

18 September 2012

Justice Greg Garde AO RFD  
President  
Victorian Civil and Administrative Tribunal  
President's Chambers  
55 King St  
MELBOURNE VIC 3000

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Dear Justice Garde

## **PILCH Homeless Persons' Legal Clinic – submission to the VCAT Legislation Reform Project**

We refer to your letter dated 23 July 2012 in which you invited input from interested organisations about suggested changes to the *Victorian Civil and Administrative Tribunal Act 1998 (Vic) (VCAT Act)*, parts of enabling enactments that relate to the Victorian Civil and Administrative Tribunal (**VCAT**) and the *Victorian Civil and Administrative Tribunal Rules 2008 (VCAT Rules)*.

The PILCH Homeless Persons' Legal Clinic (**HPLC**)<sup>1</sup> welcomes the opportunity to comment on the VCAT Legislation Reform Project (**Project**) and commends VCAT for consulting on potential changes.

### **1. Executive summary**

The comments and recommendations in this submission are informed by the HPLC's experience and expertise as an organisation that provides free legal advice, advocacy and representation to clients experiencing or at risk of homelessness. The HPLC regularly represents clients involved in VCAT proceedings, in particular in the Residential Tenancies List and the Guardianship List.

The operations and decisions of VCAT have a significant impact on the HPLC's client group. In the most serious – and common – situations VCAT's decisions can result in the eviction of a person from their home or a limitation being placed on a person's autonomy to manage their finances or lifestyle.

Informed by our casework, the HPLC makes the following five key recommendations in relation to the Project:

1. **Human rights jurisdiction** – The VCAT Act or the enabling enactment, the *Residential Tenancies Act 1997 (Vic) (RTA)*, should be amended to give VCAT jurisdiction to consider compliance with section 38 of the Charter in determining an application for a possession order by a social landlord under the RTA.<sup>2</sup>
2. **Adjournments** – The *Common Procedures Practice Note (PNVCAT1)* should be amended to remove the limitations on circumstances in which adjournments will be granted. In particular, the statement that 'the non-availability of a particular professional advocate will not normally be regarded as a sufficient basis for adjournment' should be removed and VCAT processes should be revised accordingly.

<sup>1</sup> Information regarding the HPLC is annexed to this submission.

<sup>2</sup> 'Social landlord' is used in this submission to refer to both the Director of Housing and community housing providers.

3. **Attendance** – Section 99(2) of the VCAT Act should be amended to limit the circumstances in which certain proceedings (in particular possession applications and applications for the appointment of a guardian or administrator) can be heard in the absence of the respondent. This reform should be accompanied by ongoing improvements in measures to increase attendance at VCAT hearings.
4. **Representation** – Section 62(8) of the VCAT Act should be amended to expressly recognise that officers of the Director of Housing (**DOH**), representatives of community housing providers and real estate agents are ‘professional advocates’. Section 62(2) of the VCAT Act should also be amended to include a right to representation for people who experience one or more of a defined set of vulnerabilities (including, for example, homelessness, age, disability, mental illness, substance dependence, and/or cultural or linguistic barriers).
5. **Merits review** – The VCAT Act should be amended to provide for merits review of VCAT decisions.

The HPLC also endorses the submission and recommendations of the Tenancy Working Group of the Federation of Community Legal Centres.

## 2. VCAT’s jurisdiction to consider section 38 of the Charter

The HPLC’s foremost recommendation in relation to the Project is that legislation (either the VCAT Act or the enabling legislation, the RTA) should be amended to give VCAT jurisdiction to consider unlawfulness under section 38 of the Charter in determining applications for possession under the RTA.

As you know, the Court of Appeal in *Director of Housing v Sudi (Sudi)*<sup>3</sup> held that, in determining an application for a possession order, VCAT does not have jurisdiction to consider whether the public authority landlord has complied with its obligation under section 38 of the Charter to give proper consideration to human rights in decision-making and to act compatibly with human rights.<sup>4</sup>

This section discusses:

- VCAT’s jurisdiction in residential tenancy matters;
- The role of VCAT and the Charter in residential tenancy matters prior to Sudi;
- The changes that the HPLC has observed through our casework since Sudi; and
- The HPLC’s recommendations in relation to VCAT’s jurisdiction to consider the Charter in residential tenancy matters.

### a. VCAT’s jurisdiction – a creature of statute

It is well understood that VCAT is a creature of statute that does not have inherent jurisdiction and that ‘its jurisdiction, extensive though it is, is precisely defined in the various enabling enactments’.<sup>5</sup> The Court of Appeal in Sudi reiterated:

<sup>3</sup> *Director of Housing v Sudi* [2011] VSCA 266.

<sup>4</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(1): ‘Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.’

<sup>5</sup> Jason Pizer, *Pizer’s Annotated VCAT Act* (3<sup>rd</sup> ed, 2007) 23 citing *Roads Corporation v Maclaw No 469 Pty Ltd* (2001) 19 VAR 169 (Balmford J).

As an administrative tribunal, the jurisdiction of VCAT derives entirely from statute. The powers of an administrative tribunal in any particular instance flow from the statute that establishes the tribunal, in this case the VCAT Act, and any subject-specific legislation granting further jurisdiction, in this instance, the RTA.<sup>6</sup>

In the context of tenancy proceedings, the provisions from which VCAT derives its jurisdiction include:

- Section 446 of the RTA, which confers jurisdiction on VCAT to determine 'an application under this Act' relating to any matter arising in relation to a tenancy agreement or proposed tenancy agreement of premises in Victoria, a residency right or site agreement under the RTA or 'referred to it under [the RTA]'; and
- Sections 40–44 of the VCAT Act, which confer the following jurisdiction on VCAT:
  - Review jurisdiction – jurisdiction conferred on VCAT 'by or under an enabling enactment to review a decision made by a decision-maker'.<sup>7</sup> Review jurisdiction involves undertaking merits review of an administrative decision; and
  - Original jurisdiction – jurisdiction other than review jurisdiction.<sup>8</sup> VCAT is not standing in the shoes of any decision-maker or undertaking any form of review; it is making a first instance decision. In exercising its original jurisdiction, VCAT 'has the functions conferred on it by or under the enabling enactment, as well as any functions conferred on it by or under [the VCAT Act], the regulations and the rules'.<sup>9</sup>

When determining an application for possession, VCAT is exercising original jurisdiction.

