

Background Paper

**Sub-standard and Inhumane Living Conditions of
Office of Housing Accommodation**

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Introduction

Adequate housing as a basic fundamental human right is articulated in Article 11 of the ICESCR¹. The ICESCR² came into legal force in Australia in 1976³. The right to adequate housing has been interpreted as a right to housing which is secure, hygienic, affordable and appropriate of a standard consistent with human dignity⁴. Housing provides individuals the basis for employment, schooling, community services and contacts. Failure to provide these basic minimum rights has a pervasive effect on people's quality of life and economic well being⁵.

In a report conducted by the UN Special Rapporteur on the Right to Adequate Housing in 2006, the Special Rapporteur found an overwhelming number of Australians living in inadequate, inappropriate and unsafe housing⁶. The Office of Housing (OoH) is Victoria's largest landlord and owns a total of 73,000 properties⁷. Decades of inconsistent funding at both state and federal levels has had a serious negative impact on housing in the public housing portfolio⁸. West Heidelberg is one of the poorest postcodes in Victoria and public housing accounts for over half of the housing in the area⁹. When housing can be deemed unfit for human habitation as a result of its state of dilapidation or lack of basic amenities it does not provide adequate housing¹⁰. Unfortunately, this is the reality of some individuals living in the public housing stock of West Heidelberg estate.

"Every Victorian deserves a place to live that is safe appropriate and affordable, with access to employment and education, and a range of community services"¹¹. The aim of this paper is to reflect the provision of sub-standard and inhumane accommodation by the OoH against the

¹ *International Covenant on Economic, Social and Cultural Rights*, Article 11(1).

² *International Covenant on Economic, Social and Cultural Rights*.

³ National Shelter inc., '*Going Public*' *Costs and Benefits of Public Housing in Australia* (1993), 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Kristen Hilton, 'UN Special Rapporteur on Adequate Housing Calls for Immediate Action on the Right to Homelessness in Australia' (2006) 25 *HRLRC Bulletin*, 7.

⁷ State of Government of Victoria Department of Human Services, *Office of Housing* (2006), 2.

⁸ Peter Mickelborough, 'Empty public houses, desperate families, there's no one home', (Melbourne) *Herald Sun*, 22 December 2007, 9.

⁹ Neighbourhood Renewal, *West Heidelberg* (2008) Neighbourhood Renewal, www.neighbourhoodrenewal.vic.gov.au/projects/west_heidelberg at 25 May 2008.

¹⁰ Glenn Foard et al, *Public Housing in Australia* (1994), 81.

¹¹ State Government of Victoria Department of Human Services, above n 5, 1.

Victorian *Charter of Human Rights and Responsibilities*¹² and demonstrate the public authorities responsibility to protect human rights.

Methodology

This paper is strongly based on case studies of tenants in the public housing system, as well as interviews with relevant persons at Banyule Community Health Service. In producing the paper these real life experiences were combined with a review of available literature and relevant legislative provisions.

Office of Housing

The OoH is responsible to the Minister for Housing¹³, and is one of eight divisions of the Department of Human Services¹⁴. The role and responsibilities of the Director of Housing are established under the *Housing Act*¹⁵. One of the primary objectives of the Director of Housing is “to ensure every person in Victoria has adequate and appropriate housing at a price within his or her means by encouraging the provision of well maintained public housing of suitable quality¹⁶”. The *Residential Tenancies Act*¹⁷ provides the legislative framework under which the OoH must operate¹⁸. Under the Act the OoH is required to provide housing of an appropriate standard and properly maintain it¹⁹.

History

During the 1940's and 1950's the then Victorian Housing Commission built approximately 4 350 units in West Heidelberg and West Ivanhoe²⁰. Subsequent government policies enabling the sale of public housing have dwindled the housing stock to now around 950 in West Heidelberg²¹.

Building first began on the Heidelberg estate in 1945, on the corner of James and Alfred

¹² *Charter of Human Rights and Responsibilities 2006* (Vic).

¹³ State Government of Victoria department of Human Services, above n 5, 1.

¹⁴ Auditor General Victoria, Parliament of Victoria, *Maintaining Public Housing Stock* (2004), 10.

¹⁵ *Housing Act 1983* (Vic).

¹⁶ Auditor General Victoria, above n 12, 23.

¹⁷ *Residential Tenancies Act 1997* (Vic).

¹⁸ Auditor General Victoria, above n 12, 23.

¹⁹ *Ibid*, 10.

²⁰ Tenant Action Project Team, *A Report of Tenants' Views on Public Housing in Heidelberg* (1984), 5.

²¹ Neighbourhood Renewal, above n 7.

