occupant's enjoyment of other human rights. Housing costs must therefore be commensurate with income levels.
- d) **Habitability:** occupants enjoy physical safety, adequate space and protection from the elements.
- e) **Accessibility:** housing must be appropriate to the specific needs of marginalised groups.
- f) **Location:** housing must not serve as an obstacle to employment opportunities, healthcare services, schools, childcare centres, social facilities etc.
- g) **Cultural adequacy:** housing must allow for the expression of cultural identity

Notably, the right to adequate housing is not an absolute right. Any limitations on the right must however be determined by law, compatible with the very nature of the rights, and only be for the purpose of 'promoting general welfare in a democratic society'.<sup>9</sup> The above 'minimum core' requirements must still be fulfilled notwithstanding limitations.

The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* provide further clarity on Australia's basic legal obligations with regard to economic, social and cultural rights ('ESC rights'). The Guidelines make clear that States must 'respect' rights (i.e. refrain from interfering with their enjoyment); 'protect' rights (i.e. prevent violations of rights by third parties); and 'fulfil' rights (i.e. take appropriate legislative, administrative, budgetary, judicial and other measures to advance the realisation of rights).<sup>10</sup> CESCR has further indicated that States must satisfy the minimum core obligations of a given right and take steps, to the maximum of available resources, to progressively realise that right.<sup>11</sup> The Committee has mandated in particular the adoption of a national housing strategy with clear targets and an appropriate timeframe to ensure the right to adequate housing.<sup>12</sup> , while the Victorian Government itself is not legally obligated under international law to ensure the right to adequate housing (it is the Commonwealth which bears this responsibility under ICESCR), inaction by Victoria on this issue places Australia in breach of its obligations under international law.<sup>13</sup>

---

<sup>7</sup> Ibid [8].

<sup>8</sup> Ibid [8](a)-(g).

<sup>9</sup> ICESCR (n 2) art 4.

<sup>10</sup> International Commission of Jurists, *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (22-26 January 1997) [6].

<sup>11</sup> CESCR, *General Comment No 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, UN Doc E/1991/23 (14 December 1990) [10] ('General Comment No 3').

<sup>12</sup> CESCR, *General Comment No 4 (n 4)* [7].

<sup>13</sup> ICCPR (n 17) art 50 ; ICESCR (n 18) art 28; see also HRC, *General Comment No 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) 2 [4].

Consistently with Australia's obligations under ICESCR, the Victorian Government should therefore take steps to progressively realise the right to adequate housing through measures such as strategic law and policy that ensures adequate infrastructure, and the appropriate resources and services to ensure housing is affordable, accessible, habitable, culturally adequate and provides security of tenure.<sup>14</sup> The provisions of the Victorian Charter, especially the right to be free of arbitrary interference with one's home in s 13, contribute to realising the right to housing but do not go that far. That is why the Castan Centre has promoted, and promotes here, inclusion of the right to housing and other ESC rights expressly in the Charter. It should also be noted that there are several other rights which are impacted by homelessness and inadequate housing, including the rights to health; life, liberty and security of a person; privacy; equality and non-discrimination. Detailed consideration of these rights is however beyond the scope of the present submission.

### **3. A RIGHTS-BASED TEN-YEAR HOUSING STRATEGY**

This section will seek to address the following questions contained in Engage Victoria's discussion paper on the strategy:

1. *'What actions will enable people to access social housing, sustain their tenancies, and move between different housing options as their needs change?'*
2. *What are the most important features of affordable housing? (i.e., price, location, security of tenure, access to transport or daily amenities, connection to support services etc.)*
3. *What actions will support people to find and obtain an affordable home?*
4. *What actions will strengthen social and affordable housing communities?*
5. *What actions will enable and deliver growth in social housing?*
6. *What do we need to do to ensure housing supply meets the needs of people with specific support and housing needs?*
7. *What do we need to do to enable a well-functioning affordable housing system that provides rental and home ownership opportunities for those that need them?*
8. *How do we strengthen our partnership approach to build a stronger and more effective social and affordable housing system?*

This submission maintains that the Victorian Government can best address the above questions by adopting a rights-based approach to social and affordable housing. This section recommends in particular that the Victorian Government do so by (a) enshrining the right to housing in the *Victorian Charter*; (b) designing, developing and implementing a housing strategy in accordance with UN standards and guidance; (c) addressing the issue of housing discrimination; (d) increasing investment in *adequate* social housing; and (e) increasing support for persons experiencing homelessness. These recommendations will be examined in further detail as follows.