The Court of Appeal in *Sudi* held that, in determining an application for a possession order, VCAT does not have the power to consider whether the public authority landlord had complied with its Charter obligations i.e. there is no scope to consider the lawfulness of the application for possession under section 38 of the Charter.

In *Sudi*, the application for possession had been made under section 344 of the RTA on the basis that the premises was occupied without licence or consent.<sup>10</sup> More commonly, the HPLC assists clients where applications for possession are made under Division 1 of Part 7, including under section 322 of the RTA.

Together, Divisions 1, 2 and 3 of Part 7 of the RTA contain the provisions under which a landlord, rooming house owner, caravan park owner, site owner, person entitled to give a notice to vacate under section 289A, mortgagee or person who claims to be entitled to the possession of a premises can apply to VCAT for a possession order.

It is in this legislative and jurisdictional context that the HPLC discusses the role of VCAT in considering applications for possession in both the pre and post *Sudi* landscapes.

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<sup>6</sup> *Sudi*, above n 3, [19].

<sup>7</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 42.

<sup>8</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 41.

<sup>9</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 44.

<sup>10</sup> *Residential Tenancies Act 1997* (Vic) s 344 provides that: 'A person who claims to be entitled to the possession of premises may apply to the Tribunal for a possession order if – (a) the premises have been rented premises under a tenancy agreement at any time within the period of 12 months before the date of the application; and (b) the applicant alleges that the premises are occupied solely by a person (not being a tenant under a tenancy agreement) who entered into or remained in occupation without the applicant's licence or consent or that of any predecessor in title of the applicant'. Section 345 provides: 'The Tribunal must make a possession order for the premises if the Tribunal is satisfied that – (a) the applicant under section 344 is entitled to possession of the premises; and (b) there are reasonable grounds for believing that a person is occupying the premises without licence or consent'.

### ***b. The role of VCAT in Charter decision-making pre-Sudi***

In June 2011, the HPLC made a detailed submission to the Scrutiny of Acts and Regulations Committee as part of the Charter review. *Charting the Right Course (HPLC Charter Submission)* contained 20 case studies of matters in which the HPLC had used the Charter to negotiate and advocate for clients at risk of homelessness. It identified that this work helped to prevent 42 people, including 21 children, being evicted from social housing into homelessness.

The HPLC Charter Submission highlighted that over 50% of the matters it discussed had been resolved via negotiation. In only nine did VCAT make the final determination; and in seven of these, VCAT determined that the eviction should not proceed.

The HPLC Charter Submission was prepared prior to the Court of Appeal's decision in *Sudi*. At that time, the HPLC stated: 'the protection of rights under the Charter would not be as effective and efficient if there was no enforcement role for courts and tribunals'.<sup>11</sup> Based on what the HPLC had observed through our casework, the HPLC identified the following significant benefits of VCAT's ability to consider section 38 compliance as part of eviction proceedings:

- **Preventative function** – the knowledge that rights are enforceable before VCAT is a powerful motivator in terms of compliance. It provides a more compelling incentive to avoid breaches and therefore makes it less likely that social landlords will seek eviction without giving proper consideration to tenants' human rights and possible alternatives to eviction;
- **Guidance by VCAT** – VCAT's decisions provide clarity about the application of the Charter in practice. In particular, the decisions in *Metro West v Sudi*<sup>12</sup> and *HomeGround v Mohamed*<sup>13</sup> provided practical guidance about the categorisation of 'functional public authorities' and the way in which blanket application of policies by transitional housing managers (**THMs**) risked being non-compliant with the Charter; and
- **Additional layer of protection** – on rare but important occasions an independent decision-maker is needed to avoid unjust outcomes. The HPLC Charter Submission contained nine case studies where negotiated outcomes were not possible. In seven of these cases, if VCAT had not had a role (i.e. as an independent tribunal assessing the HPLC's submissions, which included Charter-based arguments), it is highly likely that these people – 29 in total, including 16 children – would have been evicted.

Pre-Sudi, VCAT Members were engaging in consideration of the Charter as part of their determination of applications for possession by social landlords. Members were effectively balancing human rights considerations against the competing obligations of social housing providers in making their decisions.

By way of example, in a housing context, the HPLC commonly articulates the obligation of public authorities under section 38 in the manner set out below.

In order to comply with section 38(1) of the Charter, the public authority landlord should have:

1. Identified whether any of the individual or family's human rights would be engaged by the decision to apply for a possession order;

<sup>11</sup> PILCH Homeless Persons' Legal Clinic, *Charting the Right Course: Submission to the Inquiry into the Charter of Human Rights and Responsibilities* (6 June 2011) 35 (**HPLC Charter Submission**).

<sup>12</sup> *Metro West v Sudi* [2009] VCAT 2025 (9 October 2009).

<sup>13</sup> *HomeGround Services v Mohamed* [2009] VCAT 1131 (6 July 2009).

2. Considered whether such a decision would have the effect of interfering with the rights that have been engaged (if any); and
3. If there was an interference, considered whether the interference could be demonstrably justified as a reasonable limit in accordance with section 7(2) of the Charter. For example, by:
  - a) Considering the legitimate aim the social landlord is seeking to achieve – such as the management of a waiting list of over 36,000 people or ensuring the safety of other tenants;
  - b) Balancing these aims against the circumstances of the individual or family – such as considering what caused the non-compliance and what the consequences of eviction will be; and
  - c) Considering whether there are alternatives to eviction.

This is a common sense balancing exercise that VCAT Members are well equipped to undertake. This has been noted by VCAT Members with reference to the decision of Emerton J in *Castles v Secretary to the Department of Justice*:<sup>14</sup>

Emerton J decided that a public authority would meet its obligation under section 38(1) if there is some evidence that shows the decision-maker seriously turned his or her mind to the possible impact of the decision on a person's human rights and the implications of the decision for the affected person, and that the countervailing interests or obligations were identified. While it would not be enough for a decision-maker to merely invoke the Charter, a sophisticated legal exercise is not required given that the consideration of human rights is intended to be part of the day to day work of employees of public authorities.<sup>15</sup>

In the HPLC's view, a pre-occupation with the complexity of the Charter is misinformed and ignores the practical way in which the Charter was effectively bringing about better decision-making and leading to fairer outcomes for struggling clients.

