Special Rapporteur on the right to adequate housing questionnaire

The Australian Human Rights Commission thanks the Special Rapporteur for the opportunity to contribute to the questionnaire in accordance to the work relevant to the mandate of the Commission. The Commission welcomes the work of the Special Rapporteur on the right to an adequate standard of living and the right to non-discrimination.

The following submission responds to questions 4 and 5 outlined in the questionnaire.

**4. Please provide any information available about discrimination and stigmatization of people who are homeless, including laws or policies that may be used to remove homeless persons from public spaces or to prohibit activities in public spaces such as sleeping, camping, eating, sitting, or asking for money.**

The Commission is aware that the Australian Human Rights Law Centre in their 2014 UPR factsheet on housing and homelessness outlined that ‘all Australian states and territories have laws which have the effect of criminalising homelessness and poverty.’[[1]](#endnote-1)

Move on laws

Move on laws and their equivalents exist in several Australian jurisdictions.[[2]](#endnote-2) The purpose of these laws is to allow police to issue enforceable directions to persons (both individuals and groups) in public places to move away, or ‘disperse’, from a particular area in a range of circumstances.[[3]](#endnote-3) There is a broad spectrum of conduct that can trigger the use of move-on powers across Australia: [[4]](#endnote-4)

* At the more restrictive end of this spectrum, in the Australian Capital Territory (ACT) a move on power can only be used when a person has engaged, or is likely to engage, in violent conduct in a public place.[[5]](#endnote-5)
* At the middle of spectrum sit South Australia (SA), Western Australia (WA) and Tasmania where a move-on direction can be given in circumstances where an offence has been or is likely to be committed, or where the safety of a person in the vicinity is threatened, but also where a person is causing an obstruction and where a breach of the peace is likely to occur.[[6]](#endnote-6)
* At the most permissive end of the spectrum, police in New South Wales (NSW), Queensland and the Northern Territory (NT) can issue a move on direction in an extremely wide range of circumstances, including where a person’s mere presence could cause anxiety to another person, or interfere with another’s ‘reasonable enjoyment’ of the space.[[7]](#endnote-7)

The Commission’s 2013 submission to the United Nations Committee Torture noted the concerns the Victorian Equal Opportunity and Human Rights about the enactment of criminal laws and the enforcement of existing criminal laws in Victoria which are likely to have a disproportionate impact on homeless persons.[[8]](#endnote-8)

Progress: The *Summary Offences Amendment (Move-on Laws) Act* 2015 (Vic) repeals amendments made to the *Summary Offences Act* 1996 (Vic) by the *Summary Offences and Sentencing Amendment Act* (Vic) 2014 which provided police with greater powers to give directions to ‘move on’ persons from public places in certain circumstances, to arrest persons in contravention of such directions, and introduces a scheme whereby police can apply for a court order to exclude a person from a public place for up to 12 months.

Ongoing concerns: empirical research suggests high levels of police harassment and interference in the lives of people experiencing homelessness, particularly those who are young and/or Indigenous. [[9]](#endnote-9) It is of serious concern that the research suggests that, at times, police use their move-on powers in a manner which breaches the legislation.[[10]](#endnote-10)

Asking for money

The criminalisation of begging results in prolonged court proceedings and large debts for homeless persons which contributes to the cycle of poverty.

Begging in a public place is a criminal offence in Queensland,[[11]](#endnote-11) South
Australia,[[12]](#endnote-12) Tasmania,[[13]](#endnote-13) the Northern Territory[[14]](#endnote-14) and Victoria.[[15]](#endnote-15)

In Victoria begging is punishable by 12 months in prison.[[16]](#endnote-16) The Commission is concerned by media reports that Victoria Police have allegedly confiscated money obtained by homeless persons from begging, on the basis that they are ‘proceeds of crime’.[[17]](#endnote-17) There are also reports of police forcing homeless people to place money collected from begging into a charity box.[[18]](#endnote-18)

 ‘Drunk and disorderly’ police powers

In NSW a person who is given a move on direction for being intoxicated and disorderly in a public place and at any time within 6 hours after the move on direction is given, is intoxicated and disorderly in the same or another public place they are guilty of an offence.[[19]](#endnote-19) In a review of these powers the NSW ombudsman expressed concerns about the negative impacts these powers may have on vulnerable grounds such as homeless people.[[20]](#endnote-20)

Similar provisions exist in other Australian Jurisdictions.[[21]](#endnote-21)