Streets²². The construction of these earlier houses was generally brick or weatherboard²³. In 1953 plans were made for West Heidelberg to be the site for the Olympic Village for the 1956 Olympic Games²⁴. Construction for the Olympic Village went ahead following presentation of the plans to the Council in March 1954. Pre-cast concrete was used as the primary material for housing construction in the West Heidelberg estate in the later years, particularly in the Olympic Village section²⁵.

As a reflection of its construction over a ten year period, the design and facilities of the public housing vary across the West Heidelberg estate. The materials used in the assembly differ, the sizing of the rooms varies, as does the size of the blocks²⁶. The bulk of the public housing stock in West Heidelberg was built in a relatively short time period; consequently its construction is not of the highest standard²⁷. As was found by the Tenant Action Project Team in a 1984 Report, generally public housing in West Heidelberg is more in line with standards more acceptable in the 1950s²⁸. While modernisation and maintenance programs have been conducted over the 50 year period since the estates formation, this has failed to improve the public housing stock in West Heidelberg on a significant scale.

Case Studies – The Problem

Case Study 1

Mr A is a male in his late 40's with significant physical and mental health issues, including an existing respiratory condition. Mr A was living in a ground floor walk-up in West Heidelberg. The walk-up was one of the concrete buildings built in the 1950s public housing construction period. These older concrete buildings have a tendency to get damp with a lack of sunlight and ventilation. There was also no heating available to limit the rising damp. The combination of these factors led to the build up of mould on the south end of the building. The mould spores irritated Mr A's respiratory condition and had a considerable impact on his health.

²² Tenant Action Project Team, above n 18, 3.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid, 5.

²⁶ Ibid.

²⁷ Interview with BCHS worker 1 (7 May 2008).

²⁸ Tenant Action Project Team, above n 18, 5.

There is a stigma surrounding public housing residents that they don't clean and don't care about their homes. In circumstances like those described above, the resident is viewed as contributing to their own problems by not making any effort, for example by opening their windows. However, it is important to take into account the social reality of public housing tenants. Mr A was living alone and not always home. Conscious of his safety and security as a result of previous experiences he was reluctant to leave his windows open.

The response of the OoH was to offer new accommodation. However, this new accommodation was another older style walk-up. Mr A was worried he was going to be presented with the same problems, with the housing provided aggravating his breathing. Consequently, Mr A was unable to take up the accommodation offered.

Case Study 2

Ms B is an elderly woman who was living in OoH accommodation in West Heidelberg. Ms B has cognitive issues, but is still able to take care of herself. Ms B was sharing accommodation with her husband but upon his passing her family felt it best she reside with them. Accordingly, Ms B gave up the house and divided her time between her children. However, there was strong family conflict. This had a significant affect on Ms B, so much so that she felt out of control of her own life.

Ms B applied for emergency housing accommodation. The OoH offered Ms B a place in Bundoora, however Ms B was looking for a place in West Heidelberg. Ms B was told she would have to wait at least six months. Ms B was therefore to remain in a volatile family situation, leaving her unable to deal with her cognitive disease and requiring much further family support and counselling to cope.

Case Study 3

Mr C, a male on a disability pension living in a boarding house situation through the Office of Housing. In his housing situation Mr C had immense difficulties with both privacy and unkept

conditions. The unkept conditions related to food preservation and cleanliness in the kitchen. Mr C was unable to deal with the poor conditions of his housing situation left the boarding house and to date has no fixed living situation. As his only resort Mr C has been living in a factory. Young males are often a target for sloppier living arrangements.

Case Study 4

Ms D is living in an OoH two storey walk-up in West Heidelberg. The walk-up has a very steep staircase to the second level. These stairs are considerably unsafe. The upper level contains the bedrooms while the kitchen and lounge room are on the ground floor.

Ms D has breathing problems as a result of early stages of COPD²⁹. This makes it difficult to continuously go up and down the stairs. Ms D has two children; a young child aged eighteen months and a primary school aged boy. The young boy, a sufferer of Asbergers Syndrome, was on crutches for a period as his leg was in plaster. This situation required the whole family to sleep downstairs in very limited space. During this period Ms D was extremely tense and did not feel she could manage life.

Ms D tried to get another place. Due to her circumstances it was important she remain near contacts for support. Ms D was on a wait list for a significantly long period. During this time Ms D was totally preoccupied. She was at a very high risk of not being able to deal with both her chronic disease and family life because of her inadequate housing situation. This is the experience of many individuals in public housing, where because their basic needs are not being met, including security, environmental safety, comfort and social connections, the individual's ability to cope with their own lives is seriously affected.