### ***c. Decision-making and evictions post-Sudi***

Through our work, the HPLC has seen the impact of the Sudi decision on the ability of disadvantaged clients to access justice and obtain fair outcomes. These impacts are discussed below.

#### ***i. Unwillingness to negotiate – a return to inflexible decision-making***

As discussed above, in the HPLC's experience, the Charter has been extremely effective outside courts and tribunals. It opens the doors to negotiation and makes room for competing priorities to be considered and balanced. It allows for practical solutions to be contemplated outside the narrow range of possible outcomes that policies and legislation might otherwise dictate.

However, we can now say with certainty that enforceability is critical to the Charter's preventative role and its utility in negotiation. The potential for enforcement (i.e. the knowledge that VCAT would consider Charter

<sup>14</sup> *Castles v Secretary to the Department of Justice* [2010] VSC 310 [185]–[186].

<sup>15</sup> *Director of Housing v KJ* (Residential Tenancies) [2010] VCAT 2026 (16 December 2010) [81]. See also *Director of Housing v TK* (Residential Tenancies) [2010] VCAT 1839 (16 November 2010) [57]–[58].

compliance in eviction proceedings) provided a compelling incentive for public authorities to avoid breaches and genuinely consider reasonable alternatives.<sup>16</sup>

In the post-Sudi landscape, the HPLC has witnessed less accountability for human rights compliance; social landlords are less inclined to try to comply with human rights obligations because there is little consequence of not doing so. While technically, tenants have the option of seeking review of a social landlord's decision in the Supreme Court, in reality, the complexity of this process, the potential adverse cost consequences and the extremely limited capacity of legal services to assist with such actions, make it highly unlikely that this option will be pursued.

Through our casework, we have seen directly that social landlords are less receptive to negotiation and less willing to consider alternatives to eviction.

### **Eviction for arrears by social landlords**

In two recent matters, the HPLC has assisted clients facing eviction from social housing for arrears. Both clients experienced extreme hardship and multiple vulnerabilities, including a mix of family violence, long term incarceration, substance dependence, cultural and linguistic barriers and mental illness. The reasons that the arrears had accrued were genuine and compelling. The landlords were on notice that the consequences of eviction would be homelessness and, more than likely, deterioration of mental health, family breakdown, relapse and / or re-offending.

The landlords – in one case the OOH and in another a housing association – refused to negotiate alternatives to eviction. The OOH applied to have one client and her children evicted on the basis of the arrears; they resisted attempts to negotiate on the basis of the client's extreme hardship and repeatedly rejected her offers to enter into a payment plan.

The HPLC successfully represented this client at VCAT (with the support of pro bono counsel) and managed to obtain a VCAT order adjourning the eviction subject to the client's compliance with a payment plan. The HPLC also supported the client to access \$1500 – approximately 50% of the arrears owing – which was the lump sum the OOH demanded (not an insignificant amount for a woman who is reliant on Centrelink with three children to care for).

In the second matter, the housing association successfully obtained a possession order on the basis of the client's arrears. Despite the client's obvious difficulty maintaining his tenancy, at no stage had the housing association offered to link him with a housing support service. Further, the client's offer to pay \$400 up front and enter into a payment plan was rejected and the housing association refused to withdraw the application for possession. Because the Charter could not be raised at VCAT, there was no room to question whether this decision was justified and proportionate or to compel the landlord to weigh up alternatives to eviction. When the warrant was executed, the client re-entered homelessness.

<sup>16</sup> See, eg, Chris Povey, 'Director of Housing Considers Rights of Vulnerable Tenants', Case Note on *Director of Housing v TK* [2010] VCAT 1839 (16 November 2010), Human Rights Law Centre Case Law Database, which states: 'of greater significance is the evidence presented before VCAT relating to the landlord's process in paying proper consideration to the tenant's human rights. Unlike previous reported VCAT cases, the Director of Housing led evidence of its processes and policies in ensuring that tenants' rights are considered in decision-making processes. This is significant, as it demonstrates that the Director is now engaging in constructive and thoughtful consideration of human rights in making decisions about vulnerable tenants. This is a welcome departure from the opaque technical compliance evidenced in other cases, and demonstrates that the Charter is having a real impact in government decision making culture'.



## ***ii. Social housing providers – ‘no reason’ evictions into homelessness***

A clear example of the Charter’s potential to improve the processes of public authorities was the movement away from the practice of issuing transitional housing tenants with 120 day ‘no reason’ Notices to Vacate to compel them to move out of short-term housing and into longer-term housing.

Prior to the introduction of the Charter, it was standard practice for transitional housing managers (**THMs**) to issue tenants with a no reason Notice to Vacate when the tenant signed the lease. This Notice to Vacate gave the tenant 120 days to find alternative accommodation, after which the landlord could apply to VCAT for a possession order. Often these short-term leases were rolled over more than once, but having the Notice to Vacate constantly on foot meant the landlord could choose to apply for a possession order at the end of the four month period.

In relation to this practice, the HPLC Charter Submission noted:

When it commenced, this process was a logical way for THMs to make sure that people were actively trying to find long-term accommodation, so that other people who needed short-term housing could access transitional properties. Unfortunately, the acute shortage of affordable housing in Victoria means that there is often no long-term accommodation for tenants to relocate to upon leaving transitional housing. For this reason, the standard practice of issuing 120 day Notices to Vacate to move people out of transitional properties was no longer an appropriate policy or practice.<sup>17</sup>

The flaws in this policy were also recognised in the 2010 Inquiry into the Adequacy and Future Directions of Public Housing in Victoria, which recommended that the ‘Victorian Government reviews the Transitional Housing program to determine its effectiveness in the context of extensive waiting times to access public housing and in context of broader changes to social housing provision’.<sup>18</sup>

In the face of performance targets and funding agreements, however, there was no impetus to change the outdated practice until the Charter was used in VCAT to identify the impact on marginalised Victorians. The VCAT decisions in *HomeGround Services v Mohamed*<sup>19</sup> and *Metro West v Sudi*<sup>20</sup> drew attention to the fact that these policies risked pushing people into a revolving cycle of rough sleeping and emergency accommodation and, gradually, social housing providers stopped issuing tenants with no reason Notices to Vacate as standard practice.