**Please explain whether such discrimination is prohibited by law at national and/or local levels and describe any initiatives being taken or proposed to address this problem.**

Discrimination law and homelessness

Homelessness is not a protected attribute under discrimination law in any jurisdiction in Australia.[[22]](#endnote-22)

Initiatives

The NSW [Protocol for Homeless People in Public Places](https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCIQFjABahUKEwiIrevR-s_IAhViIqYKHfRCBRs&url=http%3A%2F%2Fwww.housing.nsw.gov.au%2FNR%2Frdonlyres%2F526F64E9-FE16-4580-AE63-7831436A3E6B%2F0%2FProtocolforHomelessPeopleGuidelines.PDF&usg=AFQjCNEbZtWLHr_e-0Vi-xJNrIZeJWjwUA&bvm=bv.105454873,d.dGY) is a government initiative aimed at ensuring homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their situation.[[23]](#endnote-23)

Similar protocols and action plans exist in other Australian jurisdictions.[[24]](#endnote-24)

**5. Please indicate if you know whether homelessness has been recognized as a human rights violation by courts, by national human rights institutions in your country/ in the area of your expertise, and if so, on the basis of which human rights (for example: right to adequate housing, right to life, etc.)**

Courts recognition

The High Court of Australia has held that international norms influence the development of the Australian common law.[[25]](#endnote-25) The right to an adequate standard of living contained in the ICESCR and other rights which engage homelessness therefore have the potential to be addressed in the development of the common law in Australia.

The Commission considers that homelessness raises a range of human rights concerns [[26]](#endnote-26) as persons who are homeless may be facing violations of the right to an adequate standard of living (which includes the right to adequate housing), the right to education, the right to liberty and security of the person, the right to privacy, the right to social security, the right to freedom from discrimination, the right to vote and many more.’[[27]](#endnote-27)

**Provide information on any initiatives being taken by your organization or others to address homelessness using an explicit human rights framework.**

Commission work

The Commission made a submission to the 2009 inquiry into homelessness legislation conducted by the Standing Committee on Family, Community and Youth. The submission can be viewed [here](https://www.humanrights.gov.au/legal/submissions/2009/20090901_homelessness.html).

In 2008 the Commission published a paper titled ‘[[*Homelessness is a Human Rights Issue*](https://www.humanrights.gov.au/sites/default/files/document/publication/Homelessness_2008.doc)'](https://fileshare/web_drafts/HreocWeb/human_rights/housing/homelessness_2008.html)[[28]](#endnote-28)