Case Study 5

In October 2000, Ms E was being harassed by her neighbours at her OoH accommodation. The neighbours were harassing Ms E by throwing stones and breaking windows on the property. Ms E requested a priority transfer. Two years later Ms E still had not been moved.

²⁹ COPD stands for chronic obstructive pulmonary disease, a lung disease in which the lungs are damaged, making it hard to breathe. Cigarette smoking is the most common cause of COPD.

In January 2007 Ms E's house was found to be extremely hot. The bathroom window was the only window in the house able to be opened. The OoH responded by saying the windows were too old to fix but they would follow it up. After an initial visit by the OoH in mid January to measure the windows, nothing further was done. It took months of repeated phone calls to finally get a response from the OoH who undertook to replace all windows in two weeks. A phone call in late December revealed only the one bedroom window had been replaced.

Ms E was very distressed about the state of her house. In January 2008 not only were the house windows not fixed, but there was a major insect problem inside the house and grass was growing in the cupboards of the kitchen. Ms E was given no direct response and when recontacted the OoH did not return the phone call. To date Ms E is still waiting on the further maintenance.

Case Study 6

Ms F and her family moved to a new address in West Heidelberg. Following the move all family members started to fall sick. Ms F in particular, began to suffer from nausea, numbness, loss in motor coordination and vomiting, resulting in two admissions to hospital. Ms F's symptoms were diagnosed as carbon monoxide poisoning, a result of using an old unsafe gas hot water heater. This illness significantly affected Ms F's mental well-being. Following her diagnosis Ms F's recovery was stifled by a lack of duty of care of the OoH.

Human Rights Legislation

ICESCR

As previously outlined, Article 11 of the ICESCR³⁰ expresses the right to adequate housing. However, there exists a disturbing gap between the standards set in article 11(1) of the Covenant and the current situation³¹.

³⁰ *International Covenant on Economic, Social and Cultural Right*, Article 11(1).

³¹ Office of the High Commissioner for Human Rights, *Right to Adequate Housing* (1991).

As a signatory to the ICESCR³² Australia has recognised the importance and significance of human rights, and is subsequently bound by the Covenant. However, these rights are not legally enforceable in the Australian jurisdiction until incorporated into legislation.

Victorian Charter

The *Charter of Human Rights and Responsibilities Act*³³ came into operation 1 January 2007³⁴. The *Charter* provides Victorians with legislatively recognised human rights. Division 4 of the Act, which came into effect 1 January 2008, binds public authorities to comply with the *Charter* when making decisions or developing new legislation. A public authority is defined broadly under s 4 of the *Charter* to include 'core' public authorities as well as those bodies exercising functions of a public nature³⁵. The OoH as a ministerial department falls under the definition of a public authority.

Section 38(1) of the *Charter* states that it is unlawful for a public authority to act in a way that is incompatible with a human right, or in making a decision fail to give proper consideration to a relevant human right³⁶. Under s 3(1) of the *Charter* an 'act' is defined to include not only a positive duty to act, but also a failure to act and a proposal to act³⁷.

In Victoria, despite the encouraging introduction of human rights legislation by way of the *Charter of Human Rights and Responsibilities*³⁸, the right to adequate housing was not legislatively protected³⁹. However, does the provision of sub-standard and inhumane accommodation by the OoH fall under other provisions of the *Charter*? No case law exists in this area in Victoria due to the relatively new introduction of human rights legislation, so we must turn to other jurisdictions for the answer.

³² *International Covenant on Economic, Social and Cultural Rights*.

³³ *Charter of Human Rights and Responsibilities 2006* (Vic).

³⁴ John Cain, *Charter of Human Rights Newsletter* (2007), 1.

³⁵ HRLRC, *Human Rights Law Resource Manual* (2007), Chapter 5, 71.

³⁶ *Ibid*, Chapter 5, 69.

³⁷ *Ibid*.

³⁸ *Charter of Human Rights and Responsibilities 2006* (Vic).

³⁹ Kristen Hilton, above n 4, 7.

Other Jurisdictions

UK

In the decision of *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department*⁴⁰ the House of Lords reviewed the right to housing in the context of Article 3 ECHR⁴¹. The relevant provision in the Victorian *Charter*⁴² is s 10. Although this case revolves around a breach of the rights of asylum seekers as a result of restrictive legislation it provides a valuable discussion on the right to protection from inhumane and degrading treatment.