Unfortunately, Sudi has had a significant impact on the operation of the Charter and the practices of housing providers. Post-Sudi, the HPLC has seen a regression back to the practice of issuing 120 day Notices to Vacate to vulnerable tenants. We are currently assisting a number of clients who have been issued with no reason notices by social landlords who assert that these notices are served on all new incoming residents in accordance with the landlord’s right under the RTA. This practice presents an immediate risk of homelessness to some of Victoria’s most disadvantaged tenants.

The HPLC is strongly of the view that decision-making processes and outcomes for disadvantaged tenants could be improved if social housing providers were again accountable before VCAT for their compliance with section 38 of the Charter.

<sup>17</sup> HPLC Charter Submission, above n 11, 24.

<sup>18</sup> Family and Community Development Committee, *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (September 2010) xxxiii.

<sup>19</sup> *HomeGround Services v Mohamed* [2009] VCAT 1131 (6 July 2009).

<sup>20</sup> *Metro West v Sudi* [2009] VCAT 2025 (9 October 2009).

#### ***d. The HPLC's comments and recommendations in relation to VCAT's jurisdiction***

Based on what we have seen in our casework, the HPLC is firmly of the view that there is an undeniable link between the finding that VCAT does not have jurisdiction to consider section 38 of the Charter in determining applications for possession and a deterioration in decision-making processes by social landlords.

In light of this, this section discusses:

- The importance of balancing VCAT's ability to provide inexpensive, quick resolution of disputes against its ability to promote fairness and access to justice; and
- Potential legislative amendments that could rectify the gap in access to justice that has resulted from the jurisdictional limitations identified in Sudi.

#### ***i. The risk of efficient evictions into homelessness***

There is a heavy focus on the role of VCAT as 'a forum for speedy and inexpensive resolution of specific kinds of disputes in respect of which the legislature saw fit to confer jurisdiction',<sup>21</sup> and on its role in helping the RTA fulfil its purpose 'to provide for the inexpensive and quick resolution of disputes under [the RTA]'.<sup>22</sup>

The HPLC understands that in 2010–11, the Residential Tenancies List received 57,659 matters;<sup>23</sup> 22% of these applications were brought by the Director of Housing; and 38.7% of applications were for possession orders.<sup>24</sup>

In this context, the HPLC makes these key points:

- The efficient, affordable, accessible nature of VCAT is essential to its ability to deliver access to justice, but:
  - VCAT must be careful not to prioritise efficiency and expediency at the expense of rigorous, fair decision-making; and
  - Pragmatic concerns about VCAT as an efficient, affordable, accessible forum are not mutually exclusive with consideration of section 38 unlawfulness under the Charter; and
- It is not a realistic option for the vast majority of the HPLC's clients to seek review of the decision of their social landlord to apply for possession in the Supreme Court and the bifurcation of the eviction and Charter proceedings is inefficient and ineffective.

#### ***Efficient, affordable access to justice***

Weinberg JA in Sudi suggested that, where the DOH is involved, 'there is significant potential for the Charter to be used to thwart the processes laid down for eviction by the RTA'.<sup>25</sup> He also expressed concern that

<sup>21</sup> Sudi, above n 3, [19].

<sup>22</sup> Residential Tenancies Act 1997 (Vic) s 1(d).

<sup>23</sup> Victorian Civil and Administrative Tribunal, VCAT Annual Report 2010/11 (2011) 5 (VCAT Annual Report).

<sup>24</sup> Ibid 25.

<sup>25</sup> Sudi, above n 3, [291].



decision-makers will be required to 'provide a detailed account of precisely how his or her decision was arrived at'.<sup>26</sup>

In the HPLC's view, when decision-makers are determining whether or not a person or family should be evicted from social housing, it is not unreasonable that they might be required to account for how that decision was arrived at. VCAT has a crucial role to play in assessing whether, in making the decision to apply for possession, in addition to satisfying the technical requirements of the RTA, the social landlord gave proper consideration to the tenant's rights under the Charter and acted compatibly with those rights. The practical way in which this can be done (and has previously been done) is discussed in parts 2.b and 2.d.ii of this submission.

As discussed above, in the HPLC's experience, the knowledge that VCAT would be considering compliance with section 38 of the Charter prompted social landlords to genuinely consider their Charter obligations and led to better decision-making. The result was more negotiated outcomes and a decreasing need to resort to VCAT for determinations. Such changes had the potential to improve efficiency and reduce the burden on VCAT.<sup>27</sup>

The HPLC also points out that, for the overwhelming majority of low income tenants, social housing is the end of the line; eviction from social housing will inevitably result in homelessness. If a social housing provider cannot satisfy VCAT that it has complied with its obligations under section 38 of the Charter, it should not be granted a possession order that will cause a person to be evicted into homelessness.

The HPLC encourages VCAT not to prioritise its role as a forum to dispense quick decisions over its role to 'render justice in a timely and cost efficient manner'.<sup>28</sup>

### *The Supreme Court and bifurcated decision-making*

As a result of the limitations on VCAT's jurisdiction identified in Sudi, tenants who question whether the decision of their social landlord to apply for possession gave proper consideration to their Charter rights must apply to have the possession hearing at VCAT adjourned and seek leave to have the decision judicially reviewed by the Supreme Court. There is no legislative guarantee that an adjournment of possession proceedings will be granted by VCAT; the tenant is required to satisfy VCAT of the strength of the Supreme Court case.

Legislative amendment that establishes VCAT's jurisdiction to consider compliance with section 38 of the Charter in determining applications for possession would create an accessible and efficient mechanism for delivering fair outcomes in eviction proceedings involving social landlords. It would allow for competing priorities and objectives of social landlords to be raised and considered in VCAT – the same forum that will be deciding whether or not the tenant should be evicted. This makes sense. The current situation whereby the possession proceeding and the assessment of Charter compliance are bifurcated presents problems in terms of both efficiency and effectiveness.

By way of example, the below case study shows the benefits of both parties being able to make submissions about Charter compliance as part of a possession proceeding.

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<sup>26</sup> Sudi, above n 3, [288].

<sup>27</sup> The HPLC notes that, between 2009–10 and 2010–11 (i.e. the period before Sudi identified the limitations on VCAT's jurisdiction to consider Charter unlawfulness), there was a 25.6% reduction in the proportion of applications to the Residential Tenancies List that were possession applications. While the HPLC is not in a position to identify the reason for this, it would be worthwhile considering whether this was attributable in part to social landlords engaging in more careful decision-making before resorting to a possession application.