1. Human Rights Law Centre, *Fact Sheet 6 – Housing and Homelessness* (2016). At [http://hrlc.org.au/wp-content/uploads/2015/07/6+Final+Housing+and+Homelessness+Fact+Sheet.pdf](http://hrlc.org.au/wp-content/uploads/2015/07/6%2BFinal%2BHousing%2Band%2BHomelessness%2BFact%2BSheet.pdf) (Viewed 19 October 2015) [↑](#endnote-ref-1)
2. Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s 197; *Police Powers and Responsibilities Act 2000* (Qld) pt 5; *Summary Offences Act 1953* (SA) s 18; *Police Act 1892* (WA) s 50; *Offences Act* (NT) s 47A; *Crime Prevention Powers Act 1998* (ACT) s 4; *Police Offences Act 1935* (Tas) s 15B(1) [↑](#endnote-ref-2)
3. Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ (2007) *UNSW Law Journal* 30 (1), 157. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-3)
4. Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ (2007) *UNSW Law Journal* 30 (1), 157. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-4)
5. *Crime Prevention Powers Act 1998* (ACT) s 4; Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ (2007) *UNSW Law Journal* 30 (1), 159. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-5)
6. *Summary Offences Act 1953* (SA) s 18; *Police Act 1892* (WA) s 50; ; *Police Offences Act 1935* (Tas) s 15B(1); *Offences Act* (NT) s 47A; Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ (2007) *UNSW Law Journal* 30 (1), 159. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-6)
7. Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) s 197; ; *Police Powers and Responsibilities Act 2000* (Qld) pt 5; Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ (2007) *UNSW Law Journal* 30 (1), 159. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-7)
8. Australian Human Rights Commission*, Information concerning Australia’s compliance with the Convention Against Torture*, (September 2014) 21 [86]. At <https://www.humanrights.gov.au/sites/default/files/20141017_AHRC_CATsubmission.pdf> (Viewed 19 October 2015) [↑](#endnote-ref-8)
9. Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ (2007) *UNSW Law Journal* 30 (1), 164. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-9)
10. Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ *UNSW Law Journal* 30 (1), 164. At <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=0CEgQFjAHahUKEwi1qNi5zbTIAhWnF6YKHfksAjk&url=http%3A%2F%2Fwww.unswlawjournal.unsw.edu.au%2Fsites%2Fdefault%2Ffiles%2F7_walsh_and_taylor_2007.pdf&usg=AFQjCNEcD3pLbktKOO8Ujellh92fXP1wbQ> (Viewed 19 October 2015) [↑](#endnote-ref-10)
11. *Summary Offences Act 2005* (QLD) s 8 [↑](#endnote-ref-11)
12. *Summary Offences Act 2005* (SA) s 12 [↑](#endnote-ref-12)
13. *Police Offences Act (TAS) 1935* s 8 [↑](#endnote-ref-13)
14. *Summary Offences Act 2005* (NT) s 56 [↑](#endnote-ref-14)
15. *Summary Offences Act 1966* (Vic) s 49A [↑](#endnote-ref-15)
16. *Summary Offences Act 1966* (Vic) s 49A [↑](#endnote-ref-16)
17. Aisha Dow and Tammy Mills, ‘”Proceeds of Crime” Seizure Beggars Belief’, *The Age* (Melbourne), 21 August 2014, <http://www.theage.com.au/victoria/proceeds-of-crime-seizure-beggars-belief-20140820-3e109.html> (Viewed 19 October 2015) [↑](#endnote-ref-17)
18. Clare Rawlinson, “Begging fines making matters worse for Melbourne’s homeless, youth services say’, *ABC News,* 14 October 2014, <http://www.abc.net.au/news/2014-08-18/begging-to-pay-for-begging-fines/5678214> (Viewed 19 October 2015) [↑](#endnote-ref-18)
19. *Summary Offences Act 1998* (NSW), s 9. [↑](#endnote-ref-19)
20. Ombudsman *Issues Paper Summary Offences Act 1998 Section 9: Continuation of intoxicated and disorderly behaviour following move on direction* (December 2012). At <https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0014/7601/Move-on-powers-Issues-paper.pdf> (Viewed 19 October 2015) [↑](#endnote-ref-20)
21. See: *Summary Offences Act 1966* (Vic) s14; Summary Offences Act 1953 (SA) s 20; Summary Offences Act 2005 (QLD) s 10. [↑](#endnote-ref-21)
22. Tamara Walsh and Monica Taylor, ‘You’re not welcome here: police move on powers and discrimination law’ *UNSW Law Journal* 30 (1), 164. [↑](#endnote-ref-22)
23. NSW Government Family and Community Services, *Protocol for homeless people in public places: guidelines for implementation (May 2013). At* <http://www.housing.nsw.gov.au/NR/rdonlyres/526F64E9-FE16-4580-AE63-7831436A3E6B/0/ProtocolforHomelessPeopleGuidelines.PDF> (Viewed 19 October 2015) [↑](#endnote-ref-23)
24. See: Queensland Government, *Opening Doors: Queensland Strategy for reducing homelessness 2011-14.* At <http://www.cabinet.qld.gov.au/documents/2011/may/qld%20strategy%20for%20reducing%20homelessness/Attachments/Opening%20Doors_Qld%20strategy%20for%20reducing%20homelessness.pdf> (Viewed 19 October 2015); Victorian Government, *City of Melbourne homelessness Strategy 2011-13.* At <http://participate.melbourne.vic.gov.au/download_file/65/218> (Viewed 19 October 2015) [↑](#endnote-ref-24)
25. *Mabo v Queensland (No 2)* (1992) at 42; Ronald Sackville, ‘Homelessness, Human Rights and the Law’ (2004) *Australian Journal of Human Rights 10 (1). At* [*http://www.austlii.edu.au/au/journals/AJHR/2004/2.html*](http://www.austlii.edu.au/au/journals/AJHR/2004/2.html) [↑](#endnote-ref-25)
26. Australian Human Rights Commission, *Homelessness is a Human Rights Issue* (2008). At <https://www.humanrights.gov.au/sites/default/files/content/word/human_rights/Homelessness_2008.doc> (Viewed 19 October 2015) [↑](#endnote-ref-26)
27. Australian Human Rights Commission, *Housing, homelessness and human rights,* retrieved from <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/housing-homelessness-and-human-rights> (Viewed 19 October 2015) [↑](#endnote-ref-27)
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