#### **(a) Enshrine a Right to Housing in the Charter**

The first important step that must be taken to ensure a rights-based housing strategy is to enshrine a right to housing in the *Victorian Charter*. To do so would have both symbolic and practical implications.

---

<sup>14</sup> 'Homelessness is a Human Rights Issue', *Australian Human Rights Commission* (1 January 2008) [6.1] at [www.humanrights.gov.au/our-work/rights-and-freedoms/publications/homelessness-human-rights-issue](http://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/homelessness-human-rights-issue).

As to the symbolic effect of including the right to housing in the Charter, this would demonstrate to the Victorian people that the right 'is so important that it *ought* to be enshrined in law' - not just at an international level, but in Victoria's own statutes.<sup>15</sup> This has the potential to catalyse a significant shift in existing cultural and societal perceptions of housing and homelessness in the state. These perceptions, which presently conceptualise housing as a commodity rather than a right, and perpetuate problematic stereotypes about persons experiencing homelessness,<sup>16</sup> have exacerbated the housing crisis in the state, and led to housing discrimination.<sup>17</sup> The inclusion of a right to housing in Victorian law would work to dismantle these preconceived notions, with flow on improvements to housing policy, and the delivery of housing services. This is the experience in Scotland, where the inclusion of the right to housing has been found to have improved the attitudes of housing service providers, as well as the operation and quality of housing services.<sup>18</sup>

At a practical level, the inclusion of the right to housing in the Charter would also serve to ensure that the Victorian Government takes the right (and by extension the central qualities of *adequate* housing) into consideration in the development of housing policies, and in the exercise of its discretion on the issues of housing.<sup>19</sup> Notably, the Victorian Legislative Council Legal and Social Issues Committee ('LSIC') in 2021 endorsed this view, stating that 'the addition of the right to housing to the *Charter of Human Rights and Responsibilities Act 2006* (Vic) would contribute to the consideration of the right to housing in future policy and legislative decisions'.<sup>20</sup> This is an important starting point because housing policy is at the root of various other housing-related concerns in Victoria,<sup>21</sup> such as the shortage of public housing stock, the poor *quality* of existing public housing and the lack of funding and resources to develop and increase housing stock. To incorporate consideration of the right to housing at the top-level of policy and law making would go on to have positive trickle-down impacts on the housing sector and general public.

A third potential benefit of enshrining the right to housing in the Charter is that public housing providers (and potentially even community housing providers),<sup>22</sup> as 'public authorities' within the meaning of s 4 of the Victorian Charter, would also be bound to ensure the adequacy of housing.<sup>23</sup> Accordingly, these providers would be required to ensure that social housing is accessible and affordable to all persons seeking it (including marginalised and vulnerable groups) and that public housing tenants have security of tenure. In addition, providers would need to ensure that housing provides physical safety, space and protection from the elements; is equipped with basic facilities such

---

<sup>15</sup> 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).

<sup>16</sup> See eg, Deb Batterham et al, Public Perceptions of Homelessness – a Literature Review (Report, May 2020) at [https://cms.launchhousing.org.au/app/uploads/2020/06/Public-perceptions\\_a-literature-review\\_Final\\_Public.pdf](https://cms.launchhousing.org.au/app/uploads/2020/06/Public-perceptions_a-literature-review_Final_Public.pdf).

<sup>17</sup> See eg, 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>.

<sup>18</sup> Fiona King, 'Scotland: Delivering a Right to Housing' (2015) 24(9) *Journal of Law and Social Policy* 155, 155.