<sup>28</sup> *Kearney v Legal Services Board* [2006] VCAT 2303 [4] (Bowman VP).

### Eviction of parents and newborn twins prevented

Mahdi was originally from Somalia and had come to Australia as a refugee when he was 16. At 17 he became homeless due to family breakdown and later suffered from drug dependence and mental health problems. His partner had recently given birth to twins.

While Mahdi was serving one month in prison, the Director of Housing applied to VCAT for a possession order because Mahdi owed almost \$8000 in outstanding rent. Mahdi did not attend the VCAT hearing where the possession order was made.

When he was released from prison, Mahdi approached the Office of Housing to try to explain his situation and avoid eviction. The OOH referred Mahdi to a Social Housing Advocacy and Support Program worker who assisted Mahdi to apply to have the possession order reviewed (under section 120 of the VCAT Act) on the basis that, with a reasonable excuse, he had not attended and was not represented at the hearing where the order was made.

The SHASP worker then linked Mahdi with the HPLC who represented him at VCAT. VCAT granted the application for a review hearing and proceeded to hear the substantive matter.

The HPLC submitted (amongst other things) that:

- a) the DOH had acted unlawfully in seeking a possession order because it failed to give proper consideration to the rights under the Charter in accordance with section 38(1); and
- b) in seeking a possession order, the DOH acted incompatibly with Mahdi's right not to have his home or privacy unlawfully or arbitrarily interfered with under section 13(a) of the Charter, and that this interference was not justified by application of section 7(2) of the Charter.

Following a brief adjournment for negotiation, the parties reached an agreement. The VCAT Member made orders by consent that the possession order be set aside and the warrant be cancelled. Mahdi was ordered to pay a lump sum to the OOH and to pay rent, together with an additional \$40 per fortnight toward the arrears.

Given the large sum owed by Mahdi, the VCAT Member balanced the Charter-based submissions against the financial loss of the landlord and the fact that there appeared to be little prospect of mitigating that loss quickly. The Charter was crucial to the HPLC's ability to convey information about the client's circumstances to both the DOH and to VCAT. Prior to the hearing, the representatives for the DOH were unwilling to negotiate with Mahdi. However, after the HPLC's submissions had encouraged them to consider his circumstances in the context of Charter-based rights, the DOH's representatives had greater compassion for Mahdi and his family and were willing to give him another chance at fulfilling his obligations as a tenant.

This can be contrasted with the case study in part 2.c.i in which a tenant was evicted for arrears post-Sudi. In the post-Sudi case, there was no room under the RTA to present VCAT or the social landlord with information about the client's human rights and individual circumstances with the result being that he was evicted into homelessness.

The HPLC also points out that, despite running numerous matters where tenants are facing eviction from social housing which may potentially be unlawful under section 38 of the Charter, the HPLC has not progressed a single application for judicial review before the Supreme Court. The emotional and financial burden for tenants, as well as the limited resources of the HPLC (and other community legal services) means that this option will rarely be genuinely open to our clients.

These realities should be kept in mind when determining whether the post-Sudi difficulties (i.e. the inability to access decision-makers who can assess Charter compliance in eviction proceedings) are the acceptable 'flipside' of the 'policy benefits derived from limiting VCAT's jurisdiction ... the quick, efficient, inexpensive and informal resolution of issues arising under the RTA'.<sup>29</sup> The HPLC is strongly of the view that the current trade off between efficiency and fairness is one that significantly disadvantages the State's most vulnerable tenants.

## **ii. Potential amendments to the RTA and practical application**

There are a number of different ways in which legislative drafters might expressly confer jurisdiction on VCAT to consider unlawfulness under section 38 of the Charter as part of the determination of an application for possession.

The HPLC does not purport to be the appropriate organisation to undertake such drafting. In the interests of providing constructive, practical input, however, the HPLC identifies the following potential amendment to the RTA which would, in our view, rectify the gap in access to justice left by the decision in Sudi.<sup>30</sup>

Potential amendment to section 332 of the RTA through insertion of a new sub-section (3):

### **PART 7 – REGAINING POSSESSION – POSSESSION ORDERS AND WARRANTS**

#### **Division 1 – Applications for possession orders**

...

#### **332. Order not to be made in certain circumstances**

...

(3) Despite section 330, the Tribunal must not make a possession order if –

- (a) the application is made by a landlord, rooming house owner, caravan park owner, site owner, person entitled to give a notice to vacate under section 289A or mortgagee that is a public authority under section 4 of the Charter of Human Rights and Responsibilities Act 2006 (Vic); and
- (b) the Tribunal is satisfied that the landlord, rooming house owner, caravan park owner, site owner, person entitled to give a notice to vacate under section 289A or mortgagee, in making the application for the order, has breached its obligations under section 38 of the Charter of Human Rights and Responsibilities Act 2006 (Vic).

The HPLC suggests that similar drafting could be included in Part 7, Division 2 (alternative procedure for possession) and Part 7, Division 3 (recovery of possession of rented premises where occupied without consent). Alternatively, amendments that apply to all possession order applications made under Divisions 1, 2 and 3 of Part 7 could be inserted as a new Division 3A of Part 7 of the RTA.

These suggested amendments would require the Tribunal to determine whether:

<sup>29</sup> Sudi, above n 3, [39].

<sup>30</sup> The HPLC notes that our preferred approach to rectifying the problems presented by Sudi would be to amend the Charter so that it contains a provision that is analogous to section 40C(2)(b) of the *Human Rights Act 2004* (ACT) (HRA) which provides that a person can rely on their rights under the HRA in 'other legal proceedings' and therefore allows human rights arguments to be considered in eviction proceedings. Given the scope of the Project, however, the HPLC proposes that amendments to the VCAT Act or the RTA would also make a significant and positive difference in the protections available to social housing tenants facing eviction.

- The social landlord is a public authority under section 4 of the Charter and therefore has obligations under section 38 of the Charter (this is a practical exercise using the framework set out in *Metro West v Sudi*);
- Any Charter rights are engaged by the social landlord's decision to apply for possession. This will most likely require consideration of the scope and meaning of the rights under sections 13(a) and/or 17 of the Charter. The right under section 13(a) has an inbuilt limitation in that the protection is from interference with privacy, home or family that is 'arbitrary or unlawful' not from interference per se;
- The relevant rights are limited by the application for possession; and
- Any limitation on the relevant rights is justified and proportionate under section 7(2) of the Charter. This will include considering evidence presented by the social landlord about its obligations to manage the waiting list for social housing and to manage tenancies in a way that ensures the safety of other tenants and how these are balanced against the individual circumstances of the tenant (including their vulnerabilities and the likelihood of homelessness).