Treatment is defined as inhumane and degrading if to a seriously detrimental extent it denies the basic needs of any human being⁴³. The judgements stress that inhumane and degrading treatment requires a minimum standard of severity⁴⁴. The House of Lords follows the definition of 'inhumane and degrading treatment' as in *Pretty v United Kingdom*⁴⁵:

Ill-treatment involves actual bodily injury or intense physical and mental suffering. Where treatment humiliates or debases an individual showing a lack of respect for and diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral or physical resistance, it may be characterized as degrading and also fall within the prohibition of article 3. The suffering which flows from naturally occurring illness, physical or mental, may be covered by article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible.

While the judgments concur forced street homelessness of asylum seekers crosses the threshold into Article 3 degrading treatment, they are hesitant to extend its scope⁴⁶. Echoing *Chapman v United Kingdom*⁴⁷ the majority articulate that a general public duty to house homeless or provide for destitute cannot be read into Article 3⁴⁸. Treatment requires something more than a mere failure, but the reality of some West Heidelberg's public housing tenants is not merely the failure

⁴⁰ [2005] UKHL 66; [2005] 3 W.L.R. 1014.

⁴¹ *Convention for the Protection of Human Rights and Fundamental Freedoms*

⁴² *Charter of Human Rights and Responsibilities 2006* (Vic).

⁴³ *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66, 7.

⁴⁴ *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66, 7.

⁴⁵ 35 EHRR 1.

⁴⁶ *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66, 101.

⁴⁷ (2001) 33 EHRR.

⁴⁸ *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66, 7.

of the OoH to provide a minimum standard of living but more closely in line with the definition of inhumane and degrading treatment. As stated by Baroness Hale of Richmond “we have to judge matters by standards of our own society in the modern world, not by standards of a third world country or bygone age⁴⁹.”

South Africa

The South African Constitution provides South Africans with the enjoyment of the right to adequate housing⁵⁰. In a landmark judgement of the South African Constitutional Court⁵¹ the court's key message was ‘human beings are required to be treated as human beings⁵²’.

The case represents the struggle between 400 occupiers to resist the City Of Johannesburg's attempt to remove them from ‘bad buildings’. The judgement affirmed the right to adequate housing and ordered the parties to engage so that the public authority could help alleviate the dire consequences faced by the residents, determine how and when the buildings could be rendered relatively safe and conducive to health. Such a decision enables public authorities to work with those affected to actively participate in finding a solution⁵³.

Conclusion

The people residing in public housing are vulnerable people with very few resources⁵⁴. Lack of stable, adequate housing has a significant flow on affect to other areas of individuals' lives. Health issues are exacerbated, and quality of life is considerably affected⁵⁵. Response of the OoH is to view public housing as a privilege not as a right⁵⁶. Human Rights legislation calls for us to treat individuals with inherent dignity. The provision of sub-standard and inhumane accommodation erodes this dignity and falls significantly below the human rights standards required of a country with Australia's economic standing.

⁴⁹ *R. (on the application of Adam, Limbuela and Tesema) v. Secretary of State for the Home Department* [2005] UKHL 66, 78.

⁵⁰ Phoebe Knowles, ‘Public Authorities Must Consult with People before Evicting Them’ (2008) 25 *HRLRC Bulletin*, 13.

⁵¹ *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg* CCT 24/07 [2008] ZACC 1 (19 February 2008)

⁵² Phoebe Knowles, above n 46, 13.

⁵³ *Ibid.*

⁵⁴ Interview with Community Health Nurse (7 May 2008).

⁵⁵ Interview with BCHS worker 2 (14 May 2008).

⁵⁶ Interview with BCHS worker 1 (7 May 2008).

Recommendations

The provision of housing requires the adoption of a human rights approach⁵⁷.

Recommendation 1

As a public authority the OoH are in danger of breaching human rights obligations. In light of the snapshot of case studies, it is arguable the standard of some accommodation provided falls under inhumane and degrading treatment and would therefore bring OoH in breach of its human rights obligations under the *Charter*.

Although minor changes to improve public housing stock have been implemented, for example the upgrading of aged care and disabled housing and the Neighbourhood Renewal program, these changes have failed to get to the heart of the problem. Public housing requires a significant investment for real changes to be made to prevent the denial of individual's fundamental basic needs.

Recommendation 2

Section 44 and 45 of the *Charter of Human Rights and Responsibilities* requires the Charter be reviewed in four years⁵⁸. Under s 44(a) the review should consider the inclusion of the right to adequate housing to explicitly recognise an individual's economic, social and cultural rights and transcribe Australia's international obligations into domestic law.

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⁵⁷ Miloon Kothari, *United Nations Special Rapporteur on adequate housing, Miloon Kothari Mission to Australia: Preliminary Observations* (2006), 10.

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