<sup>19</sup> Victorian Legislative Council, Legal and Social Issues Committee, Inquiry into homelessness in Victoria (Final Report, March 2021) 197 at [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSLIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSLIC_59-06_Homelessness_in_Vic_Final_report.pdf) ('*Homelessness Inquiry Final Report*'). See also Bell (n 14) 30.

<sup>20</sup> Victorian Legislative Council, Legal and Social Issues Committee, *Homelessness Inquiry Final Report* (n 19) 197.

<sup>21</sup> 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>.

<sup>22</sup> Human Rights Law Centre, *Your Advocacy Guide* (Report, June 2018) 2. See eg, 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.

<sup>23</sup> *Victorian Charter* (n 1) s 4.

as water, energy, heat, food storage and sanitation; is not cut off from key opportunities, facilities and services; and is culturally appropriate. At present, it is clear that these basic requirements are simply not being fulfilled. There are reports of thousands-long waitlists for social housing,<sup>24</sup> overcrowding,<sup>25</sup> inadequate ventilation and protection from the extreme heat and cool weather,<sup>26</sup> and the absence of culturally appropriate delivery of services to public housing tenants in Victoria.<sup>27</sup> Creating an enforceable right to housing would address these outstanding issues ‘on the ground’ and serve to increase access to housing and enable tenants to sustain their tenancies in the longer-term.

### **(b) Adopt a rights-based housing strategy**

The next step is to design, develop and implement a ‘rights-based’ housing strategy. The UN has provided important guidance on what such a strategy would entail.<sup>28</sup> Whilst UN guidance to date has focused on the qualities of *national* housing strategies, key recommendations made by the former UN Special Rapporteur on the right to adequate housing, Leilani Farha (‘former Special Rapporteur’) remain relevant to the present discussion.

As a starting point, former Special Rapporteur has emphasised that housing strategies should be based on a vision of structural change that is required over time’.<sup>29</sup> This means that strategies should seek to *provide housing*, as well as *address the gaps and inequalities* that have served as barriers to housing within communities.<sup>30</sup>

Strategies should be firmly grounded in a **legal basis**, meaning that they should recognise the right to adequate housing as it is guaranteed under international law, and provide avenues for effective remedies.<sup>31</sup> This includes laying out protections against forced evictions, and clear steps for compensation, restitution and rehabilitation for displacement where such evictions occur.<sup>32</sup> In addition, strategies should set *legal standards* for compliance with the right to adequate housing, including immediate obligations (i.e. minimum core obligations) and those which require continuous future action (i.e. progressive realisation obligations’).

Strategies should also work to **prioritise those most in need**, in particular by identifying groups in need of support and addressing barriers to accessing housing and the exercise of basic rights. For

---

<sup>24</sup> 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>.

<sup>25</sup> Affordable Development Outcomes, Improving access to affordable housing for vulnerable Victorians Report to Infrastructure Victoria (Report, 2016) 19 at <https://www.infrastructurevictoria.com.au/wp-content/uploads/2019/04/Affordable-Development-Outcomes-Improving-access-to-affordable-housing-for-vulnerable-Victorians.pdf>. See also ‘The Big Problem in Public Housing’, *Victorian Public Tenants Association* (6 July 2020) at <https://vpta.org.au/the-big-problem-in-public-housing/>.

<sup>26</sup> 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/>.

<sup>27</sup> 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) 137 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/>.

<sup>28</sup> 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*, UN Doc A/HRC/37/53 (15 January 2018) [7] (*Report of the Special Rapporteur 2018*).

<sup>29</sup> *Ibid* [6].

<sup>30</sup> *Ibid*.