These are not considerations that are outside the expertise of VCAT Members. In particular, we note that VCAT's *Member Competency Framework*, launched in December 2010, identifies 'possess[ing] a sound knowledge and understanding of the *Charter of Human Rights and Responsibilities Act 2006*' as one of four key competencies in 'knowledge and technical skills' required by VCAT Members.<sup>31</sup>

As noted above, the overemphasis on the complexity of the Charter and difficulty of application underestimates the capacity of VCAT Members to engage in balanced decision-making that takes account of both merit under the RTA and Charter compliance.<sup>32</sup> The notion that VCAT must treat the decision to apply for possession by a social landlord as valid despite potential incompatibility with Charter obligations undermines VCAT's ability to deliver justice and fairness and presents an increased risk of arbitrary eviction for Victorian social housing tenants.

In *Sudi*, the DOH submitted that it would be problematic if VCAT was required to undertake one set of enquiries for social housing providers and another slightly more straightforward set for private landlords. The HPLC submits that this is not a legitimate justification for preventing VCAT's consideration of Charter compliance by social landlords. We refer to the new provisions in sections 250A and 250B of the RTA (introduced via the *Residential Tenancies Amendment (Public Housing) Act 2011 (Vic)*), which deal with 'drug-related conduct in public housing' and 'prescribed indictable offences in public housing'. We assume, based on these provisions, that the Government does not see any difficulty with there being different legislative provisions applicable to social and private landlords and submit that this should not be a barrier to the proposed legislative reform.

### 3. Accessible justice – adjournments, attendance and representation

Given the magnitude of the consequences of VCAT decisions for HPLC clients – namely, eviction from their home or the appointment of a third party to manage their financial or lifestyle choices – the HPLC is strongly of the view that both practical and legal changes are needed to make sure that people are supported to attend hearings and access representation to assist them to understand their rights and options and to effectively put forward their case.

<sup>31</sup> Victorian Civil and Administrative Tribunal, *Member Competency Framework* (1 December 2010) 4. The other three required competencies in the knowledge and technical skills section are: possess a sound and detailed knowledge of VCAT's legal framework and jurisdiction as set out in the VCAT Act and enabling enactments; possess a detailed knowledge of VCAT's procedures and apply appropriately; and Specialist Members possess an in depth and up-to-date expert knowledge of the subject matter of the relevant VCAT jurisdiction.

<sup>32</sup> See, eg, *Sudi*, above n 3, [209]–[212] (Weinberg JA): 'In the present case, Bell J observed that VCAT was the most suitable forum for determining Charter questions of the kind raised by Mr Sudi. With great respect, I have misgivings as to whether that is so'.

The HPLC's recommendations have been set out in greater detail in the following submissions:

- Joint submission by the HPLC and Seniors Rights Victoria, *Submission to the VCAT Review* (June 2009);
- HPLC submission, *'Standing Guard': Submission in Response to the Victoria Law Reform Commission's Guardianship Information Paper* (May 2010); and
- HPLC supplementary submission, *Submission in Response to the Discussion Paper May 2010 – 'Transforming VCAT'* (June 2010).

Many of the recommendations in this section are also addressed in detail in the submission of the Tenancy Working Group of the Federation of Community Legal Centres, which the HPLC endorses.

### **a. Adjournments**

The HPLC commends VCAT for the numerous initiatives implemented under *Transforming VCAT* that aim to improve service delivery to the Victorian community. In particular, the HPLC congratulates VCAT on measures taken in recognition of VCAT's duty to ensure fair hearings under section 24 of the Charter and various provisions of the VCAT Act, including sections 97 and 98:

A fair hearing involves the provision of a reasonable opportunity to put your case – the right to be heard – and to have your case determined according to law by a competent, independent and impartial tribunal. The provision of a fair hearing is at the very heart of the Tribunal's obligations to the parties who appear before it.<sup>33</sup>

However, the HPLC notes with concern the statement in VCAT's recent *Common Procedures Practice Note (PNVCAT1)*:

Applications for adjournments of a hearing are not encouraged and there should be no expectation an adjournment will be granted even if all parties consent. The Tribunal may refuse an adjournment if it considers that the adjournment is not in the public interest, is prejudicial to the interests of one or more parties or the expeditious determination of the proceeding, is contrary to efficient case management, or is otherwise not justified.<sup>34</sup>

In particular, the HPLC is concerned about clause 44(c) of PNVCAT1, which provides:

the non-availability of a particular professional advocate will not normally be regarded as a sufficient basis for adjournment.

We question the consistency of such strict limitations with the *Fair Hearing Obligation Practice Note (PNVCAT3)*, which reinforces VCAT's 'obligation to provide all parties with a fair hearing and to ensure that parties and their representatives are treated with courtesy and respect ... and [recognises] a duty to provide assistance to self-represented parties who may be unfamiliar with Tribunal processes or unaware of their rights'.<sup>35</sup>

The HPLC notes that a recent review of over 400 open HPLC files revealed that of those HPLC clients, at least:

- 24% have severe mental health issues;

<sup>33</sup> VCAT Annual Report, above n 23, 17.

<sup>34</sup> Victorian Civil and Administrative Tribunal, *Practice Note – PNVCAT1 – Common Procedures* (15 March 2012).

<sup>35</sup> VCAT Annual Report, above n 23, 6.



- 23% have drug and alcohol dependence issues; and
- 17% experience multiple complex needs.<sup>36</sup>

Clients with complex circumstances face numerous barriers to accessing legal representation and may be reluctant to engage with services as a result of a lack of trust and having been 'handballed' between services in the past. In addition, community legal centres are acutely under-resourced and rarely have alternative lawyers able to pick up a file in the event that the client's lawyer is not available on the day of the hearing and an adjournment has been refused.

The HPLC encourages VCAT to consider these practical realities and to modify PNVCAT1 and associated practices accordingly. The inability of a client's legal representative to attend a hearing should, in many cases, be accepted as a sufficient basis for adjournment.

### ***b. Attendance***

It is widely recognised that VCAT's notices of hearing do nothing to assist people to understand (a) that they have a VCAT hearing; (b) the nature of the hearing or the importance of attendance; or (c) where they can seek assistance and advice in relation to the hearing.<sup>37</sup> The HPLC understands there is a process-based reason for VCAT continuing to use its inaccessible notice forms (for example, a limitation of technology).

The HPLC does not accept that this is an appropriate reason to continue to inform clients of VCAT hearings in this way.

In light of the ongoing low levels of attendance at proceedings in both the Residential Tenancies List and the Guardianship List, the HPLC encourages VCAT to review the form of its notices.

In recognition of the importance of attendance of parties at hearings, in particular eviction proceedings and applications for guardianship or administration orders, the HPLC recommends that holding a hearing in the absence of the party under section 99(2) of the VCAT Act should be an absolute last resort. We suggest that VCAT considers amending section 99(2) of the VCAT Act to limit the circumstances in which certain hearings will proceed in the absence of a party.

### ***c. Representation***

Through our casework, the HPLC sees the practical impact of the provision of legal advice and representation for clients who are homeless or at risk of homelessness. In the context of tenancy matters, this legal representation can play a crucial role in sustaining tenancies and preventing evictions into homelessness.

The case study below provides an example of the role legal services can play in avoiding eviction of vulnerable clients and children. In addition to the provision of representation and advocacy in eviction proceedings, legal services may also be able to assist with ongoing negotiation and linking clients with appropriate services to help sustain their tenancies in the longer term.

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<sup>36</sup> For the purposes of the file review, 'multiple complex needs' referred to more than one of: severe mental health issues, drug and alcohol dependence, cognitive impairment, domestic violence and challenging behaviour. We note that these needs are likely to be under reported as they were only recorded if the client's needs were expressly identified on the file.

<sup>37</sup> See, eg, The Hon Justice Kevin Bell, *One VCAT – President's Review of VCAT* (25 February 2010) 23: 'The need to redesign forms and correspondence in plain English was frequently emphasised' (**One VCAT Review**).



### **Mother and three children face eviction for neighbourhood dispute**

Jennifer was living in public housing with her three young children who attended the local primary school. They had been living there for three years and, prior to this, had experienced ongoing homelessness. Since moving into the property, Jennifer had been able to start studying and had engaged with support workers to assist her to manage her anxiety and depression.

The family had had an amicable relationship with the neighbours until an incident involving one of Jennifer's children being injured by the neighbours' son caused the relationship to deteriorate. Jennifer's former partner, who did not live at the property, had a number of altercations with the neighbours.

Jennifer's tenancy became insecure when the Office of Housing obtained a compliance order from VCAT, which required Jennifer and any visitor to the property to refrain from interfering with the privacy, peace and comfort of the neighbours. Three months later, a Notice to Vacate was issued as a result of Jennifer's alleged failure to comply with the compliance order and an application for a possession order was made.

The HPLC represented Jennifer in the proceedings. They advocated to obtain proper documentation from the Office of Housing, who had been reluctant to provide the evidence that they intended to rely on at the hearing. At the hearing, VCAT did not make a possession order. Instead, the Member adjourned the matter for six-months, subject to an undertaking by Jennifer to comply with the original compliance order, use her best efforts to ensure her children comply with it, seek alternative accommodation and not to invite Jennifer's former partner to the property.

Although Jennifer's tenancy remained insecure (because of the risk of eviction if she breached the compliance order), she and her children had avoided eviction and returning to homelessness. It is highly unlikely that this would have been the case if Jennifer had not had legal advice and representation.

The HPLC has since been able to assist Jennifer to make an application for an Early Housing Transfer to the Office of Housing. The VCAT adjournment has allowed Jennifer to remain in her home while making this application and for her children to continue attending the local school. The Office of Housing staff have been supportive of trying to arrange a 'mutual swap' for Jennifer and her children so that they can remove themselves from the ongoing conflict with the neighbours.

Given the obvious benefit of having access to legal representation for vulnerable clients, the HPLC submits that the limitations on the ability of parties to be represented under section 62 of the VCAT can be problematic. In the example above, Jennifer was entitled to representation by a professional advocate in the eviction proceedings,<sup>38</sup> but not in the application for a compliance order.<sup>39</sup> If Jennifer had been entitled (and encouraged) to access legal representation in relation to the compliance proceeding, the legal matter and risk to her tenancy might have been addressed before they escalated.

The HPLC submits that DOH officers, representatives of community housing providers and real estate agents should be included in the definition of 'professional advocate' under section 62(8) of the VCAT Act. While these representatives arguably already fall within the definition under section 62(8)(d) in that they have 'had substantial experience as an advocate in proceedings of a similar nature to the proceeding before the Tribunal', express inclusion in this definition would avoid doubt.

Clear recognition that these parties are 'professional advocates' who are representing the landlord (either the DOH, a community housing provider or a private landlord) means that tenants would have a clear right of representation under section 62(1)(iii) of the VCAT Act. It will also activate the requirement for the real

<sup>38</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) Sch 1, cl 67.

<sup>39</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 62.

estate agent, DOH officer or representative of a community housing provider to seek leave to appear. In the event that the tenant is self-represented, this will put the VCAT Member on notice of the tenant's potential disadvantage and engage VCAT's obligations under the *Fair Hearing Obligation Practice Note (PNVCAT3)*:

Members have a particular responsibility to assist self-represented parties (sometimes referred to as litigants in person) to the extent necessary to ensure a fair hearing. What a Member must do to assist a self-represented party depends on the particular party and the nature of the case. For example, greater assistance may be warranted in circumstances where a person may lose substantial freedoms and personal autonomy (such as in the Guardianship List) or potentially be made homeless (such as in the Residential Tenancies List) as a result of Tribunal orders.