<sup>31</sup> *Ibid* [16]

<sup>32</sup> *Ibid*.

example, persons experiencing homelessness are one such group. Housing strategies should therefore allocate the maximum of available resources to eliminate homelessness *as a priority*.<sup>33</sup> An important aspect of this requirement is that strategies should both seek to address the underlying structural causes of homelessness, as well as the symptoms.<sup>34</sup>

Strategies should be **comprehensive**, which is to say they should include all key features of adequate housing as defined under international law, and targeted measures to address them.<sup>35</sup> Example measures suggested by the former Special Rapporteur include rent regulation, housing subsidies, and the setting of standards for construction and occupation of residential facilities.<sup>36</sup> Strategies should also be **whole of government**, meaning that they should contain shared responsibilities for all relevant levels of government and their agencies, as well as engage others from the private, financial and philanthropic sectors, including landlords, the construction industry, housing developers and others.<sup>37</sup>

Strategies should also ensure '**rights-based participation**'. This refers to the need to involve persons who have experienced housing disadvantage and homelessness in every stage, from design and development of strategies, through to implementation, through to monitoring and evaluation.<sup>38</sup> This is achievable by way of establishing housing councils, commissions, committees and advisory panels. Importantly, consultations (such as the present one) are *not sufficient* to ensure rights-based participation, because while they involve *input* from various groups, they leave critical decision-making solely in the hands of the government.<sup>39</sup> Instead, rights-based participation requires rights-holders and the community to *lead* strategies by sharing their insights on what is lacking and is needed, and government should then respond accordingly.<sup>40</sup> Importantly, rights-based strategies should ensure the empowerment and inclusion of vulnerable groups.<sup>41</sup>

Furthermore, strategies should ensure **accountable budgeting**. By this the former Special Rapporteur refers to the need to allocate reasonable and adequate resources to respecting, protecting and fulfilling the right to adequate housing.<sup>42</sup> Notably, governments must comply with the standards set out in ICESCR, which require them to utilise the 'maximum of available resources' and 'all appropriate means' to realise the right to adequate housing.<sup>43</sup> Strategies should also contain **reasonable and achievable goals and timelines**, which reflect the urgency of respecting rights, and recognise the severe consequences of failing to do so.<sup>44</sup> According to the UN Office of the High Commissioner for Human Rights, strategies should contain information on what is deliverable and when, the results of such measures, and assessments of impact on vulnerable groups.<sup>45</sup>

---

33 Ibid [18] (emphasis added).

34 Ibid [33] - [34].

35 Ibid [48].

36 Ibid.

37 Ibid [55].

38 Ibid [61].

39 Ibid [62].

40 Ibid.

41 Ibid [73]-[74].

42 Ibid [73].

43 ICESCR (n 2) art 2(1).

44 Leilani Farha, *Report of the Special Rapporteur* (n 48) [90].

45 United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012) 37.

The former Special Rapporteur has also called for housing strategies to provide **mechanisms for accountability**.<sup>46</sup> These mechanisms need to ensure the effective implementation and monitoring of frameworks, identify issues and hold actors accountable to their obligations.<sup>47</sup> This can take the form of a designated monitoring body, such as an ombudsman who can provide independent oversight on developments and compliance.<sup>48</sup> Housing strategies should also seek to ensure **access to justice** for those denied adequate housing.<sup>49</sup> This encompasses access to legal assistance, and pathways to make claims through ombudsman offices, councils, housing advocates or similar bodies. Finally, housing strategies **should involve and guide the private sector**, including landlords, housing developers, construction companies and others, who should be educated on human rights and the right to adequate housing in particular.<sup>50</sup>

### (c) Address Housing Discrimination

In addition to the above, Victoria's ten-year housing strategy must also encompass specific measures to address and prevent housing discrimination. At present, it is clear that social housing tenants, LGTBQIA+ persons, women and children, persons experiencing homelessness and other vulnerable groups are subject to both direct and discrimination which can impact on their ability to access housing, sustain their tenancies or transition into appropriate housing as their needs change. For example, the Victorian Equal Opportunity and Human Rights Commission ('VEOHRC') in 2012 released a report which revealed that some Victorians have experienced discrimination in the private rental market on the basis of race, disability or having children.<sup>51</sup> More recently still, both the Council to Homeless Persons and the Federation of Victorian Legal Centres have indicated that persons experiencing mental illness have experienced barriers to accessing both private rentals and public housing.<sup>52</sup> The Victorian LSIC has also recognised that stigma and discrimination also impact on persons experiencing homelessness, those with a criminal record, low-income young persons with no rental history, older persons, Aboriginal Victorians and those from culturally and linguistically diverse ('CALD') communities.<sup>53</sup>

Existing anti-discrimination protections are not adequate to address housing discrimination. As identified by the VEOHRC for example, *proving* discriminatory treatment is challenging as rental agents typically provide other reasons for the denial of rental applications.<sup>54</sup> In addition, current 'protected characteristics' are limited (i.e., race, disability, age and sex etc) and should be extended to also cover other relevant grounds such as socio-economic status, including homelessness.

---

<sup>46</sup> Leilani Farha, *Report of the Special Rapporteur* (n 48) [101] -[105].

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid* [110].

<sup>50</sup> *Ibid* [118] – [126].

<sup>51</sup> Victorian Equal Opportunity and Human Rights Commission ('VEOHRC'), *Locked out > Discrimination in Victoria's Private Rental Market* (Report, 2012) 16 at [http://www.nwhn.net.au/admin/file/content2/c7/Locked\\_out\\_\\_\\_Discrimination\\_in\\_Victorias\\_private\\_rental\\_market.pdf](http://www.nwhn.net.au/admin/file/content2/c7/Locked_out___Discrimination_in_Victorias_private_rental_market.pdf) ('Locked Out').

<sup>52</sup> Federation of Community Legal Centres, Submission to Victorian Parliament, Legislative Council Legal and Social Issues Committee, *Inquiry into Homelessness in Victoria* (March 2020) 22 at [https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/718/attachments/original/1584333935/Submission\\_to\\_Inquiry\\_into\\_Homelessness.pdf?1584333935](https://d3n8a8pro7vhmx.cloudfront.net/fclc/pages/718/attachments/original/1584333935/Submission_to_Inquiry_into_Homelessness.pdf?1584333935); Council to Homeless Persons, Submission No 328 to Victorian Parliament, Legislative Council Legal and Social Issues Committee, *Inquiry into Homelessness in Victoria* 27 at [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Submissions/S328\\_-\\_Council\\_to\\_Homeless\\_Persons\\_Redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Submissions/S328_-_Council_to_Homeless_Persons_Redacted.pdf).

<sup>53</sup> Victorian Legislative Council Legal and Social Issues Committee, *Homelessness Inquiry Final Report* (n 19) 23, 56, 307, 310.

<sup>54</sup> VEOCHR, *Locked out* (n 27) 16.

We particularly wish to emphasise the need to adopt a gender perspective when formulating and implementing housing policy and strategy. It is well known that women experiencing family violence have particular housing needs and are vulnerable to homelessness. The actions and resources necessary to address these needs and prevent homelessness are not sufficiently identified by general approaches. Likewise, it is well known that LGBTQI+ persons suffer particular kinds of discrimination when trying to access housing and homelessness services. Their particular needs and vulnerabilities are also not sufficiently identified by general approaches.

Victoria's housing strategy should seek to address these gaps in protections and include additional measures such as training real estate agents and educating the broader public to ensure that vulnerable persons, including the homeless are not subject to housing discrimination.<sup>55</sup>

#### **(d) Increase Investment in Adequate Social Housing**

Victoria is currently facing a severe shortage of adequate and affordable housing. In 2017, the Victorian Parliament recognised that only 2.8% of rental properties in the State were considered to be 'affordable' to low-income individuals and those dependent on income support. In 2020, affordability is estimated to be even lower, at only 2%.<sup>56</sup> The Australian Productivity Commission's 2019 report on Government Service has made clear that Victoria has less social housing available than it did a decade ago years ago.<sup>57</sup> This is, in part, due to the transfer of public housing to the private sector, which has occurred at a greater rate in Victoria than in other states and territories.<sup>58</sup>