The duty to assist may require a Member to endeavour to ascertain the true legal character of the claims made. Whilst a Member may assist a party to identify relevant legal issues, it is not the Tribunal's role to act as that party's advocate. Members may refer a self-represented party to a duty lawyer or other provider of pro bono legal services for legal advice.<sup>40</sup>

The HPLC also recommends that section 62(2) of the VCAT Act is amended to include a right to representation for people who experience one or more of a defined set of vulnerabilities (including, for example, homelessness, age, disability, mental illness, substance dependence, and/or cultural or linguistic barriers). We further recommend that the *Fair Hearing Obligation Practice Note (PNVCAT3)* is modified to require VCAT Members who become aware that a party experiences one of the identified vulnerabilities to offer to stand the matter down so that the individual can obtain representation or legal advice.<sup>41</sup>

While the HPLC appreciates concerns about the 'legalisation' of the VCAT process, where one party experiences inherent disadvantage it is not possible for fair hearings and just outcomes to be delivered. Accordingly, the legislative and practice-based impediments to people accessing the representation they need should be removed.

#### 4. Merits review of VCAT decisions

The difficulties faced by the HPLC's client group in participating effectively in VCAT's processes and the significant barriers clients face to having decisions reviewed by the Supreme Court have been made clear throughout this submission.

In a 2010 review of VCAT, then-President of VCAT Justice Bell noted:

There was widespread criticism of the tribunal's current limited capacity for internally rehearing and reopening cases and with the lack of an internal appeal tribunal. There was widespread support for such a system, although many were concerned about how added costs and delay could be minimised.<sup>42</sup>

It remains the case that where a party to a proceeding believes they have not been afforded procedural fairness or is otherwise dissatisfied with the decision of VCAT, their only recourse is to apply to the Supreme Court for leave to appeal the order of VCAT in relation to a question of law.<sup>43</sup> The absence of a provision in the VCAT Act for a matter to be reconsidered or re-opened by VCAT once an order has been made is a significant limitation on the accountability of VCAT decision-makers and on the ability of parties to avoid arbitrary or unjust outcomes.<sup>44</sup>

<sup>40</sup> Victorian Civil and Administrative Tribunal, *Practice Note – PNVCAT3 – Fair Hearing Obligation* (15 March 2012) [17]–[18].

<sup>41</sup> See, example, PILCH Homeless Persons' Legal Clinic, *Standing Guard: Submission in Response to the Victorian Law Reform Commission's Guardianship Information Paper* (28 May 2010) 19 – 23.

<sup>42</sup> One VCAT Review, above n 37, 23. Justice Bell recommended that the VCAT Act be amended to: establish an appeal Tribunal within VCAT; and provide the Tribunal with a general power of reconsideration subject to sensible limits, whether or not an appeal Tribunal is established (at 5).

<sup>43</sup> *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* s 148.

<sup>44</sup> See, PILCH Homeless Persons' Legal Clinic and Seniors Rights Victoria, *Submission to the VCAT Review* (June 2009) 21–22 which identified that the merits review models that are currently in operation (namely the Commonwealth Social Security Appeals Tribunal and the NSW Administrative Decisions Tribunal) indicate that a significant proportion of appeals result in decisions that vary or set aside the decision

The HPLC reiterates the recommendations in previous submissions that there is a need for enhancement of VCAT's ability to reopen, review and reconsider decisions made by its Members.<sup>45</sup>

The HPLC recommends that the VCAT Act is amended to provide for merits review of VCAT decisions.

Although we recognise the extra resource commitment such a system of internal review might present for VCAT, it would ensure that parties had an affordable and accessible right of appeal and that the quality of VCAT decision-making is monitored and maintained.

In response to the inevitable concerns about the costs or complexities associated with introducing merits review, the HPLC reiterates the comments of Justice Bell:

That more parties might appeal is not a persuasive reason not to have an appeal tribunal at VCAT. The present system is less accessible than it should be. I am concerned that some parties with legitimate grounds are not pursuing an appeal because of these restrictions. This is not consistent with the principle of equal access to justice, which should embrace an appropriate appeal system.<sup>46</sup>

\* \* \* \* \*

The HPLC appreciates the ongoing work of VCAT to improve its operations.

Thank you for the opportunity to comment on the Project.

Please contact Lucy Adams on (03) 8636 4409 if you would like to discuss anything contained in this submission.

Yours sincerely



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under appeal. Such statistics demonstrate that primary decision makers, no matter how experienced, competent and well supported, can and do make errors of judgment in the course of exercising their powers and discretions.

<sup>45</sup> See PILCH Homeless Persons' Legal Clinic and Seniors Rights Victoria, *Submission to the VCAT Review* (June 2009); PILCH Homeless Persons' Legal Clinic, *Submission in response to the Discussion Paper May 2010 – 'Transforming VCAT'* (June 2010).

<sup>46</sup> One VCAT Review, above n 37, 58.

## **Annexure – About the PILCH Homeless Persons' Legal Clinic**

The Public Interest Law Clearing House (Vic) Inc (**PILCH**) is a leading Victorian, not-for-profit organisation. It is committed to furthering the public interest, improving access to justice and protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education. In carrying out its work, PILCH seeks to:

- address disadvantage and marginalisation in the community;
- effect structural change to address injustice;
- foster a strong pro bono culture in Victoria; and
- increase the pro bono capacity of the legal profession.

The HPLC is a project of PILCH and was established in 2001 in response to the unmet need for targeted legal services for people experiencing homelessness. The HPLC works to address the causes and effects of homelessness in the Victorian community through:

- legal casework – assisting individuals;
- advocacy – reforming systems and structures; and
- capacity building – training and awareness raising.

Free legal services are offered by the HPLC on a weekly basis at nine outreach locations that are already accessed by people experiencing homelessness, including crisis accommodation centres and social and family services.

The HPLC's host agencies are Melbourne Citymission, The Big Issue, Ozanam House, Flagstaff Crisis Accommodation, Hanover Welfare Services, Victorian Association for the Care and Resettlement of Offenders (VACRO), HomeGround Housing Services, Northside Geelong and Salvation Army St Kilda Crisis Contact Centre. The HPLC collaborates with corporate law firms to provide pro bono legal assistance. Volunteer lawyers from the following firms provide services at the host agencies: Allens Linklaters, Clayton Utz, Corrs Chambers Westgarth, DLA Piper, Freehills, King & Wood Mallesons, Minter Ellison and Harwood Andrews

Since its establishment, the HPLC has assisted over 5000 people experiencing or at risk of homelessness in Victoria.

In 2005, the HPLC received the national Human Rights Law Award conferred by the Human Rights and Equal Opportunity Commission in recognition of its contribution to social justice and human rights. In 2009 it received a Melbourne Award for contribution to community in the City of Melbourne.