The scarcity of social housing in Victoria is exacerbated by the sheer volume of housing applicants, which exceeds the number of available dwellings.<sup>59</sup> Indeed most recent estimates indicate that there are almost 50,000 applicants on the Victorian Housing Register awaiting social housing, over 50% of which qualify for 'priority access'.<sup>60</sup> This has placed considerable strain on crisis and emergency accommodation providers and support services.<sup>61</sup> The issue has been further complicated by the general tendency for tenants to remain longer in social housing once they have obtained it, in large part due to the unaffordability of private rentals.<sup>62</sup>

---

<sup>55</sup> This has also been recommended by the Victorian Legislative Council Legal and Social Issues Committee. See Victorian Legislative Council Legal and Social Issues Committee, *Homelessness Inquiry Final Report* (n 19) xxxix (recommendation 49).

<sup>56</sup> Anglicare Victoria, *Rental Affordability Snapshot 2020: Victorian Rental Market* (2020) 15.

<sup>57</sup> '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](http://www.pc.gov.au/research/ongoing/report-on-government-services/2019/archive/housing-and-homelessness); see also David Kelly, Libby Porter and Kate Shaw, 'Shh! Don't Mention the Public Housing Shortage. But No Serious Action on Homelessness Can Ignore it', *The Conversation* (10 October 2019) at [www.theconversation.com/shh-dont-mention-the-public-housing-shortage-but-no-serious-action-on-homelessness-can-ignore-it-124875](http://www.theconversation.com/shh-dont-mention-the-public-housing-shortage-but-no-serious-action-on-homelessness-can-ignore-it-124875).

<sup>58</sup> '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](http://www.vpta.org.au/100000-waiting-for-a-home-in-2020); see also Dr 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.

<sup>59</sup> *Victoria's Social Housing Supply Requirements to 2036* (Report, March 2017) 2 at [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public\\_Housing\\_Renewal\\_Program/QON/VPTA-QON-Victorias\\_social\\_housing\\_supply\\_reqs\\_to\\_2036.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public_Housing_Renewal_Program/QON/VPTA-QON-Victorias_social_housing_supply_reqs_to_2036.pdf).

<sup>60</sup> Priority access groups are (a) persons experiencing homelessness and receiving support; (b) persons escaping or who have escaped family violence; (c) persons with disability or significant support needs; (d) persons with special housing needs. See 'Victorian Housing Register', *HousingVic* (2021) at <https://www.housing.vic.gov.au/victorian-housing-register>.

<sup>61</sup> Victorian Legislative Council Legal and Social Issues Committee, *Homelessness Inquiry Final Report* (n 19) 98.

<sup>62</sup> *Ibid* 2-3.

We commend the Victorian Government's decision to increase investment in social housing in the wake of COVID-19.<sup>63</sup> This is an important first step towards addressing the present housing crisis. We note however that this investment, which is expected to generate over 12,000 new homes, is by itself insufficient. While the availability of social dwellings is set to increase to approximately 3.5% of all Victorian housing, this proportion is still significantly lower than the national average, which is 4.2% of all housing.<sup>64</sup> Further, the investment will need to be accompanied by transparency in decision-making, the clear identification of funding streams and agencies responsible for oversight and implementation, clear time frames within which objectives are sought to be achieved, among various other measures.<sup>65</sup> In addition, decisions should be made in consultation with persons impacted by housing policies, including persons experiencing homelessness, public housing tenants and related advocacy groups.

The increased availability of social housing, and affordable low-cost homes will ensure access to housing and allow for tenants (both social and private) to better sustain their tenancies longer term. The availability of such housing will also provide pathways for vulnerable persons to transition out of crisis and emergency accommodation.

### **(e) Increase support for persons experiencing homelessness**

Victoria has historically failed to provide adequate support for persons experiencing homelessness, with insufficient funding and resources dedicated to address the issue.<sup>66</sup> While the COVID-19 saw positive changes, including the temporary housing of some 2000 persons experiencing homelessness in hotel accommodation,<sup>67</sup> and \$6 million in funding dedicated to homelessness support organisations, these efforts need to be continued and made sustainable throughout the remainder of the pandemic and beyond.<sup>68</sup>

As the Government looks to implement 'exit plans' for persons housed in temporary hotel accommodation, it is necessary to ensure that all persons are provided with viable pathways to longer-term accommodation, and that alternative housing options satisfy the core minimum requirements for adequate housing. Reports have however emerged that indicate that a numerous people housed in temporary accommodation during the height of the pandemic have *not* been assisted into longer-term tenancies.<sup>69</sup> Furthermore, other reports indicate that individuals are being offered poor quality or

---

<sup>63</sup> Daniel Andrews, 'Victoria's Big Housing Build' (Media Release, Premier of Victoria, 15 November) at <https://www.premier.vic.gov.au/victorias-big-housing-build>.

<sup>64</sup> Katrina Raynor, 'Victoria's \$5.4bn Big Housing Build: it is big, but the Social Housing Challenge is Even Bigger', *The Conversation* (18 November 2020) at <https://theconversation.com/victorias-5-4bn-big-housing-build-it-is-big-but-the-social-housing-challenge-is-even-bigger-150161>.

<sup>65</sup> Ibid; See also Carolyn Whizman, Kate Raynor and Louise Frost, 'Collaborative Governance for Affordable Housing in Toronto and Melbourne: Evaluating Procedural Accountability' (2020) *Canadian Planning and Policy Journal* 1 – 19.

<sup>66</sup> See, eg, 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>.

<sup>67</sup> Richard Wynne, '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>.

<sup>68</sup> Richard Wynne, '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>.

<sup>69</sup> H Pawson et al, *COVID-19: Rental Housing and Homelessness Impacts – An Initial Analysis* (Report, 2021) 123 at [http://povertyandinequality.acoss.org.au/wp-content/uploads/2021/02/COVID19\\_Rental-housing-and-homelessness-impacts\\_report-1.pdf](http://povertyandinequality.acoss.org.au/wp-content/uploads/2021/02/COVID19_Rental-housing-and-homelessness-impacts_report-1.pdf); 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>; 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](http://theage.com.au/national/victoria/homeless-people-stuck-in-unsuitable-sometimes-dangerous-accommodation-20210304-p577ql.html).

otherwise inappropriate alternative housing options (i.e., certain private rooming houses), and that hotel accommodation is being terminated even where persons decline to transfer to such environments.<sup>70</sup> The quality of such alternative options has long been criticised, with many private rooming houses being labelled ‘unsafe’ with ‘appalling conditions’.<sup>71</sup>

The above concerns showcase that a failure to properly plan and dedicate resources to this issue in the long term will see Victoria regress from its important developments post-pandemic. The ten-year strategy should therefore seek to ensure that persons experiencing homelessness are providing ongoing supports as long as they need it. Beyond greater investment to develop new social housing, the Victorian Government should also work to review and improve existing housing and longer-term accommodation options such as private rooming houses to ensure that they are of acceptable quality. Finally, persons experiencing homelessness should not be denied agency in decision-making around transfers to longer-term accommodation and should be free to decline inappropriate accommodation without fear of returning to rough sleeping.

#### **4. CONCLUSION**

The above submission has sought to demonstrate that the Victorian Government should adopt a rights-based approach in its Ten-year Social and Affordable Housing Strategy. Doing so would be in compliance with established obligations and standards set out in international human rights law. These obligations and standards provide clear and achievable guidance on measures to respect, protect and fulfil the right to housing. In addition, we have recommended that the strategy contain specific measures to specifically address housing discrimination, increase investment in social housing, and increase support for persons experiencing homelessness. These issues have, to date, undermined the enjoyment of the right to adequate housing in Victoria, and warrant targeted attention over the next decade.

By adopting the above approach, we believe that the Victorian Government can address both the structural causes of issues such as housing unaffordability and homelessness. The Castan Centre would be very pleased to continue to provide their human rights expertise to assist in the further development of such strategy, or other initiatives relating to housing and homelessness in Victoria.

---

<sup>70</sup> 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>.

<sup>71</sup> 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>.